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:	The Association of the Luxembourg Fund Industry **(ALFI)** and the Association of the Luxembourg Pension Funds **(ALFP)** (jointly "the Respondents") are pleased to provide a common response to the Call for Evidence	
Disclosure of comments :	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this CP should be treated as confidential, by deleting the word **Public** in the column to the left and by inserting the word **Confidential**.*	Public

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.
- ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.
  - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
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Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).

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
Question	**Comment**	
General comment	The Respondents would like to align their general comments to EFRP's comments as mentioned below. ➢ The debate on occupational pension provision and the rules by which occupational pensions are provided is a political one and not a technical one only. The Respondents therefore call for a political debate within the European Commission and with stakeholders and national governments. The approach should be holistic, since pensions are an issue for all European citizens. It should be closely linked to other EC pension-related initiatives, such as the EC White Paper on Pensions. ➢ The Respondents once again laments the insufficient timeframe within which stakeholders are asked to comment on the 500-plus page consultation. ➢ The Respondents would once again underline the flawed logic behind the "same risks, same rules" and "level playing field" approach to the IORP review. It should be a case of "different functions, different standards" instead. ➢ Where revised rules are proposed for IORPs, the principles of proportionality and subsidiarity should be respected. This means that the nature, size and (lack of) complexity of IORPs should be recognised in the regulatory texts. ➢ The Respondents want to see a thorough, adequate impact assessment study carried out before the revised IORP Directive is proposed. This impact study should look into both micro- and macro-economic impacts of the new rules on pensions. On a micro-economic level, revised rules may discourage and stop employers from offering pensions to their staff. ➢ The Respondents would warn against adverse impacts on investments and economic growth: if pension funds are forced to de-risk, this will have an effect on benefits and on financial markets and economic growth.	

	➢ The supply and cost-efficiency of occupational pensions should not be jeopardised, as the Commission's Call for Advice states in its paragraph 1.3. ➢ Much of the EIOPA and European Commission documents are inspired by a "consumer protection" language. The Respondents find this inappropriate, since occupational pension plan members do not freely choose a pension "product" in the open market like someone purchasing an insurance policy does. ➢ In several Member States the social partners and pension plan members and beneficiaries play a formal role in the governance of IORPs. The IORP review should not negatively impact their role.	
1.	The Respondents agree with the deep and very helpful analysis and assessments of the different options established by EIOPA and prefer Option 3. The Respondents adhere to and support the proposal that the new EU Member States should be able to benefit from the advantages offered by the IORP Directive. Therefore, it appears absolutely necessary to us that the current scope of the Directive be adapted to include these new Member States' occupational retirement schemes that fulfil the same purpose and reply to the same need as in the existing Member States but which currently fall outside the scope of the Directive. It seems unacceptable to us that the residents of these Member States cannot benefit from the achievements of the common market in such an important matter (individually and collectively speaking) as retirement provisions.	
2.	See Q 1	
3.	See Q 1	
4.	See Q 1	

5.	The directive defines the Home member state as "the Member State, in which the institution has its registered office and its main administration or, if it does not have a registered office, its main administration" (Art. 6.i) The host member state is defined in Art 6.j as "the Member State whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members". In the case of "cross-border" activities a specific cross border application process must be respected in which Home and Host supervisor are sufficiently involved in (authorization and approval procedure). In consequence the host member state is the state where the IORP intends to carry out its activities for a sponsoring undertaking in form of a specific pension scheme. As the use of different definitions has led to a number of cases where Member States involved in cross border activities came to different conclusions, the Respondents agree on EIOPA's recommendation to give further clarification through amending the IORP directive and to reflect the position, that cross border activities arise when sponsor and IORP are located in two different member states. The Respondents agree that the decisive criterion for a cross border activity should be the different location of the sponsor and the IORP in two different member States. The Respondents share EIOPA's analysis with respect to the clarification of the host member states' definition. The new wording as proposed by EIOPA ensures that the ability to take measures against the IORP in case of breaches of SLL is limited to the newly defined host member state (i.e. the member state where the sponsoring undertaking is located). This is all the more relevant and effective if the social and labour law applicable	

	to members of the scheme is the law of the host member state. The Respondents think that the proposed modification of article 6 (c) will ensure that the identity of the sponsoring undertaking will be clearly established. The combination of payment of the premium and the existence of a direct agreement with the institution or the member will give the employer the status of sponsoring undertaking (even if the member is not paid by the latter). The Respondents are in favour of option 2.	
6.	The Respondents agree with EFRP's comments on this question and would prefer to speak about " safeguarding the interest of scheme members" or "the protection of pension benefits" instead of "consumer protection" when discussing occupational pensions (see 6.2.12., 6.2.13. and 6.2.14., for example). The Respondents prefer option 1, leaving it to Member States to decide to impose the application of ring-fencing measures. There is currently no definition of ring-fencing in the IORP Directive, and EIOPA admits that ring-fencing is a "subjective area" in its 2010 report. The Respondents find that studies or moves towards further clarification of their different specific meanings are needed before any principles can be adopted. The Respondents consider ring-fencing rules more important in mandatory systems than in voluntary systems.	

7.	The Respondents agree with EFRP and want to avoid an "overkill" of ring-fencing as this would lead to a loss of economies of scale that could be achieved and to increased administrative costs for IORPs. It would also call on EIOPA and the Commission to respect Member State regulations in this area. A fair balance must therefore be struck between protecting benefits on the one hand and the need for IORPs to function effectively, including in stress situations, on the other.	
8.	The Respondents agree with EFRP and are not in favour of making ring-fencing mandatory in the case of cross-border activity. One of the main reasons why IORPs would go cross-border is to achieve economies of scale, but this advantage will be undone if the IORP in question is obliged to set up separate legal persons or keep separate assets in the host country.	
9.	The introduction of privilege rules could perhaps be envisaged, and the Respondents agree with EFRP who sees the advantage of increased members protection. However, given the differences in approaches between Member States, more analysis is needed before any rules are adopted and the suggestions under point 14 of section 5.6. should therefore not be implemented. The Respondents agree with EFRP and consider that privilege rules are part of national contract, commercial and insolvency law. Given that Member States enjoy national sovereignty in large areas of these legal fields, Member States should not be asked to introduce privilege rules at national level.	
10.	The Green Paper emphasized the issue: *"According to the responses to the Green Paper there is a lack of clear definition of the scope of SLL".* In our contribution to the Green Paper the Respondents had already identified this major	

	obstacle to the development of cross-border IORPs. The key brake on cross border activity is undoubtedly the obligation for a pension fund to apply the host Member State's social and labour law to the relationships between the sponsoring undertaking and its pension scheme members. Those provisions are so diverse and so divergent within the EEA that it becomes very difficult, even impossible for a pension fund to administer schemes governed by foreign laws. Some Member States have moreover an extensive interpretation of the concept of "social and labour law". Each Member State has, in addition, its own criteria with regard to this matter. Most of the Member States have chosen a "defensive" approach. As a result, would it not be possible at European level to give less latitude to the Member States in this field? The Respondents propose only to impose on the pan-European funds the obligation to comply with "core" social provisions with regard to occupational pensions, such as, for instance, the social principles which are applicable when an employee is posted in an EEA State? This would not aim at limiting the rights of pension scheme members, which would remain governed by ad hoc social provisions; however, the management of those pension funds would be simplified via this minimum harmonisation of the social provisions at European level. Those pension funds could be obliged to comply with some specific rules set forth by social law. Those principles could be named "core" social rules, but only where related to occupational pensions (2nd pillar), which would be applicable when it comes to cross-border structures,	

	the sponsoring undertaking itself being responsible for compliance with any other social provisions. Indeed, it is not necessary for pension funds to ensure compliance with the entire social law of the 27 Member States (and EEA States) where the sponsoring undertakings are likely to be established. The latter are solely responsible for the particular aspect of supplementary pension. Moreover, perfect knowledge of the social legislation of every EEA Member State by a pension fund established in one of those States remains a mere utopia. It seems therefore essential to reduce the scope of social rules that the host State may impose on an IORP located in another Member State. If not, the Respondents fear that there will never be a major development of pan-European IORPs in view of the difficulty involved in knowing, implementing and monitoring all of these social rules. The creation of pan-European IRPs should permit, in principle, the reduction of the cost of creating supplementary pensions through economies of scale. This goal will certainly not be met if applying the social law of 27 Member States is required. This is why the Respondents insist on limiting the obligations of IORPs to comply with a "base" of selected social rules relating to supplementary pensions. There is no question of reducing the rights of members. On the contrary, they must remain fully protected, but the Respondents recommend that we should avoid falling into a formalism which would serve as a substitute for a "State protectionism." IORPs should thus be required to comply with social rules of the host State, applicable in the following areas, including: • Setting-up, amendment and repeal of supplementary pension schemes; • Conditions for membership;	

	• Participation of the members and / or their representatives in the management • Vested rights (conditions, calculation); • Options for affiliates if they leave the sponsoring company before retirement age; • Benefits: conditions (retirement age, designation of beneficiaries ...) and payment options (annuities or lump sum ...). The respect of the other social provisions should remain the responsibility of the sponsoring undertakings themselves. The Respondents are in favour of option 2.	
11.	See Q 10	
12.	See Q 10	
13.	A market-consistent basis should be used as a general rule. However, for certain assets held by an IORP on a long-term basis, the use of other valuation methods should be permitted with appropriate safeguards; such safeguards would need to be determined. For a long term investor like an IORP such a possibility is not only reasonable but required, also with respect to the desired countercyclical policy of IORPs (*Call for Advice Question 8*). Due to the long term horizon for example, IORPs are able to invest in more illiquid and return-seeking assets. For such kind of investments marked-to-market valuations are not always possible. Therefore, the Respondents agree to advise EIOPA that the valuation of assets should not always be valued marked-to-market.	
14.	The general valuation principle of the current IORP should be retained (option 1), because the case for using market-consistent valuations of liabilities (=transfer values) fails to take into account the possibility for IORP to adjust benefits downwards when funding becomes insufficient. Thus transfer values should not be referred to as a valuation concept.	

15.	The own credit standing should not be taken into account in valuing the liabilities. Taking the credit standing of the fund into account, is denying the going concern principle.	
16.	Reported results of IORP should be reconcilable to financial reporting figures, at least for sponsor-backed IORP, for several reasons: Firstly, accounting standards require that prudential rules are taken into account in financial reporting figures. Secondly, divergences in prudential and accounting requirements increase the cost of compliance with both.	
17.	In amending Article 76(1) of the Solvency II Directive, it should be noted that the term 'obligations' is not necessarily suitable for hybrid schemes in which no explicit guarantee is provided. A provision should be made to accommodate this. The Respondents agree with EFRP and recommend replacing the word 'obligations' with 'current benefits'. The Respondents agree that Articles 76(4) and (5) can be added as proposed. With respect to Article 76(3), the requirement to "make use of information provided by the financial markets" should be subject to a test of proportionality of the effort required to implement such an approach. For smaller funds in a small country data availability and cost of implementation of such an approach are major issues. Subject to this provision, option 1 may be acceptable, but option 2 should be rejected.	
18.	The consideration of this question implies that the concept of the holistic balance sheet is taken to be an appropriate approach. In the Respondents view the concept would need to be discussed and developed more fully in respect of the implications for sponsor-backed IORP before any conclusions can be drawn.	

	The Respondents further note that under current legislation, the question of own funds is not applicable to sponsor-backed IORP. Accordingly, the Respondents suggest that the current approach (option 1) be retained, however without reference to the implicit rules of Solvency II (risk margin based on cost of capital).	
19.	Similar to EFRP, the Respondents are in favour of taking into account only the current benefits without any future accrual. For taking into account also future accruals, and thus automatically also future contributions and future returns, a lot of very influential assumptions should be made, which leads to the risk of making the supervisory framework very dependent on the assumptions and the subjectivity of these assumptions.	
20.	The Respondents agree that technical provisions should be calculated on a gross basis without taking into account insurance recoverable; however, we suggest that the reference to "best estimate" with its implied reference to market consistency and relation to market data be removed.	
21.	The Respondents do not agree with the options presented by EIOPA. From a perspective of market consistency, the discount rate should always reflect the nature of the liabilities. Currently, the differences in discount rates are very large between Member States. These differences exist due to the differences in the pension promises and they have historical and cultural roots, and at times reflect national Social and Labour Law. As a result of the different kind of pension plans, also the discount rates for calculating the technical provisions differ. These reflect individual schemes' circumstances. It would not be correct to impose a 'two sizes fit all' model. In order to have the appropriate valuation of liabilities, EIOPA should advice a tailor-made discount rate.	

	Furthermore, the very concept of a risk-free rate would need to be examined in the light of current market movements before it could be introduced into any regulatory text.	
22.	Yes, service costs to accrued benefits should be taken into account in the value of the liabilities.	
23.	The Respondents agree with EFRP and would rather prefer Option 1 and is in favour of explicitly separating unconditional and conditional benefits. For the valuation of conditional benefits, complex calculations based on option theory may be necessary. Discretionary benefits should not be taken into account in the value of the liabilities, given the nature and uncertainty of these benefits. These kinds of benefits are often paid out of extra returns. As long as future extra returns are not taking into account, also discretionary benefits do not be into the technical provisions. The Respondents 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, the Respondents 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.	
24.	Yes, the Respondents agree that contractual options should be disclosed in the value of the technical provisions.	
25.	The Respondents are in favour of option 2 (no change), but would suggest that a distinction has to be made between DB and DC plans.	
26.	The Respondents prefer option 1: article 81 should not be included in the revised IORP directive, but its principles could be	

	beneficial. However, the allowance for credit risk should not be interpreted as imposing option elements within the value of the reinsurance contract, but rather as a (periodic) assessment regarding the likelihood of receiving the insurance.	
27.	The Respondents would like to emphasize that the proportionality principle has to be applied. We are in favour of use of exact data in the case of small pension funds.	
28.	The Respondents would like to emphasize that the proportionality principle has to be applied. For smaller funds, their own experience may not necessarily be sufficiently significant to use it as a basis for valuation.	
29.	The Respondents 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, as is already the case with national legislation. The Respondents would like to emphasize that the proportionality principle has to be applied.	
30.	The Respondents agree that an Article may be added regarding powers of the supervisor to require IORPs to increase the amount of technical provisions in accordance with prudential regulation. However, a reasonable time line for any additional funding has to be determined.	
31.	The Respondents agree with EFRP and strongly disagrees with the proposal that a new IORP directive should allow for the Commission to adopt level 2 implementing measures regarding the calculation of technical provisions as introduced by Article 86 of Solvency II. The Respondents suggest that EIOPA advises the Commission that Quantitative Impact Studies – on the level of the effect for an individual IORP and on the level of the effects of total pension provision in Member States - in respect of the revision of the IORP directive be carried out *before* Level 1 measures are decided upon. The character of the pension	

	benefit differs from Member State to Member State. As a result of the different characteristics of pension benefits, also the way how technical provisions are calculated is different. A relative small change of the way technical provisions have to be calculated could have major consequences.	
32.	The Respondents believe that no additional rules should be set up by member states. We believe that member states should not be permitted to set up additional rules for the calculation of technical provisions for cross-border IORPs, this in order to increase the number of cross-border IORPs.	
33.	The Respondents in the case of sponsor backed IORPs, are not in favour of the introduction of a Solvency Capital Requirement. We believe that the calculation methods should be defined before introducing the Solvency Capital Requirement, if this is considered to be necessary, and with correct application of proportionality principle. One of the great advantages of an IORP is that it has the ability of risk mitigating mechanisms, just like sponsor support. Sponsor support is an instrument to provide pension security and therefore has to be taking into account. When an IORP can call on sponsor support, it is not necessary for an IORP to have the same kind of capital requirements than an IORP without sponsor support. The same holds for other kind of risk mitigating mechanisms, just like for example a pension protection scheme, intergenerational risk sharing and conditionality of pension benefits. The Respondents are concerned about the complexity and the subjectivity when determining parameters if this would be part of a holistic balance sheet. There should be simpler methods to allow for capital relief in case of sponsor support.	

34.	The Respondents are opposed to the application to IORPs of articles 87-99 of the Solvency II Directive on own funds. IORPs have no own shares, neither do they have subordinated liabilities. The additional concepts of ancillary own funds and surplus funds seems therefore superfluous for IORPs. The same holds for the tiring of own funds. This concept is not applicable for IORPs.	
35.	The Respondents agree 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.	There should not be a uniformed level of security for IORPs across Europe. In most Member States the level of risk of a pension promise is currently part of the pension agreement itself, and is just one of several elements. Other elements are, for example, the accumulation of pension rights, the contribution and whether or not there is indexation. This balance is different in all the Member States and is intertwined with national social and labour law. 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 (ex-post) adjustment mechanisms of pension benefits, would risk communicating to members a false sense of "uniform" security. EIOPA states not to advice on a specific probability level. The Respondents agree with Everson this, but would like to add the suggestion that EIOPA, considering the arguments mentioned advice the EC not to pursue a uniformed security level.	
37.	As discussed earlier, a harmonized confidence level is not appropriate for IORPs.	
38.	The Respondents reject the proposal of applying the Solvency II-rules for calculating the SCR to IORPs. Pension security is about much more than scheme funding levels alone. A broader approach is required, taking into account the full range of mechanisms that pension institutions across different member states now use to ensure that pension incomes are safe and secure. When an IORP can call on other kinds of risk-mitigating elements, such as a protection fund or a sponsor guarantee, a SCR may not be necessary.	
39.	The Respondents prefer not to impose the SCR. If there should be a SCR implied, a three-yearly assessment is appropriate.	
40.	The Respondents prefer not to impose a uniformed MCR. This is because of the kind of pension contract differs from Member State to Member State.	
41.	A pension protection scheme is an instrument to provide pension security and therefore has to been taking into account.	

	The Respondents are concerned about the complexity and the subjectivity when determining parameters if a pension protection fund would be part of a holistic balance sheet. There should be simpler methods to allow for capital relief in case of sponsor support.	
42.	Yes, the Respondents agree that, measures to control operational risks should be applied to DC schemes where investment risk is borne by plan members. However, such measures should not increase capital requirement but rather be implemented as part of the risk management system. The EFRP is in favour of option 3 and calls for flexibility. This option proposes the introduction of a capital requirement to specifically address the operational risk, with the possibility that it could be reduced under specific circumstances where there is other provision against operational risk. EIOPA should consider the option to reduce the requirements for operational risk, when an IORP is able to show that its operational risk procedures are appropriate. In such a case capital requirements for operational risk are not/less necessary and a certain mechanism provides the right incentive for adequate risk management.	
43.	The Respondents agree that deteriorating financial conditions should have an impact on the investments and risk management applied to the relevant IORP in application of the prudent man principle. However due to the nature of DC schemes, we believe that additional capital requirement are inconsistent with the nature of such schemes. The Respondents are also afraid that additional capital requirement could dissuade employers from setting up DC schemes.	
44.	The Respondents are very much in favour of option 1. This option retains the current	

	flexible position on recovery periods. 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.	
45.	Already provided by article 14(2) of the IOFP Directive	
46.	Such analysis shows the prediction of the financial position of the IORP, including all the paid benefits, received contributions and expected returns.	
47.	The current IORP directive follows a prudent person plus approach meaning that the prudent person principle can be supplemented by more detailed provisions including quantitative restrictions based on home member state´s option. The prudent person principle is a key role in the IORP directive. Compared to Solvency II rules there is no specific requirement within the current IORP directive to fully understand and control the investment risks at any time. It seems opportune to fill the lack of a provision in the current Directive in order to emphasize that IORP´s have to be aware of the risks arising out of their assets in a same way as insurance undertakings. The Respondents support EIOPA´s view to add to the current IORP directive an adapted first paragraph of § 132 (2) of the Solvency II directive in order to emphasize the responsibility of the IORP for the oversight and supervision of the investments of the institution. Additionally the Respondents support the view to add the second part of the paragraph in order to take DC schemes into account ("where applicable"). (7.1. Option 3).	

48.	The Respondents support the consistent application of the prudent person principle as described in Q 47 above; we believe that no additional restrictions should be imposed. The Respondents share EIOPA´s analysis regarding Article 18 (1) f of the IORP Directive. We do not see the need for a special restriction on investment in the sponsoring undertaking when IORP is sponsored by two or more undertakings for potential risk concentration issues. The current quantitative restriction limits as set in Article 18(1) (f) seem to be appropriate. (7.2. Option 2) With regards to more detailed investment rules compared to those laid out in Article 18 (5) the Respondents agree on the importance to distinguish between pension schemes where the investment risk is borne by IORPs and those where the investment risk is borne by members. Nevertheless the current status can create potential differences between Member States and could act as disincentive to cross-border IORP´s. In order to create a level playing field for investment rules in all member states and to treat IORPs and insurance undertakings in an equal way, the Respondents opt for the deletion of Article 18 (5) first and second sub-paragraphs of the IORP directive for all IORP´s. (7.3. Option 2) The existing article 18 (5) (b) places a ceiling on the extent to which member states can put limitations on foreign currency exposure and to allow a minimum diversification of the IORP´s portfolio. The Solvency Directive does not contain a similar provision. The Respondents agree on EIOPA´s position that Article 18(5)(b) would be redundant if the option to impose further quantitative restrictions would be deleted. We believe that this provision can be deleted (7.4. Option 2). The Respondents furthermore agree to delete Article 18 (5) (c) limiting the opportunities	

	for member states to lay down more detailed investment rules including also quantitative limits. Given that the revised directive would follow the prudent person principle without allowing further quantitative restrictions, Article 18(5) (c) is redundant. (7.5. Option 2) According to the existing Article 18 (6) of the IORP directive Member States can lay down more stringent investment rules on an individual basis. This gives the power to member state´s supervisors to intervene in individual IORP´s where prudentially justified. Given that according to Article 14 competent authorities have already the power to take appropriate measures if needed the Respondents believe that more stringent investment rules on an individual basis is already covered by Article 14 and to amend it if necessary (7.6. Option 2) Article 18 (7) of the IORP directive enables Host Member States to require IORPs in the home member state to comply with stricter investment rules. The Respondents believe that this provision should be deleted, as it removes the ability for host member states to restrict investments and creates a level playing field among member states (7.7. Option 2) As IORPs are not comparable to UCITS, the Respondents believe that the IORP directive should remain unchanged with regards to the material elements of Article 132(3). (7.8.1. Option 1) In respect of supervisory involvement in multifonds IORPs, the Respondents believe that	

	the IORP directive should remain unchanged. In addition we feel a need for supplementary information or client education and a need for disclosure of additional information to members. (7.8.2. Option 1). Regarding the usefulness of a VAR type upper limit on the entire portfolio the Respondents agree with EIOPA that there is no need to introduce this approach at European level. (7.8.3.)	
49.	The Respondents believe that there should be no differentiation between DB and collectively managed DC pensions with regards to investment provisions.	
50.	As laid out before, the Respondents strongly believe that the prudent person principle gives an optimal regulatory framework; further quantitative restrictions are not necessary and not justified and should therefore be avoided.	
51.	The Respondents agree on EIOPA´s suggestion to retain the prohibition of borrowing in the IORP directive. As occupational pension benefit generally form a part of the basic retirement income, additional protection for members and beneficiaries is adequate to protect future benefits. As there is no further clarification in the current wording of Article 18 (1) (d) the Respondents agree that further clarification borrowing terms can only be positive. (7.10. Option 1)	
52.	The Respondents support EIOPA´s view to include the principle of the protection of members and beneficiaries into the directive. Concerning the article on financial stability and pro-cyclicality and inclusion of the Pillar II	

	dampener into the IOPR Directive the Respondents support option 1 (12.3.21. Option 1). We agree that the inclusion of a general article will force supervisors to consider the potential impact of their actions and decisions on the stability of the financial system. We furthermore agree that the inclusion of equity and a duration dampener into the directive needs further analysis.	
53.	The Respondents agree with the principle of clarity, transparency and comparability. However, structures and procedures proposed by Solvency II implementing measures are not appropriate to IORP. We recommend a specific regulatory framework adapted for IORPs. The Respondents retain status quo of the IORP Directive.	
54.	Yes, EIOPA identified main differences between IORP and Insurance Supervision: • Proportionality principle is even more important for IORPs due to diversity of IORPs across Europe • Verification on a continuous basis may not be possible for certain IORPs • Degree to which disclosures can be made in a common format is limited considering diversity of IORPs.	
55.	Stress testing is already possible under the current legislation. The Respondents would	

	prefer Option 1.	
56.	The Respondents prefer not to change the current IORP Directive.	
57.	The Respondents think that this is not applicable for IORPs since IORPs are in general not commercial financial institutions.	
58.	Generally no. Option 2: the host states should not be able to impose sanctions on IORPs without going through the home state.	
59.	Option 3 is preferred: Member States can determine the most suitable ways of supervision for the IORPs established under their territory. This would enable a diversity of approach that better reflects the diversity of IORPs across EU.	
60.	Option 3 is preferred: retain the legal possibility to impose capital add-ons in the Member States. Capital add-ons may not be appropriate for certain IORPs. Specific considerations should be given to pure DC scheme as imposing a capital add-on would directly affect the pensions of the members.	
61.	The Respondents share EIOPA's analysis with respect to the way • Article 13 (b) – cooperation of the service provider with the Supervisory authorities – effective access by IORP, auditors & Supervisory authority to data related to outsourced function – access by the Supervisory authority to the business premises of the service provider and	

	• Article 13 (d) – Member States must ensure the Supervisory authority has the necessary powers to intervene on outsourced functions or activities of Directive 2033/41/EC could be clarified in order to guarantee proper supervision of outsourced functions and activities. Furthermore supervisory rules are already in place to control outsourced functions. Finally, the Respondents also share EIOPA's conclusion on clarifications that should be made about the location of the main administration of the IORP as it influences duties of the Supervisory authorities – home state and host state in cross-border activities. We agree • that it seems to be most appropriate that the home state is defined as the state where the IORP was authorized • that the revised IORP Directive could include a requirement that main administration is always located in the home member state	
62.	See Q 61	
63.	Despite regulatory and industry initiatives, governance weaknesses persist across OECD and non-OECD countries. Therefore, the Respondents welcome and agree to these amendments. Governance is increasingly recognized as an important aspect of an efficient private pension system, enhancing investment performance and benefit security. The Respondents agree to these amendments that suggest the importance of governance through a more balanced representation of stakeholders in the governing body, higher levels of expertise (and the implementation of codes of conduct addressing conflicts of	

	interest. Consolidation of the pension industry in some countries may also be required to achieve economies of scale and reduce costs, which in turn would allow pension funds to dedicate more resources to strengthening their internal governance. Although these amendments need to be applied to all elements of the governance system, the Respondents stress out the amendments have to be put into relation with the principle of proportionality (nature, scale).	
64.	See 63	
65.	The Respondents generally support EIOPA's proposition to introduce the same fit and proper requirements for IORPs as were introduced for insurance and reinsurance undertakings in article 42 (1) of the Solvency II Framework Directive. The Respondents fully adhere to the suggestion that the requirement for persons who effectively run the IORP be subject to the fit and proper requirements as it is already the case. The submission of persons who are responsible for other key functions to the fit and proper requirements should take into account the proportionality principle and the differences between the different types of IORPs in Europe, the nature, scale and complexity of their operations as well as their operational structures. These key functions are not necessarily carried out internally and for certain types of IORPs will be outsourced. The Respondents also fully agree that these requirements have to be complied with at all times and that it should be ensured that effective procedures and on-going controls be in place to enable the supervisory authority to assess the fitness and propriety and that supervisory authorities be granted the relevant powers to take adequate measures when fit and proper requirements are not fulfilled.	

	The Respondents do not foresee any negative impact as a result of the application of these principles which are in the best interest of the affiliated members of the IORPS and which participate to strong governance principles.	
66.	See 65	
67.	See 65	
68.	The Respondents welcome the idea of providing additional protection to investors by implementing more detailed legislation regarding the use of risk management processes by IORPs. However some elements listed in draft article 44 item 2 are specific to the insurance industry. The Respondents strongly believe that there are differences between pension funds and insurance companies and it is not a trivial task to adapt such a directive to work effectively for pensions. As a consequence, a principle-based approach would be more appropriate than a rule-based approach. In this context, we welcome the removal of the explicit reference to the Solvency Capital Requirement from item 2. In addition, the reference to the fact that the risk management system should cover "all risks" and that the written policy on risk management […] shall comprise policies relating to "all significant risks an IORP is faced to", should be sufficient and the list does not add anything new. As a suggestion, we propose to remove this list. The Respondents generally welcome the application of the principle of proportionality depending on the size and complexity (structure, mechanism, and underlying investments) of the relevant IORP and consider that this principle of proportionality should be expressly referred to in the proposed article. Item 4 of the article refers to internal model approaches. Whilst the Respondents believe there should be flexibility in the risk-based adequacy framework, we cannot envisage a significant appetite for a full internal model approach by employers in Europe for their	

	pension funds. In general, it is our feeling that a risk framework, which is appropriate for DB arrangements, can generally be applied to DC and hybrid arrangements without significant adaptation. The Respondents agree that in the context of DC arrangements where the risks are borne by the members and/or the beneficiaries, the risk-management process should ensure adequate protection to members and/or beneficiaries. However, these risks are inherent to DC arrangements and should be also adequately disclosed. The risk management process in place at the level of the IORP should adequately capture the risks to which the members and/or beneficiaries are exposed to indirectly (operational risks, market risks, counterparty risks, liquidity risks….). Therefore, the Respondents wonder whether an additional agreement to be entered into between the IORP and the employer/employee would not constitute an unnecessary burden. The Respondents do not consider that specific rules regarding the risk-management process should be adopted for Life cycling in the DC scheme. If the principle of proportionality is applicable, taking *inter alia*, the complexity of underlying investments when implementing the risk management process the relevant IORP will have the possibility to adapt it over time in line with the allocation of the portfolio.	
69.	The Respondents are in favour of option 1 and believes it will be more efficient to focus on the risk management function which includes concepts included in the ORSA rather than pile up several requirements that have the same purpose. It will create an accumulation of legislation and requirement which is misleading and too burdensome.	
70.	The ORSA should not be applicable for IORPs where sponsors and/or members bear the risks. The Respondents stress that proper investment rules and risk management are sufficient. The introduction of ORSA will increase the administrative costs for IORPS, members and supervisory authorities. The added value of the initiative will be smaller than	

	the costs.	
71.	The performing of own-risk and solvency assessment (ORSA) should not be necessary for IORP. Indeed, the funding calculations for solvency requirement are covering this matter. The Respondents are not in favour of a holistic balance sheet approach and thinks that ORSA is not appropriate. The Respondents acknowledge the fact that ORSA includes both qualitative and quantitative elements contrary to capital requirement. However qualitative elements are also included in the risk management function. Therefore, the introduction of ORSA will create an overlap of qualitative requirements which are too burdensome and misleading	
72.	The Respondents generally support EIOPA's proposition to introduce the same internal controls systems and compliance function. The Respondents fully adhere to the suggestion that the requirements for internal control systems and compliance function should take into account the proportionality principle and the differences between the different types of IORPs in Europe, the nature, scale and complexity of their operations as well as their operational structures. In case of important activities outsourced, the IORP should be required to perform due diligence in order to determine whether the third party has a well-adapted and effective internal control system in place. In regards to the point 12.3.7 the Respondents do not necessarily share the EIOPA view that there is no major difference in the internal control system between IORPs that manage DC schemes and those that manage DB schemes. We support the view that the internal control system should take into account the specific risks that are attached to DB	

	and DC schemes. The compliance function may be assigned to a member of the Board of Directors. For certain types of IORPs it is important to leave the possibility for IORPs to outsource the compliance function. On the grounds of proportionality, the IORPs should be allowed to implement alternative measures meeting the general objectives of a compliance function, an example of alternative measure could be that the compliance function is carried out by the management of the IORP, which for instance discuss the subject at least one a year with a reference in the minutes of the meeting. The supervisory authorities should have the possibility to review the proposed alternative measures. The Respondents fully share the view that in any case the principle of proportionality should fully apply to the compliance function to prevent overly burdensome and additional costs that would undermine the supply of occupational pensions.	
73.	See 72	
74.	The Respondents generally support EIOPA's proposition to introduce internal audit requirements for IORPs. The internal audit function should include an evaluation of the adequacy of the internal control systems and the governance system of the IORP, including the outsourced activities. The Respondents fully adhere to the suggestion that the principles of internal audit must be implemented in a reasonable and proportionate manner and that it is the responsibility	

	of the IORP to define an adequate and consistent way of performing the internal audit. The internal auditor must be independent and cannot be involved in the management of the IORP. The IORP should also be allowed to outsource the internal audit function. Or employ alternative measures to carry out the function that could be reviewed by the supervisory authorities. The Respondents fully share the view that the introduction of an internal audit function could be overly burdensome without a corresponding increase in benefits on some scheme, with potential adverse costs impacts for members if the principle of proportionality is not taken into account.	
75.	See74	
76.	The Respondents would like to emphasize that in the Luxemburg environment; the actuary (liability manager) already has the obligation to report to supervisory authorities, and has a whistle-blowing function in the case of ASSEP-SEPCAV. Since this works well in our country, we are in favour of the introduction of these responsibilities for the actuarial function.	
77.	No, the current IORP Directive should be the starting point.	
78.	The Respondents agree that the actuarial function has to be performed in an independent manner, but we insist that the actuarial function could be performed by natural persons as well as by legal persons. For legal persons, the requirements have to be fulfilled by the management. The Respondents feel that the possibility for legal persons to perform the actuarial function could increase independence as well as continuity, which we feel is important for IORPs in general and for small IORPs in particular.	

	In order to insure independence, the fit and proper principle should apply to the actuarial function. In the case of legal persons performing the actuarial function, the identity of the shareholders should be revealed to the supervisory authorities.	
79.	See 78	
80.	The Respondents agree that outsourcing of critical or important functions or activities of IORPs should be made subject to certain limitations that would be included in the revised IORP Directive. Outsourcing cannot lead to operating inefficiency in IORPs. Furthermore, it cannot hinder the exercise of an effective supervision by Supervisory authorities. The Respondents also agree that Member States shall ensure that IORPs remain fully responsible when they outsource functions or activities to third parties. In this context, we agree with EIOPA's view that Art. 49 of Directive 2009/138/EC (Solvency II), reformulated in a positive way, is a good basis for addressing the specificities of IORPs in relation to outsourcing. Further, we fully agree that the revised IORP Directive contains a principle requiring IORPs to have a written outsourcing agreement and that Level 2 would then provide for the minimum contents of the agreement. The Respondents would also welcome a precision by the IORP Directive (or on Level 2) on • which functions and activities are considered as being critical and important and • which functions would be considered as other functions that could eventually be carried out by undertakings which do not fall under specific prudential supervision. Our opinion is that outsourcing by IORPs to non-supervised entities should be avoided. Finally, as to the role of the supervisory authority, we are in favour of Option 2, i.e. a system where	

	• For IORPs that are registered, the Supervisory authority should have the necessary powers at any time to request information on outsourced functions and activities and • For IORPs that are authorized, the IORP shall in timely manner notify the supervisory authority prior to the outsourcing of critical or important functions or activities as well as any subsequent changes with respect to those functions or activities.	
81.	See 80	
82.	See 80	
83.	The Respondents agree that the concept comprises safe keeping and oversight and that the word "depositary" is the appropriate term. (a) Choice between the three options: The Respondents do agree that an obligation to use a depositary is beneficial for asset protection and general supervision. The Respondents do not share the view that either a distinction according to legal form (contractual vs. company type structure) or according to the type (DC vs. DB) is appropriate. Such distinction is not made in Ucits or in AIFMD, and this for good reason. The need for protection is and remains the same, regardless of the legal for or type or at least the increase of protection outweights potential disadvantages. Consequently we favour a general requirement to have a custodian, regardless of the legal	

	form or the type. (b) Need for written contract: The Respondents agree (c) Distinction between financial instruments that can be held in custody and other assets: The Respondents agree with the distinction and notably that "financial instruments, including units and shares of collective investment schemes, issued in nominative form or registered directly with the issuer or through a registrar acting on behalf of the issuer" fall into the category of "other assets". (c) Duties of a depositary: The Respondents generally agree with the proposed text, provided, however, that the principle of proportionality will find application and it being understood that in relation to custody segregation of accounts may not always be feasible on sub-custody level and that in relation to other assets record keeping and ownership verification duties can only apply to assets that have been notify by the IORP to the depositary as belonging to the fund. (d) Liability: The Respondents agree with liability of the depositary for loss as a result of unjustifiable failure to perform its obligations or its improper performance of them. (e) Oversight functions:	

	The Respondents agree. (f) Conflicts of interest: The Respondents agree.	
84.	The Respondents believe that the increased protection generated will outweigh potential disadvantages.	
85.	While it is certain that costs will increase, it is not reasonably possible to provide a specific amount.	
86.	Please see above.	
87.	The Respondents agree.	
88.	Please see above. It is not reasonable possible to provide a specific amount of the increase.	
89.	Yes the Respondents agree with the analysis of the EIOPA. However, it should be recalled that pension funds are institutions that operate on the basis of different principles from those that apply to insurers and have a simplified business model. Consequently, it would be irrelevant to impose them the same disclosure requirements to the Supervisors as those imposed to the insurers (as laid down under Article 35 of the Solvency II Directive). The respondents are therefore of the opinion that	

	option 1 is preferable This said, it could be considered to harmonize a little more information IORPs have to provide to the Supervisors within the EU, taking care however to avoid adding to their administrative burden. One must indeed avoid increasing the costs of managing a pension fund, and run the risk of discouraging employers from setting up new pension funds or even getting them to terminate existing pension funds.	
90.	The information currently required from pension funds (Article 13 of current IORP Directive) seems sufficient in view of the activities of this type of financing vehicle. However, in some respects, a more harmonized presentation of certain information provided to regulators would not hurt. To achieve this, it would be interesting to identify the kind of information where convergence in the presentation is desirable. In any case, there is no reason to seek similar information at any cost. Harmonization should only be required where similarity of information is necessary in the control to be exercised by the competent authorities. This convergence could be achieved as it is under the Solvency II Directive - art. 35, point 6: appropriate powers could be given to the Commission which would decide on implementing measures to ensure the convergence of such information. It goes without saying that these measures should only focus on how information should be presented but not include additional duties.	
91.	Taking into consideration the fact that under DB schemes, no investment risk is borne by the affiliated, the additional information intended for DC schemes (merely pertaining on investment risks) should not be imposed on DB plans.	

92.	A simplified KID seems indeed an appropriate solution for DC schemes. But based on the principle of level playing field, one should avoid that an insurer offering unit linked group insurance products would be exempted from any obligation in terms of financial information to the affiliates on those products. All pension funding vehicles must be on an equal footing in this respect. Under the existing European directives, when an insurer has an obligation to provide financial information on the underlying assets of an insurance contract, this information must be given to the policyholder. (see annex III of Directive 2002/83/EC concerning life insurance). One should bear in mind that, under a group insurance contract, the policyholder is the employer and not the affiliated. If the communication of financial information on the underlying assets of a DC plan funded through a pension fund becomes compulsory, the same rule should apply to group insurance schemes. For this adopted KID, one could learn from art. 78 - point 3 of the UCITS IV Directive, taking up the following (both at joining the scheme and on an on-going basis, in the case of modification): - Identification of the investment fund - Brief description of investment objectives and investment policy - Presentation of past performance[1] but not the performance scenarios (too uncertain and even dangerous - see below) - Costs and expenses - Profile of risk and management fees. By cons, it seems useless to provide for comparisons between IORPs, in any case, the employee has, in most of the cases no choice of membership (with the exception of pension rules allowing for the possibility to opt out). Usually, the employee has to join the pension fund sponsored by his employer.	

	This situation is totally different from that of an individual investor or saver who has the choice between different investment vehicles available on the market.	
93.	The simplified KID should obviously define the risk profile based on the investment horizon or other criteria. In this respect, it would be good to bear in mind the primary purpose of pension funds and the fact that they operate in a specific context: i.e. the constitution of deferred retirement benefits aimed at supplementing legal pensions. Therefore, pension funds that shelter DC schemes should only offer their members the possibility to invest in financial instruments involving a level of risk compatible with the constitution of retirement benefits. Risk-taking through a pension fund should be limited in any case. Pension funds are not to encourage risky investments. It is not their role. Scenarios of performance do not seem necessary: they are dangerous in that they can dangle unrealistic prospects of gains. The Respondents share the view that the information requirements are of primary for DC schemes, where an investment risk is borne by the affiliate and a choice is given between several underlying investments. Since the 2008 crisis, the need for better protection of affiliates to DC schemes is undisputable. However, in the context of pension funds, we have to bear in mind the specificities of this sector (given the long-term vision of a pension fund), which differ from insurance and investment funds business.	

	In addition, we are not partisans, in DC plans, to give the possibility to each affiliate, to get personalized projections of his supplementary pension "in order to estimate future returns." It is a difficult, unrealistic and dangerous exercise that may not be imposed on pension funds. A pension fund could be liable if it is deemed that it dangled illusory results. The annual information to be provided to each affiliate should be designed to provide a factual overview of his supplementary pension, at a given date, without having to embark on random projections. One should not forget that pension funds will, in this respect, rely upon external financial service providers (banks or investment advisors).What is the financial service provider who would not present its product as the most efficient? It is worth to mention that the purpose of a pension fund is not to achieve the best possible financial performance of savings. A pension fund must secure a supplementary pension for the retirement of its affiliates, by investing in a stable manner. It is not to suggest risky investments, focused at all costs on return. Those principles are clearly laid down in the existing IORP directive, under the preamble (point 6) and article 18, where the "prudent person rule" is at the heart of investment rules. In the guidelines issued by the Commission to pension funds, this is to be reminded. The Commission might also consider taking measures in order to monitor this aspect of pension funds management.	
94.	Section 11 of the IORP Directive provides for a number of information, but to be given only	

	at the request of the affiliate. In many countries, annual information is mandatory. A compulsory minimum annual information to affiliates, on the four points a) to d) of art. 11 of the existing IORP Directive should be generalized. It would also be useful to consider the obligation for pension plans sponsors to provide for minimum information on – topics such as social security benefits so that the affiliates may have a fair idea of the global income they may expect at retirement and - personal taxation in respect of retirement benefits. This obligation should of course not be restricted to pension funds but also affect other types of pension funding. However, providing for information on the effective cost during membership is certainly interesting but very difficult to customize. In some cases (a.o. in the case of DB schemes, for which contributions are calculated on the basis of collective actuarial methods). This would unnecessarily increase the cost of annual information, already sufficient on the basis of art. 11. In addition, any affiliate would have received full information on the cost at the time of affiliation. If there are changes in this respect, they could be circulated to all members outside the yearly info.	
95.	Full harmonization as such is not a primary objective and is probably difficult to achieve in view of the diversity of complementary pension systems existing in the EU. But imposing an annual information based on the current points a) to d) of art. 11 of the IORP Directive are certainly to be considered.	

	To facilitate cross-border funds, it would also be appropriate to try to harmonize as much as possible the content and the presentation of the annual information. In their joint contribution to the "Consultation of the European Commission green paper towards adequate, sustainable and safe European pension systems" (November 2010) the respondents already underlined that *"Within DC pension schemes, where the investment and longevity risks weigh on pension scheme members, individuals must understand the information provided to them on the investment products available in order to make informed choices.* *Financial education would also be required with regard to the use of retirement benefits, in particular with regard to the choice between lump sum payment and annuities.* *Individuals' abilities to make well-informed investment decisions must be improved."* Our opinion did not vary in this respect.	
96.		