	Comments Template on EIOPA-CP-11/006 **Response to Call for Advice on the review of Directive 2003/41/EC: second consultation**	**Deadline** **02.01.2012** **18:00 CET**
Company name:	Pensioenfonds Zorg en Welzijn (PFZW) Utrechtseweg 91 3702 AA ZEIST The Netherlands Contact details: Wouter Thalen (PFZW) / Niels Kortleve (PGGM) E-mail: wouter.thalen@pfzw.nl / niels.kortleve@pggm.nl	
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The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Question".
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇨ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions.
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Question	**Comment**	
General comment	Pensioenfonds Zorg en Welzijn (hereafter: PFZW) is the not-for-profit mandatory pension fund for the Dutch health care and welfare sector. We manage the pensions for more than 2.3 million participants. Our assets under management contribute to 99.5 billion euro (end of 2010). PFZW has contracted *PGGM* to administer its pension scheme and manage the assets of the pension fund. PFZW was also assisted by its services provider PGGM in answering the questions of this response. For further information on PFZW and its pension services provider PGGM: PFZW : http://www.pfzw.nl/about_us/Corporate_information/Corporate_information.asp PGGM : http://www.pggm.nl/About_PGGM/Corporate_information/Corporate_information.asp PFZW is a member of the *Pensioenfederatie*, the Dutch federation of pension funds. PFZW has been actively involved in the drafting of the response of the Pensioenfederatie. We endorse the response sent to you by the Pensioenfederatie and therefor our response will show considerable similarities. **Preliminary Remarks** Since the adoption of the IORP Directive (Directive 2003/41/EC) in 2003, the European Union went through two mayor financial crises. The Dutch pension sector was hit considerably but stood relatively firm. Dutch pension funds did not seek for state support, unlike some Dutch banks and insurance companies. Nowadays, Dutch society is engaged in a demanding process to make the Dutch pension system more sustainable. The IORP Directive explicitly underlines the role and responsibilities of individual Member States. Furthermore, the IORP Directive only refers to article 18 as being subject to review. Now we find ourselves confronted with proposals for revision and the introduction of solvency capital requirements that may interfere severely with our Dutch sustainability debate. We are ready and look forward to cooperating with EIOPA and the European Commission to further stimulate pension security. At the same time we want to stress that too much focus on capital	

requirements will be counterproductive and will ultimately lead to lower pensions (e.g. by a shift to individual Defined Contribution contracts). Taking into consideration the importance which the European Commission highlighted in its Green Paper on Pensions vis-a-vis the strength of multi pillar systems backed by funded schemes, we also stress that pension security needs to be related to the whole of pension systems of the individual member states themselves.

Above all we are convinced that consumer protection is paramount and therefor pension security should be based on full transparency and appropriate communication with pension fund members. We suggest to develop and propose a set of pension system building blocks to individual Member States, instead of introducing a set of stringent security rules. Therefor we call for both a qualitative and a quantitative impact assessment before any decision will be taken at level 1.

Last but not least, we would like to reflect on the need and purpose for the foreseen revision:

- We would like to start with underlining that we see the point in reviewing the IORP Directive. At the same time, we are not convinced that an overall revision of the IORP Directive is necessary given the following:
  - One of the reasons put forward by the European Commission to revise the current IORP Directive is the fact that there might exist pension schemes which currently do not fall under any form of prudential regulation. EIOPA's advice not to extend the scope as laid out in the 2nd draft answer to the European Commission implies that this reason is no longer valid. We will touch upon this issue in our answers on the scope.
  - Another driver for revising the current IORP Directive is a wish for further stimulation of cross border activity, or at least to prevent barriers to occur. In answer 5, we argue that the lack of cross border activity is most likely due to a lack of demand rather than a result from non-harmonised supervision. Also, major differences in social and labour law and social security (*i.e.* first pillar pensions) are far more likely to pose difficulties for cross border schemes. We therefor conclude that this second reason to revise the IORP Directive is highly disputable.
  - The only plausible reason remaining for a revision in order to establish risk based supervision is to enhance security of pension arrangements that are currently not covered by any EU regulation. Looking at the scope and the impact of a review we note that the countries that will be most affected by the review are countries with large funded pension schemes with Defined Benefit characteristics. The countries where those schemes form a large part of retirement provision do already have a sufficient national safety net.

	• Based on these three arguments, we conclude that a broad review and, especially, an overall revision of the IORP Directive seems to be disproportionate.
	• Harmonisation of pensions:
	  ○ Throughout Europe, Member States have their own unique pension systems. Harmonisation of such different systems cannot be achieved in practice. Pensions are about security, adequacy and sustainability. The different features of the different pension systems have to be tested against these three conditions at least. In the Green Paper on Pensions these three major aspects of sound pension systems have been correctly identified by the involved Directorates General. A revision of the IORP Directive as initiated by DG MARKT should take into account the overall pension system of a Member State and address security, adequacy and sustainability.' Therefore PFZW doubts whether a mere revision of the IORP Directive without any proposal on how to enhance the setting up of more occupational pension systems in the Member States fails to achieve the aim of the European Commission which is to reduce poverty of the elderly. We seriously question whether cross-border activities will achieve this aim.
	  ○ A unique and harmonised security level at the European level is uncalled for, as this is an intrinsic part of the pension deal that is negotiated between social partners at national level.
	  ○ We repeat that IORPs differ from insurance companies. They differ from an institutional point of view by the fact that no commercial shareholders exist. Instead, IORPs carry out collectively bargained pension schemes. Also, IORPs have steering mechanisms (conditional elements) that insurance companies lack. Typically, liabilities are long term allowing for more recovery power and flexibility. We also repeat that the often mentioned need for a level playing field between insurers and pension funds does not exist.
	• Holistic balance sheet:
	  ○ The idea of a holistic balance sheet seems to offer theoretical possibilities for harmonisation, but the complexities involved make this an instrument unsuitable as a primary supervision tool. Harmonisation of supervision is according to us not needed.
	  ○ Consideration can be given to using the method as an internal model that can possibly lead to lower solvency buffers if properly used. This use will account for the proportionality issues for smaller IORPs that are involved in using a complex tool.
	  ○ The answers in this response are formulated in case the European Commission decides to go through with harmonisation and the introduction of an holistic balance sheet. The fact that specific answers are formulated should not be considered a justification of the review in itself.	

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1.	The scope of the IORP Directive is a politically very sensitive issue. Our answer therefore also can only be political from a Dutch point of view. PFZW is of the opinion that EIOPA should advise the European Commission to stimulate a profound political discussion on this matter. Nevertheless we would mention some of the issues that we see: in the Netherlands occupational pensions (identified at European level as IORPs) have a long history and are a main source of pensionable income for elderly. Due to our balanced three pillar pension system, the Netherlands also have the lowest poverty rates amongst elderly in Europe. Looking at other countries, there are only few that have such a large amount of IORPs including the amount of assets that this entails. Therefore from a pure Dutch point of view revising the IORP Directive without broadening the scope at European level is out of proportion. That would mean for us that European regulation would influence our occupational pension system more than in most of the other European countries. We would be regulated by 27 Member States and might heavily be impacted, whereas a new (narrow) IORP II Directive would have mostly a minor impact on the national pension systems of those Member States. This also would mean that the Netherlands with their strong occupational pillar would face a maximum harmonisation After a lot of negotiations and adjustments, the social partners in the Netherlands have achieved a new pension deal that still needs to be implemented into national law. We have great fears that this pension deal will be endangered by the decision concerning the review and revision of the IORP Directive. Other countries have chosen for different pension vehicles that are not as affected by European regulation as we are.	
2.	See question 1, for political reasons we refrain from answering this question.	
3.	See question 1, for political reasons we refrain from answering this question.	
4.	For political reasons we refrain from answering this question.	
5.	In principle we agree with the analysis of the options and the impacts as laid out in this advice. In order to prevent that cross border activity will narrow down again to 'paying or receiving' contributions as the qualifying criterion for cross-border activity we would suggest to replace 'to pay contributions into the institution …., etcetera' by 'to fund the benefit promise in a pension scheme executed by the institution……' etcetera. We expect that the proposed amendment of articles 6 (c) and (j) will offer sufficient flexibility for dealing with the cross-border issue, provided that here will be enough room for interpretation of sponsoring undertaking as any undertaking or body (including multinational corporations) which has	

	a direct agreement with the institution for the benefit of its employees. This may include multinational corporations with headquarters established in a particular member state. Cross-border mobility within these corporations and guaranteeing and continuing pension accrual in the IORP of the base country of mobile employees was highlighted as an important issue in our 1st Phase response. Ensuring the pension security in such manner should not be inhibited/hampered by unnecessary additional rules, whilst this is properly arranged for at State level (Home Member state SLL). The adjustment of the definition will however not solve the complexity of differences in social and labour law regimes and taxation in the member states. We are not convinced that the suggested additions in the EIOPA advice will enhance the facilities for cross-border operation of institutions for occupational retirement provision; it will most probably generate new hurdles for setting up cross-border schemes. Another point is that an IORP must take into account the Social and Labour law of different Member States. Looking only at the location of the sponsoring undertaking is according to us not sufficient. A special case for cross-border activity may arise as follows: A worker has a labour contract with a sponsoring undertaking (as defined in the Draft Response of EIOPA) in Member State A and the IORP is located in Member State A too. The worker permanently works in a branch of the sponsoring undertaking in Member State B. The pension contract of the sponsoring undertaking for workers in Member State A and B will differ, following different provisions in Social and Labour Law of the two Member States. Can it be argued that in this case, although sponsoring undertaking and IORP are located in the same Member State, there is CBA? And that two national supervisors should supervise this IORP? The 'problem' multiplies when the sponsoring undertaking has branches in Member States C, D and E too. In section 5.3.19 of the Draft response EIOPA already seems to be aware of this problem. Which leads to the question: If the same problem persists when new definitions are given to the terms 'sponsoring undertaking' and 'Host State', what is the use of the change? The current definitions make it clear that Member States hold Social and Labour law in high regard. The new definitions would push this issue to the background. An additional change of article 20 IORP would be necessary to 'artificially' underline the importance of Social and Labour law (see section 5.3.17 Draft Response). We are not convinced that this approach is the way forward.	
6.	The principles laid out by EIOPA are according to us responding to the concerns expressed in the Call for Advice. We especially refer to the statement that EIOPA does not prejudice Member States'	

	abilities to require additional measures to safeguard the rights of the members and that member states should have the possibility to prohibit ring fencing in order to maintain a certain level of solidarity in the pension system. This is especially relevant for the Dutch situation.	
7.	Given the Dutch situation, we are in favour of Option 1. We refrain from judging the principles.	
8.	As stated above, we think that it should be up to the Member States to decide whether or not to allow ring fencing even in cross-border situations.	
9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However it shouldn't be mandatory. In the Dutch situation IORPs cannot go bankrupt because of implemented safety nets. Thus, there cannot be an obligation on privileged ruling for the Dutch situation.	
10.	We recognise the outline of the analysis of the options as laid out in the advice. However, the requirement of full funding in case of cross-border activity is contradictory to the principle of a single market, particularly to the free movement of services. In practice, it is a barrier to cross border activity and therefor contrary to the goals the European Commission wants to achieve.	
11.	Although we understand the rationale for the proposal under option 2, we expect that the proposed option will generate other conflicts of SLL/Prudential rules between the Host and Home member state and their respective supervisors. Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision "without prejudice to social and labour law of the host Member State" should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labour law.	
12.	The idea of a holistic balance sheet seems to offer theoretical possibilities for harmonisation, but the complexities involved make this an instrument that is unsuitable as a primary supervision tool. The concept should be developed further, where both an impact assessment by the Commission and a quantitative impact study by EIOPA are essential, before any decision can be made whether the holistic balance sheet can and should be used as a supervisory tool. The *Pensioenfederation* is willing to support both the European Commission and EIOPA in making these assessments if and when needed. Consideration may be given to using the method as an internal model that can possibly lead to lower solvency buffers if properly used. This use will account for the proportionality issues for smaller IORPs that are involved in using a complex tool. The distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs can be retained. However, we do note that this distinction is not complete and does not cover all forms of IORPs. A category should be added in	

	which the members themselves bear (part of) the risk, as opposed to the IORP as an institution.	
13.	We agree with EIOPA that assets should be valued on a market consistent basis.	
14.	We agree that no reference should be made to the transfer value. Liabilities should be valued in a market consistent way. This is not necessarily the same as the transfer value, since the concept of transfer is not fully applicable to IORPs in the same way as this is used for insurance companies. Where insurance companies always need to take into account the possibility of a forced transfer in case of insolvency, IORPs do not have this threat. We also especially agree with the point made that the transfer value for a pension contract would differ in case the liabilities would be transferred to an insurer on the one hand or to another IORP on the other hand. This makes the concept of transfer value unclear and therefor ineffective. As the two options offered in option 1 contain the most flexibility, we prefer option 1.	
15.	We agree with EIOPA that the own credit standing should never be taken into account in valuing the liabilities. If a holistic balance sheet approach were to be chosen by the European Commission, the credit standing of the IORP will be reflected in any option value where the payoff depends on the solvency of the IORP, but for transparency reasons, the best estimate of the liabilities should remain unaffected.	
16.	We see no need to make sure that supervisory standards are compatible with accounting standards. We agree with EIOPA's remark that the objective of the 2 bases is too different to achieve convergence. We are in favour of option 1 not to change the current IORP Directive on this point.	
17.	In amending Article 76(1) of the Solvency II Directive, it should be noted that the term 'obligations' is not necessarily suitable for schemes that are neither pure DB nor pure DC schemes in which no explicit guarantee is provided. A provision should be made to accommodate this. We recommend replacing the word 'obligations' with 'current benefits'. We agree that Article 76(3) can be added without amendments to a new IORP Directive, as proposed by option 2. We agree that Articles 76(4) and (5) can be added as proposed.	
18.	We are in favour of option 3. Adverse deviations of the assumptions should not be part of the value of the technical provisions, but should be covered by own funds.	
19.	We are in favour of taking into account only the current benefits without any future accrual. If a holistic balance sheet approach were to be chosen by the European Commission, future accrual could be added to the balance sheet separate from the best estimate of the liabilities. The best estimate should always be calculated on an ABO basis to keep this calculation as free of assumptions	

	as possible. Very important in that respect is the amount of future accrual (i.e. the time horizon) taken into account.	
20.	Yes, best estimate of the liabilities should be calculated without any amounts recoverable from insurance contracts. Amounts recoverable from insurance contracts are best added as an asset to the balance sheet, but at the very least separated from the best estimate liabilities.	
21.	The discount rate should reflect the nature of the liabilities. For guaranteed benefits without any ex-ante possibilities to lower the benefits, it makes sense to use a risk free discount rate, with appropriate best practice amendments such as an illiquidity premium or UFR. For benefits that are not unconditional, it makes sense to use a higher discount rate that reflects the security level. Alternatively, and especially if a holistic balance sheet approach where to be chosen by the European Commission, one could also choose to report the value of the unconditional liabilities based on a risk free discount rate, and separately report an option value that reflects the possibility to lower the benefits. Since the exact nature of the benefits is different in each and every Member State, a harmonised discount rate would be unsuitable. Option 1 therefore seems the most appropriate, where a provision could be added that the discount rate should always reflect the level of security offered in the benefits. We understand that EIOPA considers however not to include option 1 in its advice since this would not lead to increased harmonisation. We strongly feel that this is a mistake: even though it contributes the least towards the stated goal by the EC, it is the current market practice and should at least be brought under their attention. Option 3 would seem to leave the best options to deal with, if the holistic balance sheet were to be chosen. This leaves the best possibility to deal with Member State specific or scheme specific security level. We note however that basing any capital requirement on the level A technical provisions would still lead to higher than necessary capital requirements given the appropriate level of security.	
22.	Yes, service expenses to service existing benefits should be added to the best estimate value of the liabilities. The SCR however should always be based on the best estimate of the liabilities without these service expenses, since the additional service expenses are independent from investment risk and therefore need not be protected from financial shocks.	
23.	Discretionary benefits should not be taken into account in the value of the liabilities, given the nature and uncertainty of these benefits. We would advocate disclosing to members that such possibility for discretionary benefits exists, but without attaching any value to it in order not to raise false	

	expectations. Also, in order not to raise false expectations, we are not in favour of the concept of surplus funds, as the very mentioning of assets in a surplus fund that could be used for discretionary benefits could possibly be interpreted as an indication that the discretionary benefits will be given. Related to the issue of discretionary and conditional benefits, we note that it is currently very much unclear how the specific Dutch situation of indexation granting is to be considered. This may turn out to become a legal issue where the nature of the benefits will depend on the exact formulation in the pension scheme. This may lead to the undesirable situation that for the one IORP the indexation granting is considered discretionary and for the next IORP it will be considered conditional, even though the intention of the indexation granting is the same. Also, this might be equally true for recourse on recovery contributions from a sponsor, given the exact formulation in the agreement with the sponsor. We urge to provide clarity on this point before we could provide our definite standpoint on this. Pending the exact outcome of these issues, we would rather prefer Option 1 on page 152 not to include discretionary benefits in the technical provisions. We do not agree however to the statement EIOPA makes that specification of what constitutes discretionary benefits should be taken at Level 2. Especially for Dutch pension schemes, it is of vital importance that we know whether the indexation mechanism is to be considered a discretionary or conditional benefit and what the consequences of either would be. For example, we strongly remark that it would be a mistake if solvency buffers would be calculated including any indexation option value, as this would continuously increase the buffers as the solvability rises. We advocate more clarity on this point before actually deciding on the Level 1 rules, possible during a preliminary QIS. We are in favour of explicitly separating unconditional and conditional benefits. The conditional benefits should be unambiguously tied to a rule stating when and based upon which rule the benefit would be paid out or made unconditional. If a holistic balance sheet approach were to be chosen by the European Commission, the conditional benefits can be reported using the option value of the benefit. Without a holistic balance sheet approach, we think it is more straightforward to reflect the conditionality of the benefit by using a higher than risk free discount rate.	
24.	We agree that contractual options should be fully disclosed in the value of the technical provisions. However, if options in the plan are subject to a discretionary board decision, *i.e.* the Board decides whether or not to use or grant options, these options should not be disclosed in the value of the technical provision. Even if the discretionary decision process is executed along agreed procedures / guidelines / criteria they should not be disclosed. However, the existence of these options and the	

	discretionary nature thereof should be communicated appropriately to plan members.	
25.	We feel positive about the idea of splitting the technical provisions into homogeneous risk groups. However, more detail is needed as to what would constitute homogeneous risk groups. A split in Defined Benefit (DB) and Defined Contribution (DC) would make sense, but possible other splits could lead to overly burdensome administration for smaller funds. We advise therefore to state the possibility to use this within an internal risk framework that could enhance risk management and transparency. We are in favour of option 1, but with more clarification as to what would constitute homogeneous risk groups other than DB and DC.	
26.	In principle, we agree that Solvency II rules regarding reinsurance contracts and SPVs can be used. We would suggest however that the allowance for credit risk should not be interpreted as imposing an option element within the value of the reinsurance contract, but rather as a (periodic) assessment regarding the likelihood of receiving the insurance. This means that we advise on Option 2 but with additional clarification on how to take into account the credit risk.	
27.	Yes, we agree it would be useful to introduce an Article regarding the availability of data and the use of approximations in the calculation of technical provisions	
28.	Yes, we agree that an Article is useful regarding the comparison of technical provisions against experience, with appropriate adjustments.	
29.	Yes, we agree it is useful to add an Article regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions	
30.	Yes, we agree that an Article can be added regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory law	
31.	We are deeply concerned about laying down the full set of technical measures with respect to the holistic balance sheet in Level 2 implementing measures. We feel that this new instrument is so new, complex and far reaching for the day to day management of a pension fund that a first impression of the concrete consequences is in order. We advise to undertake at least both a Qualitative and a Quantitative Impact Study regarding the holistic balance sheet *before* Level 1 measures are decided upon.	
32.	We advocate not to harmonise the level of security offered in pensions, but only to provide rules regarding minimum requirements that would actually lead to the stated level of security. If this advice is followed, an article prohibiting additional rules would be redundant.	

	On the other hand, even with a high level of harmonisation, we still think that ultimately the exact definition of rules is a matter of the individual Member States. We are therefore in favour of keeping Article 15(5) in a new IORP Directive	
33.	We agree that sponsor support should play a role in the assessment of the security level provided. We also agree that theoretically, the valuation framework under the holistic balance sheet offers attractive possibilities to achieve this. We are however very concerned with the complexity involved and the subjectivity regarding the determination of certain parameters necessary. This subjectivity may lead to substantial differences in the assessment of the sponsor support between the IORP and the supervisor that may prove difficult to resolve. We therefore urge EIOPA to also consider investigating simpler methods to allow for capital relief in case of sponsor support.	
34.	The *concept* of own funds can be applied to IORPs as well. We propose however some amendments to the relevant Solvency II articles for application to IORPs. • In Article 88, we suggest to remove 88(1), as pension funds do not have any subordinated liabilities. Also, the reference to own shares should be removed. This leaves the definition of the excess of assets over liabilities for basic own funds. • The additional concepts of ancillary own funds and surplus funds seems superfluous for IORPs. These concepts can possibly play a role in case the holistic balance sheet is adopted. • The same holds for the tiering of own funds. This concept is not applicable for IORPs. Only in case the holistic balance sheet approach is adopted could some tiering be appropriate in order to cover different forms of liabilities (unconditional, conditional and possibly discretionary liabilities).	
35.	Yes, PFZW agrees that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive. Subordinated loans can serve as a security mechanism for all types of IORPs. The subordination feature can offer loss absorption in problematic, but going concern situations. Also according to the OPC report "*Survey on fully funded, technical provisions and security mechanisms in the European occupational pension sector*", Member States confirms that subordinated loans are a useful security mechanism.	
36.	We feel that the security for IORPs across Europe should not be uniform. In most Member States the level of security of a pension promise is currently part of the pension agreement itself, and is one of the main elements. Other main elements are, for example, the accumulation of pension rights, the contribution and whether or not there is indexation. The balance of all these elements is different in	

	all the Member States and is intertwined with national Social and Labour Law and any first pillar pension scheme. Just like the fact that it is not desirable that the IORP directive prescribes a uniform level of contribution rates, accrual rates or indexation policy, also levels of security of pension income should not be prescribed by European legislation. Also EIOPA underwrites this in their view: "*Some Member States provide relatively low benefits with high funding/security requirements while others provide higher promised benefits but with a lower level of funding*". The implication of this is that EU solvency regulation should recognize the different levels of security accepted by national social and labour law. Due to these differences and the opportunity of cutting pension rights in different Member States, setting the level of security across the EU, regardless of the presence of adjustment mechanisms of pension benefits, would risk communicating to members a false sense of "uniform" security. EIOPA states not to advise on a specific probability level. We agree on this, but would like to add the suggestion that EIOPA, considering the arguments mentioned, advise the EC not to pursue a uniformed security level.	
37.	Yes, If any confidence level is agreed upon within a pension scheme, this confidence level should apply to a one-year time horizon.	
38.	We are in favour of a risk-based supervisory framework. The Solvency II directive is an example of risk-based supervision. However, this does not automatically mean that PFZW is in favour of applying all Solvency-II rules for calculating the solvency capital requirement. More examples of risk-based supervision exist, such as the current Dutch regulatory system FTK. This system also provides good examples and many best practice experiences with risk based supervision that could be drawn upon. The answer on this question will very much depend on the outcomes of quantitative and qualitative impact assessments, which in our view is essential for any proposal. As EIOPA states, specific security and benefit adjustment mechanisms have to be taken into account; these are instruments that provide pension security. A more difficult question is how this can be done. PFZW pleads for a study by EIOPA, in close cooperation with the actuarial profession and IORPs representatives, to answer the question how specific security and benefit adjustment mechanisms can be valued in an appropriate way and how sensitive such an approach is to different assumptions. It is also still questionable how implicit security mechanisms can be made explicit for calculating the SCR.	
39.	Yes, IORPs should assess the SCR on an annual basis.	

40.	In the Netherlands, comparable mechanisms as the MCR and SCR are currently used. The MCR is used as the level of funds (in excess of liabilities) that should be reached with a short term recovery plan. The SCR is used as the level of funds (in excess of liabilities) that should be reached with a long term recovery plan. We are in favour of using the MCR and SCR in exactly this way. In addition, we doubt the added value of making the MCR dependent on the SCR, as is the case under Solvency II regulation.	
41.	A pension protection scheme is an instrument to provide pension security. In a holistic balance sheet all the different security mechanisms are included. Therefore, if appropriate and already present in a Member State, it is logical to include a pension protection scheme as a separate asset, if a holistic balance sheet approach were to be chosen by the European Commission. Note that a pension protection scheme may also impact the value of the liabilities, in which case the effect should be split up between the asset side and liability side of the holistic balance sheet. This occurs for example if liabilities are lowered at the transfer to the pension protection scheme.	
42.		
43.	According to us, Article 136 of the Solvency II Directive could be valuable for IORPs. If IORPs have procedures in place to identify deteriorating financial conditions, they are well prepared how to handle in a situation of stress. The inclusion of Article 141 in a revised IORP Directive is appropriate only with some amendments to reflect specific IORP situations. An insurance company has shareholders, which implies that the interests of the shareholders could be opposed to the interests of policy holders. However, IORPs do not have shareholders and have only stakeholders, which are all negatively hurt by a financial shock. Any additional supervisory action in case of deteriorating financial conditions should therefore not focus purely on restoring a solvent position, but on a fair distribution of any necessary measures. We want to stress however that such a decision is primarily the task of the board of trustees and not of the supervisor. Any overruling power should therefore only be allowed in case the board is no longer in control of the situation.	
44.	We are in favour of option 1. This option retains the current flexible position on recovery periods. The recovery periods out of Solvency II are not appropriate for IORPs. According to us recovery periods are part of social and labour law. The OECD paper "*The Impact of the Financial Crisis on Defined*	

	Benefit Plans and the Need for Counter-Cyclical Funding Regulations" (2010) shows that the current recovery periods in the different Member States are much longer than prescribed in Solvency II. Shorter recovery periods will stimulate IORPs to a pro-cyclical investment policy, which does not only harm the pension incomes, but also the European Economy as a whole. After the crisis in 2008, many national regulators decided to lengthen the recovery period due to the character of the crisis. Such kind of flexibility should also be possible in the revised IORP Directive. IORPs should have much longer recovery periods than insurance companies or banks, because of several reasons: (i) the long-term character of the liabilities of an IORP and the fact that pension funds cannot be subject to 'bank-runs', (ii) the duration of an insurance contract is - in general - shorter than the duration of a pension contract, and (iii) the fact that pension funds have the ability of steering mechanisms, like contribution policy, indexation policy and the possibility to reduce pension rights. This is – economically – an advantage of IORPs. The revised IORP should take this into account. We feel that if IORPs will be confronted with the shorter recovery periods from Solvency II, this would seriously harm the pension provision for participants. Therefore PFZW urges for a quantitative impact assessment, before a decision is taken about recovery periods.	
45.	Yes we agree that in extreme cases, the supervisor should be allowed to impose the prohibition to freely dispose of the assets within the IORP.	
46.	Article 142 of Solvency II is not appropriate. Especially estimates of management expenses and estimates of income and expenditure in respect of direct business are not relevant for an IORP. An ALM based projection should be the basis for a recovery plan of an IORP. Such analysis shows the prediction of the financial position of the IORP, including all the paid benefits, received contributions and expected returns. Furthermore, the recovery plan should contain the contribution policy, the investment policy, the indexation policy and the policy of the IORP with respect to cutting benefits. We finally note that in the Netherlands, experience exists with applying longer term recovery plans. One of the main elements in Dutch legislation related to recovery plans is that pension funds are not allowed to take on more risk than their prevailing strategic risk level. We advocate the application of such a rule in order to prevent extreme cases of pension funds 'doubling up on their risk' as an ultimate attempt to recover. We do however urge in this case to define in detail what exactly constitutes the prevailing strategic risk level.	
47.	In our strong opinion the prudent person principle should remain the basic principle in a revised IORP	

	Directive. It obliges IORPs only to get into investments that serve the best interests of the beneficiaries. Contradictory as it may seem, it may well be possible that investing in 'less risky' or seemingly 'safer' investment classes is not in the best longer term interests of the beneficiaries if they do not generate the yields necessary to meet the commitments. The investment rules and policies should always be worked out in an asset-liability context. Investment rules should be consistent with the retirement objective of an IORP, based on the (nature and duration of) future liabilities, and be based on appropriate risk management. Pension funds are important suppliers of risk-bearing capital (see also EU 2020 agenda). In the above context it is therefore stressed that a solid macro-economic analysis on the role of IORP's for the European economy is desirable.	
48.	The prudent person principle is a qualitative investment basis. Currently, in the IORP directive there are mandatory and optional quantitative restrictions. Due to these quantitative restrictions investments cannot be done in a way that might be optimal according to the retirement objective and risk management of the IORP. This is undesirable. Different investment policies in pension funds are a logical result due to the different composition of an IORP or the different pension promise. Principle based supervision (prudent person) is therefore preferable instead of quantitative requirements. The review of the IORP Directive is a good opportunity to abolish the exception in the current IORP Directive which gives Member States the option to implement quantitative investment restrictions or, if this is too big a step to take, at least make the exception temporarily (give it an end date). In our opinion, only one investment restriction should remain. This is the maximum investment in the sponsoring undertaking, as this relates to the security of the members in case of a bankruptcy of the sponsoring undertaking. We disagree with the investment proposal to limit investment in foreign currencies.	
49.	There should be no differentiation in investment provisions between defined benefit and defined contribution pensions. In both cases the prudent person principle should be the basic principle. Any deviation from that principle will result in suboptimal investment outcome.	
50.	It is our opinion that the prudent person principle will get an optimal investment result. Other restrictions to the investment policy of an IORP will give a suboptimal result.	
51.	Subordinated loans should be exempted from the prohibition of borrowing. Also, we advise to make clear that swaps used for risk management purposes should not be considered as borrowing in this sense, and should therefore also be allowed.	
52.	We are in favour of option 1, to include the general article on financial stability and the Pillar II	

	dampener, but to leave out the equity dampener. We agree with EIOPA's analysis that the equity dampener is reliant on the existence of mean-reversion. When this does not occur on the same horizon as is used for the calculation of the equity dampener, extreme risks will increase. Also, the possibility exists (as is currently the case), that the technical rule set up for the equity dampener is not able to capture the actual development in the market: currently, the equity dampener would already lead to higher buffer requirements while pension funds are not yet recovered from the crisis. If option 2 should eventually be chosen, we advise EIOPA to lengthen the period used for calculation of the equity dampener, in order to avoid higher buffers before the effects of a grave crisis is resolved. Finally, we would still like to point out that pro-cyclical behaviour could also be countered by applying a counter-cyclical premium for the discount rate.	
53.	Yes, we agree that the content of articles 29 and 31 of Solvency II could be introduced. However, it urges EIOPA and the Commission to respect the diversity of national occupational pension systems and the degrees of regulation and supervision to which IORPs are subject. Any rules in this area should therefore respect the principle of proportionality. PFZW agrees that these rules would make explicit the elements that are already implicitly included in the IORP Directive.	
54.	Yes, PFZW agrees with the need to enhance benefit security. Differences between IORP and insurance supervision and diversity of IORP allow indeed differences in supervision, transparency and accountability. PFZW would also point to other differences between IORPs and insurers: The governance structure justifies different treatment: the involvement of social partners, the role of trustees (and/or persons carrying out similar fiduciary responsibilities) and the backing of the employer where IORPs are concerned justifies a difference in treatment. IORPs are not-for-profit and often have no or very few members of staff, and no shareholders. There is therefore no incentive to increase "business" or "profits", or to "diversify" activities, which is different from many (though not all) insurance companies. The different roles and functions of IORPs and insurers should be reflected in regulation.	
55.	PFZW agrees that stress testing could be introduced for IORPs through inclusion into the IORP Directive the material elements of article 34(4) of Solvency II. This should however be subject to proportionality. The proportionality principles should be laid out in level 1 regulation. PFZW is not convinced that Article 36 of Regulation 1060/2009 (Credit rating agencies) is an appropriate basis for reinforcing the sanctioning regimes in Member States.	

	Stakeholders risk having to pay the price, whereas they are the ones who deserve protection. Further analysis is therefore needed.	
56.	PFZW is opposed to reinforcing the sanctions regime for IORPs. PFZW would therefore agree to stress testing of IORPs, but would oppose administrative penalties.	
57.	We would agree with paragraph 15.4.3., that an overall obligation to make penalties public would not be suitable. PFZW agrees with EIOPA that further analysis is needed here.	
58.	PFZW disagrees with EIOPA's recommendation to give all powers necessary to the Host supervisor with the ability to intervene directly without a priori advising the Home supervisor. PFZW believes that IORPs should continue to have one main supervisor, namely in the home state, with Host competent authority supervising the IORP via cooperation with the Home supervisor.	
59.	We prefer option 3: Member States should be free to determine the most suitable ways of supervision for their IORPs. The *Pensioenfederatie* has observed that in many Member States, solid supervisory review processes are in place for IORPs and EIOPA correctly says that articles 13 and 14 of the IORP Directive already contain provisions relating to supervisory powers and information to supervisors. Should supervisory review powers be introduced however, they should be subject to the proportionality principle and should not lead to unreasonable additional costs or burdens for the IORPs. This principle already applies to insurers by virtue of article 36(7) Solvency II.	
60.	The requirements for capital add-ons for insurers are in our opinion not appropriate in the context of the IORP Directive and should not apply to IORPs. Contrary to the insurers, where an add-on is (ultimately) paid by the shareholders instead of the members/clients, an add-on in case of an IORP would ultimately be paid by the plan members and beneficiaries. This would hamper the protection of members and beneficiaries. If add-ons would nevertheless be introduced, these should only be used as an "ultimum remedium" in specific situations which have adequately been defined in advance.	
61.	We can confirm that the material elements of Article 38 (1) of the Solvency Directive could in fact be used as a basis for the IORP Directive. However, we are of the opinion that this is not the case for Article 38 (2). It would be preferable, that service providers only have to deal with the supervisor of their country of establishment, rather than having to deal with multiple foreign supervisors in case of an international client base. The supervisor of the country of establishment of the pension service provider can in such case, under the condition that the IORP should be informed about the supervision, operate as an acting agent for the supervisor of the country of establishment of the	

	foreign IORP. Furthermore the final responsibility should remain with the IORP. Thus a balance is struck between the interests of the service provider on the one hand, and the interest of enforcing the rules of the country where the IORP is located on the other hand.	
62.	PFZW agrees with the suggestion of EIOPA that the IORP's home state should be defined as the one where the IORP was registered or authorised. Therefore we do not fully understand the phrase "proposed changes to the definition of home state and rules on chain outsourcing". More clarity should be provided in this respect. But we agree with the proposed changes on the rules on chain outsourcing, including clarification of the wording "location of the main administration". However, we see no benefits in an approach that would stipulate that the main administration needs to be located in the home member state. Furthermore, accumulation of different supervisory rules should be avoided and the final responsibility should remain with the IORP	
63.	We agree with the analysis of the EIOPA that **in principle** the material elements of the Solvency II requirements for governance could be applied to all IORP's "subject to the proportionality principle and a proper impact assessment to assess the real impact of the new requirements." as stated on page 362 of the Response for the Call for Advice on the review of Directive 2003/41/EC. We furthermore refer to our answer to question 13 of the first consultation of EIOPA.	
64.	EIOPA has rightly identified the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance principle. A proper impact assessment is necessary on the efficiency and the effectiveness of such new governance rules to IORPs.	
65.	PFZW disagrees with the EIOPA that the same 'fit and proper' requirements as for insurance and reinsurance undertakings as in Art. 42 (1) of Solvency II shall be applied to IORPs. The 'fit and proper' requirements have to be linked to the nature and risk profile of an IORP. There may be some general principles of 'fit and proper' requirements that are be similar to insurance and reinsurance undertakings, but the content of the requirements need to be adapted to the specificities of IORPs. As EIOPA correctly stated, a proper impact assessment is necessary in order to make sure that the requirements are proportionate for IORPs. It is important that the Board as a whole has an adequate level of expertise; it should not be required that each member of the Board fulfil all "fit" professional expertise requirements.	
66.	PFZW agrees that 'fit and proper requirements' should apply at all times and that there should be effective procedures and controls to enable supervisory authorities to assess fitness and propriety. However, such ex-post intervention could -as an "ultimum remedium"- be desirable in specific	

	situations.	
67.	The IORP could be asked to complete a standard questionnaire on the fitness and propriety of the candidate for the IORP board, to be sent to the supervisor who could then provide the IORP with its advice on the nomination of the candidate. This would avoid the need for an ex-post intervention by the supervisor.	
68.	We agree with EIOPA that option 2 is preferable and that general principles of risk management should be included in any new IORP Directive. We think that any negative consequence that such introduction may have in terms of added costs or administrative burden is justified by the additional security such a framework will provide for members. As stated in 20.2.16 of the EIOPA response to Call for Advice there are considerable differences between Member States in risk management rules for IORPS. In The Netherlands, a lot of qualitative rules are already in place. EIOPA proposes to add in the Risk Management requirements the line 'this also includes risks which can occur in outsourced functions and activities as well as the impact on overall risk that is generated through the outsourcing'. We propose to remove the last part of this sentence ('as well as the impact on overall risk that is generated through the outsourcing'). In The Netherlands most of the tasks for pension administration and investment management are outsourced by IORPS, which have far more expertise in these fields. According to us this has a risk reducing effect.	
69.	Yes, we agree with EIOPA that an ORSA is in principle suitable for IORPs. We think the ORSA is a good instrument for IORPs to show that the risks and solvency position is fully understood by the Board of Trustees, and that risk management processes are an integral part of all day to day managerial processes. The funding calculations do not cover in our view all aspects of this assessment. We agree with EIOPA that funding calculations and capital requirements are only quantitative and snapshot, while an ORSA is also qualitative and long term, which appropriately fits with the long term character of IORPs.	
70.	In the Netherlands, the members bear part of the risk together with the sponsoring undertaking. The board of trustees is usually a representation of the stakeholders, through employee and employer associations. It is recommendable that this representation still understands the risks run within the IORP. We do not see major differences for this type of IORP. We can understand that for less complex IORPs such as in funded DC schemes, the scope of the ORSA could be smaller.	
71.	If a holistic balance sheet approach were to be chosen by the EC, we still think that applying the concept of an ORSA is a good idea. Especially because the use of the holistic balance sheet introduces additional complexity on the balance sheet and the options that are explicitly	

	communicated, the ORSA can add value to show that the people who effectively manage the fund understand all risks, positions and processes.	
72.	We agree that Member States should have an option to introduce a whistle blowing right of the compliance function.	
73.	We refer to our answer 15. to the first consultation of the EIOPA. A one-size fits all solution must be prevented across Europe for IORPs with regard to the compliance function. The introduction of an independent and qualitative compliance function should be left to the discretion of the IORP itself. The general formula used in the Solvency II Directive could be a possibility to be considered, but a proper assessment needs to be made what the impact would be for the IORPs when such a function is introduced. If such a function is introduced we agree with EIOPA that it should include all legislation with an impact on the operations of an IORP.	
74.	In principle we agree with the introduction of an internal audit function that is effective, objective and independent from operational functions. But we would underline that there should not be too strict requirements in order to make sure that this can as well be fulfilled by means of or as part of outsourcing. As long as the independence and quality of the control, compliance and audit function are guaranteed, the exact specificities of such an internal audit function should be left to the discretion of the institution.	
75.	We agree that the internal audit function, if introduced after a proper assessment of the costs and effectiveness of such a function within an IORP, could have a whistle-blowing right in case Member States choose for such an option.	
76.	We acknowledge the importance of actuaries and the fact that their advices are necessary. We also agree with the role and duties of the actuarial function of IORPs as stated by EIOPA. However, if the whistle-blowing responsibility would be required, it should be clearly written in the final text that this responsibility would only have to be internal. The actuarial function should in this role solely have to report to the internal supervisory body, the administrative or the management body of the IORP.	
77.	We agree that the requirements of Solvency II could be a starting point for the actuarial function.	
78.	We agree with the importance of the independence of the actuarial function. Conflicts of interests must be avoided because they diminish the members/beneficiaries' level of protection and increase operational risks. The independence of the actuarial function must be clearly defined. Moreover, the competence to guarantee the operational independence should be left to Member States. The regulation should in our opinion include the obligation of a certification by an external actuary or	

	auditor.	
79.	We agree with most elements of the analysis of the options as laid down in the advice of EIOPA. We can also agree with the preference of EIOPA for option 2. We do however not agree with the assumption that standardization of the requirements regarding the actuarial function would necessarily lead to more cross border activity. Indeed it has been proved that the main hurdles for cross border activity are the differences in Social and Labor Law as well as tax treatment. Furthermore, as stated earlier we doubt that there is even a demand for cross-border activity.	
80.	We agree with EIOPA that the material requirements on insurers in respect of outsourcing could also apply to IORPs under the condition that the IORP remains responsible. But nevertheless, the starting point should be Art. 9 of the IORP Directive respecting the specificities of IORPs.	
81.	We do not agree with the standardisation of outsourcing process in order to enlarge the cross border activity.	
82.	We think that the clarity of fiduciary duties is essential in outsourcing and that this should be defined in a written agreement. Given the diversity of IORP's and the social systems in which they play a role, even minimum standards should furthermore be left to the responsibility of Member States, with respect to the principle of subsidiarity. The aim is not to impose minimum requirements on the service provider alone: for the member, it is important that the combination of IORP and service provider is adequate.	
83.	Given their specific objectives, social responsibilities, investment policies and governance structure IORPs are not comparable to AIFM and UCITS. Therefore we do not see the benefits of a compulsory regime for the appointment of a depositary for IORPs. To the contrary, we only see increasing costs which will finally be translated into higher contributions and lower benefits. In the interest of the participants we see no need for amending the IORP Directive as to this matter.	
84.	We refer to our answer to question 83. A compulsory regime for depositaries will entail costs which outweigh benefits. Furthermore the existing flexibility for Member States to tailor their regulations to the specific conditions in respect of local pension systems would be restricted.	
85.	Given their objectives and responsibilities IORPs are extremely prudent as to existing procedures for and in-depth oversight and safekeeping of their assets. Compulsory appointment of a depositary would lead to the costly engagement of a superfluous institution and the introduction of redundant procedures to interact with such institution.	

86.	We expect that the costs related to a written contract, the role in terms of safekeeping and the oversight functions will be high. Although a certain level of liability of the depositary could increase protection for the IORP (and thus for its participants) the relevant depositary party is likely to require higher fees in proportion to its liability risk. Conflict of interest rules are welcome.	
87.	IORPs governance structure and social responsibilities require already the performance of a tight oversight function. Depositaries should not duplicate these tasks which are already performed by IORPs themselves.	
88.	We refer to our answer to question 87. Implementation of these requirements for IORPs themselves are not expected to lead to high costs as IORPs in general will have many measures to that extent in place.	
89.	PFZW believes that the current IORP Directive lays down an appropriate information provision regime for IORPs and that this does not need to be modified. PFZW therefore favours option 1. Adequate information provision from IORPs to supervisors is of the utmost importance for identifying risks, pre-empting or correcting them and for preserving confidence in the system. PFZW would like to point out the difficulties, however, of harmonising information provision requirements. Due account should be taken of the specificities of national pension systems and the powers and traditions of national supervisory agencies The *Pensioenfederatie* mentions the different risk-mitigating mechanisms that exist within many pension funds: the role of trade unions and employers' representatives on IORP boards are an important supervisory role. Member protection, which EIOPA recognises as one of the main goals of information provision (28.3.10), is thus provided by specific mechanisms and the *Pensioenfederatie* therefore feels that it would not be productive to impose additional administrative and financial burdens on IORPs in this field, and to equate second-pillar pension provision with insurance products or third-pillar pension provision. Article 13 of the current IORP Directive already provides for an adequate information provision arrangement. PFZW agrees on paragraph 23.3.11 that there is a risk of employers becoming unwilling to provide pensions if the costs of providing pensions goes up. In any case, should new rules be adopted in this area, the principle of proportionality should be respected and cost implications should be taken into account. Implementing measures made possible through a small revision of Article 13 of the IORP Directive could allow the supervisors to address the most important information gaps in Member States. In this	

	respect, the OPC could be asked to investigate whether in any of the Member States any major gaps in information provision exist, and the Commission could subsequently take action to remedy these. The *Pensioenfederatie* is willing to work with the OPC, EIOPA and the Commission to share its expertise and to gather information in this area.	
90.	For the reasons mentioned above, we would not welcome convergence of provision of information.	
91.	We are of the opinion that against the background of the good information provision existing in the Netherlands, it is certainly necessary to provide more information to DC members than to DB members considering the risks that a member of an individual DC system is bearing compared to the member of a collective DB system.	
92.	A KIID like document for DC schemes with contents as envisaged in the draft EIOPA advice seems to be a reasonable information provision to DC members. As EIOPA has rightly stated such a document needs to be tailor-made to the specificities of the IORPs, be it collective or individual. In the Netherlands, IORP members already receive a pre-enrolment document. But according to the *Pensioenfederatie* the introduction of such a document should be left to the discretion of the Member States. They also can better decide whether and which additional information could be useful for the scheme members. As there is no competition between IORPs, a document facilitating the comparisons between IORPs is according to us not useful.	
93.	As EIOPA rightly states, scenarios about the performance of IORPs seem to be rather difficult looking at the long-term investment horizon and the change of investment policy in the course of this horizon. The members of individual or collective DC systems certainly need to be aware of the risks that are implied in the current investment portfolio of an IORP. A risk ranking should vary with the time horizon and also with the different investment portfolios. A question is how this can be appropriately communicated to the members who usually are no specialists in investments. In case of a life styling type of DC contract, it would be useful to draw the attention of a member to the different risks that he/she is facing. Some scenarios could be useful for individual DC members in order to help them to make an informed decision.	
94.	In the Netherlands, IORP members already receive annual information and in addition have the possibility to access information on their pension -both state and occupational pension(s)- at all times via the Dutch *Pensioenregister*. Any information provision should be left to the discretion of the individual Member States. The *Pensioenfederatie* has indicated to be willing to provide information about this national pensions registration tool to other Member States, e.g. by initiating a project at	

	EU-level in which countries where such a system already exists could join forces and cooperate in a European pilot. Reference is made here as well to the Green Paper on Pensions and the question about a European Tracking Service.	
95.	Information requirements need to be correct, understandable, in due time and not misleading as stated by EIOPA. How this is going to be put into practice should be left to the Member States. The information requirements as laid out in the Solvency II framework should not be applicable to IORPs.	
96.	In its response, the *Pensioenfederatie* has agreed on the impact assessment made by EIOPA, but underlined the need to have a proper impact assessment of all the consequences before proposing a revised directive.	