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:	Institute and Faculty of Actuaries (UK)	
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The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

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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	1. **Our understanding of scope for EIOPA review** 1.1 We have concerns over the scope of the review. In particular; • The lack of evidence to support the reasons given for the low number of cross border IORPs • The lack of evidence to support the presumption that harmonisation of the supervison of IORPs and insurance would be beneficial to any stakeholders. However, within this context, we have attempted to offer constructive comment on the proposals, which we hope is helpful to EIOPA. 1.2 We note that the reasons for review of current IORP Directive were given as • to propose measures which simplify the setting-up of cross-border IORPs, • to propose measures that would allow IORPs to benefit from risk-mitigation mechanisms • to secure modernisation of prudential regulation for IORPs which operate DC IORPs 1.3 We note also that the Commission's aim is to "to attain a level of harmonisation where EU legislation does not need additional requirements at the national level" and that the Commission's view is that the "...layout of the supervisory system should, to the extent necessary and possible, be compatible with the approach and rule used for the supervision of life assurance" 2. **Policy Objectives** 2.1 We believe that there needs to be much greater clarity over the policy objectives that lie behind the Scope that has been set. Underlying the consultation are various assumptions that relate to objectives at both European and Member State level. While these issues are at root political and	

arguably beyond the scope of the EIOPA consultation, drawing out these issues is important for clarity and to test and challenge assumptions.

2.2 Harmonisation of measurement is arguably an attractive objective but this leads to the question: what actions will be taken based on such measurement? If harmonisation is to apply to funding then this arguably is part of social policy which should be considered at a Member State level.

2.3 There are different forms of harmonisation, for example between IORPs across countries or between IORPs and insurers. Harmonisation between IORPs for future benefits brings consistency and assists cross-border activity going forward. IORPs have developed in different Member States based on differing social objectives so it is not clear whether past benefits should be harmonised as this may be counter to Member States' social objectives. This is clearly a political question.

2.4 Harmonisation of IORPs with insurance within the UK does not bring obvious benefits for consumers, as it is not harmonisation between comparable financial institutions (similarly, banks and insurers are subject to different regulation). In the UK insurance is a purchased financial product, while IORPs provide benefits that are discretionary and are related to the employment contract. In addition, in the UK IORPs and insurance are in the main non-competing financial services and so the need for harmonisation is less clear. (See answers to Q's 36 and 41).

2.5 It needs to be clear whether harmonisation is a sufficiently desirable policy objective on its own to justify these changes and costs. At best the harmonisation is partial as unfunded IORPs are omitted from the analysis. In addition, the different types of pension promise in Member States and the variety of security mechanisms in force will make precise harmonisation at a quantitative level extremely difficult to achieve.

2.6 A Solvency II measure based on assets committed to an IORP would be likely to show a significant

shortfall in the UK. Is the policy intention to increase the capital committed to IORPs and thereby target an increased security level? If so, the capital markets implications of the effective sub-ordination of other providers of capital need to be considered. Our answer to question 21 highlights that adopting the LevelA/LevelB approach is one way to mitigate what could otherwise be the very large macro economic impacts for the UK (and other countries) of a very large increase in the capital committed to IORPs that some interpretations of this consultation could lead to.

2.7 The UK recognises the desirability of benefit security. The UK system has developed to provide a practical balance between cost and security. Increasing regulatory requirements, including increased solvency requirements, would probably act as a further deterrent to voluntary pension provision by employers and lead to more organisations providing statutory minimum pensions. This would ultimately increase the burden on the Member State for pension provision and/or lead to lower overall pensions.

2.8 There could be substantial unintended social policy implications if employers further reduce their involvement with IORPs in response to the changes. In particular access to certain types of benefit (i.e. defined benefit promises) may be further restricted leaving a greater proportion of the population losing the benefits of risk-pooling and becoming exposed to the potentially higher costs of individual arrangements.

3. UK Pensions Framework

3.1 We feel it would be helpful to EIOPA for us to outline some of the key features of the UK pension environment so as to help them understand the context in which our comments are made. We estimate that over one half of the IORPs potentially affected by the proposals are in the UK and we believe that the UK framework should be explicitly taken into account in the Commission`s

thinking.

3.2 The UK has a long and relatively successful history of occupational pension provision.

3.3 Historically pension provision was used as a positive tool in many individual companies' remuneration strategies. This has led to a large number of IORPs each sponsored by a single employer or single employer group. Even where subsequent M&A activity has brought IORPs under the same sponsoring employer, in many cases the separate IORPs have continued independently. There are very few industry wide IORPs in the UK.

3.4 Successive regulatory interventions mean that, for private sector defined benefit IORPs:

- full or partial pre-funding is the norm.
- their funding position must be reviewed at least every 3 years
- calculations of the funding position must compare the market value of the IORPs' assets to liabilities calculated on a consistent basis
- where the value of liabilities exceeds assets trustees are expected to agree a recovery plan with the employer and subject to regulatory scrutiny (typically recovery plans must aim to bring assets and liabilities back into line within 10 years)
- a qualified actuary with pensions experience, supported by a framework of actuarial guidance, is responsible for the calculations and reports to the trustees
- regulations mean that a solvent employer cannot walk away from a pensions promise that has been given even if it turns out to be more expensive than initially expected
- the Pensions Protection Fund gives additional protection to IORP members by taking on the

responsibility for paying a substantial proportion of pensions if the IORP has insufficient funds to meet its liabilities and the sponsoring employer is insolvent.

3.5 There are also many defined contribution IORPs either written under contract with an insurance company or administered independently under a trust. In either case, an IORP's liability to each member is defined by the backing assets it holds.

3.6 From the end of 2012 the UK will start a process of auto enrolling all employees into an IORP of some kind. It is expected that this will further increase the proportion of UK employees in an IORP. Most of these new IORP members will become members of defined contribution IORPs.

3.7 Overall the UK already has a risk based approach to assessing solvency that is largely fit for purpose.

3.8 In the UK, regulation is subject to the Hampton Principles, which for this purpose means:

- regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- no inspection should take place without a reason
- IORPs should not have to give unnecessary information, nor give the same piece of information twice
- IORPs that persistently break regulations should be identified quickly and face

proportionate and meaningful sanctions

- regulators should provide authoritative, accessible advice easily and cheaply
- regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- regulators should recognize that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

3.9 The flexibility of funding regimes has arguably been a historic strength of the UK and a contributor to the large number of funded IORPs that exist in the UK. The more that can be done to encourage the continued existence of these well run IORPs the greater the number of pensioners who will be able to support themselves in retirement and not exclusively rely on state provision.

3.10 It is critical that the impact assessment considers the impact of any and all changes on this existing regime for IORPs.

4. Funded Schemes versus Unfunded Schemes

4.1 It is difficult to understand why EIOPA is being asked to strengthen the regime for funded IORPs as a higher priority than looking at the lower levels of security/certainty members of unfunded schemes have over their benefits.

4.2 If taken to the limit an underfunded IORP is an unfunded scheme.

4.3 There are also clear parallels between PPF in UK and PSV in Germany whilst these proposals do not

seek to position them within similar structures.

5. Impact Assessment

5.1 A robust and extensive impact assessment should be conducted and used to assess the potential courses of action. It is necessary to know what the potential consequences are arising out of the calculations before embarking on the assessment:

5.2 The impact assessment needs to consider the direct costs of moving to the proposed regime. Our observation on the implementation of Solvency II within the insurance industry is that very significant technically skilled resource has had to be deployed. With the far higher numbers of IORPs involved there could be even greater resource bottle necks and resultant cost pressures.

5.3 The Solvency II regime for insurers has yet to come into force and the practical issues are still being addressed. The nature and length of any transitional arrangements will have a material impact on the impact assessment. The very significant efforts that would be required to advise IORPs on such an approach must be recognised, since it is so different to the present approach.

5.4 The impact assessment also needs to consider the behavioural consequences of the potential changes that may take place in the years following implementation including:

- Impacts in the investment markets as IORPs rebalance their portfolios of assets towards risk free investments
- Sponsoring Employer reactions, in particular closing or amending existing IORPs
- Impact of funds that could otherwise be used for member benefits being directed to cover costs of higher governance

- Impacts on wider economies of reduced working capital and investable funds retained within firms if they are required to allocate more capital into pension funds. The assessment should also consider if there is a systemic risk of firms collectively putting more capital into pension funds, having to cut dividends to pay for this, which in turn reduces the value of investments held in the pension funds, thereby forcing firms to put more capital in and so on.

- Increased demand for member advice arising from the increased transfers of pension rights from DB to DC.

5.5 Sufficient time should be allowed, and sufficient resource allocated to impact assessments to enable Member States and stakeholders to buy into their results. There should be a further detailed consultation once the impact assessment is completed and before the Level 1 framework is prepared.

5.6 It is important to retain an open mind about what the impact assessment might show, especially as key details are not known; however based on a risk-free (or minimal risk) discount rate the results from the PPF's Purple Book report would indicate a significant shortfall of assets to liabilities (many hundrededs of £billions) prior to risk margins or capital requirements being added.

5.7 Given the wide number of options consulted on, it may be that an iterative approach involving refinement and reduction of the options in the impact assessment testing is required in order to elicit meaningful information. We highlight in our answer to question 21 how the level A/level B approach might be a way of mitigating the implications for IORP funding and this is an area where greater clarity is needed before a meaningful impact asesment can be performed.

5.8 The use of Level 2 measures is required to develop a workable framework. However these

measures will probably contain key elements of detail. We would be in favour of a full consultation on Level 2 measures. Crucially the detailed application of the regime needs to be in the hands of national regulators in order to ensure that the objectives lead to the best outcomes for IORP members and other stakeholders.

5.9 We would welcome an opportunity to engage with EIOPA in helping to scope the impact assessment test.

6. Proportionality

6.1 Proportionality is vital bearing in mind the large number of IORPs that are far smaller than insurance companies. By " proportionality" we refer to the size and resources of the IORP (rather than just the complexity of benefits) relative to the cost of implementation.

6.2 A lower amount of risk based solvency capital may be appropriate, particularly if there is a national pension protection scheme (for example the Pension Protection Fund in the UK). This will reduce disproportionate requirements on small IORPs.

6.3 IORPs that are closed to new members and/or no longer accruing benefits have less ongoing risk and are in some form of rundown. For example future salary growth is one area of risk that a closed IORP will not be exposed to. There needs to be flexibility in approach to ensure the regime is appropriate for closed IORPs.

6.4 A likely consequence of this approach would be a rapid move by those employers still supporting open IORPs/future accrual to stop doing this where they can.

6.5 We would like to work with EIOPA to try and develop workable solutions for IORPs of differing

	sizes and risk.	
1.	EIOPA has identified the need for "occupational" pension schemes to be treated appropriately and consistently across the EU and differently from other arrangements that have no direct employer involvement. We are glad EIOPA has started from this point as we believe it gives itself the freedom needed to devise regulations that are appropriate to the range of IORPs that exist across Europe. The purpose of the IORP Directive is to create an internal market for occupational retirement provision by setting the prudent person rule and making it possible to operate across borders within social policy objectives set at Member State level. The proposals in this consultation appear to constrain Member State social policy objectives by framing, if not defining, the level of solvency, risk management, governance, disclosure and administration that IORPs must meet. The scope of the Directive however only covers some such pensions institutions. Most notably, the Consultation proposes to define solvency requirements of funded defined benefit plans even where those requirements go against a Member State's social policy objectives but is not concerned, because of a definitional nicety, with the solvency requirements of unfunded plans. This seeks to put internal market financial considerations ahead of Member State social policy objectives. Our view is that, by contrast, the purpose of occupational pensions, and why Member States promote them, is to fulfil social policy objectives. In terms of scope, we agree with the exclusion of arrangements where the employee has a choice as to the direction of the monies to different institutions (such as the Pillar 1 bis institutions referenced in the draft response) as such institutions have no direct connection with the employer. However it would appear that the exclusion of contract-based occupational plans (such as stakeholder or group personal pension plans in the UK) from the scope of the IORP Directive does not meet the stated objective to "create an internal market for occupational retirement provision", since these plans meet the general criteria for occupational provision. One way of addressing this would be to apply the IORP Directive to such plans. We recognise that the Commission intends to deal with such contract-based plans via a different Directive so do not feel able to respond fully to this consultation until we understand the Commission's intentions as to the broader picture around pension type provision.	

2.	We would expect the positive impacts of the above proposal to widen the application of the IORP Directive to other occupational plans that currently fall under insurance regulation to be: a. Members would benefit from a wider and more general definition of IORP, leading to increased competition and a wider ability to allow cross-border activity b. IORPs and their sponsors would benefit from greater ability to allow cross-border activity with potential for increased efficiency c. Supervisors would benefit from greater standardisation of approach We would expect the negative impacts of the above proposal to be: d. None for members of DC plans, thoughthe impact on insured DB plans needs to be considered e. None for IORPs and their sponsors, although the difficulty of defining what constitutes the IORP is considerable f. Difficulties of definition and hence jurisdiction for supervisors particularly in locations such as Ireland where the insurance and pensions regulators are separate organisations	
3.	Option 1 but with extension above	
4.	None known	
5.	The Consultation does not consider all the options. 5.2.2 lists the three definitions in common usage by Member States today but EIOPA has limited itself to consideration of only one particular option – that proposed by the Commission. Furthermore the Commission/EIOPA have not stated why they are proposing one particular definition of cross border activity. We believe they should present the arguments for and against all the options to enable a fair and proper assessment of them by stakeholders. We are therefore not able to provide as considered a response to this question as a more balanced question would have permitted. Our general observation is that no evidence has been presented by EIOPA to support one definition of cross border activity over another, each approach has advantages and disadvantages. There are also transition issues arising for Member States with existing cross border IORPs operating under the other models to the one that will be chosen as the basis for a harmonised	

model (assuming it is decided to adopt a harmonised model).

The different implementations of this part of the IORP Directive demonstrate that these provisions are ambiguous. It follows that there is a risk of unintended consequences in changing the current definition and consequently that a full impact assessment and consultation with national regulators should be conducted before making any such changes.

Although we believe stakeholders should be presented with a relative comparison between the options in 5.2.2, we broadly agree with the analysis of the the particular option presented as compared to status quo. However, we believe some additional considerations are appropriate:

(a) There is anecdotal evidence that multinationals in some countries – fearful of having an IORP that they sponsor being considered to engage in cross-border activities – ensure that their employees working temporarily (or for an extended period) in Member States outside the Home Member State cease membership of the Home Member State IORP. This must be entirely contrary to the intentions of the IORP Directive, and the clear preference of the Member and the Employer, but it is inevitable that more employers will take this route if the chosen harmonised definition of cross-border activity increases the likelihood of cross border activity being triggered by temporary moves .

(b) EIOPA should also recognise the importance from a risk management perspective that:

(i) the IORP is clear, and can always be clear, on the benefits it is obliged to provide

(ii) the IORP sponsor is not exposed to the risk of having the IORP being forced to apply for recognition as a cross-border IORP (on account of a member or members inadvertently being considered to be cross-border members), and

iii) the impact of retrospective application of a new, different definition of cross border activity to IORPs that signed up to being an IORP under the previous definition.

(c) We are aware of no evidence that companies with employees in more than one Member State are prevented from establishing an IORP to conduct cross border pension provision. We believe that such companies choose not to conduct cross border pension provision because of the risk of regulatory creep, the differing taxation regimes, the differing social security regimes etc.

	or because they have no significant interest in establishing a cross border IORP, particularly in these difficult economic times. Revision to definition 6(c) a. We point out that the revised definition is likely to lead to some IORPS seeking guarantees or funding protection from parent companies in another Member State being refused by their sponsor (or their sponsor's parent) on the grounds that such guarantees/protection would potentially constitute cross-border activity, particularly if revised capital requirements are introduced. From an operational perspective, we would see it as a requirement of good administrative practice, and risk management, that the IORP, Employee and Sponsor are clearly identified and identifiable in every case. We conclude that it is more appropriate that Home Member States establish guidelines – appropriate to the IORPs they regulate – to inform and supplement the definition in the Directive, rather than seek to have an extensive definition in the Directive that covers all possible situations.	
6.	Our comment on question 8 below outlines the additional points with regard to cross border IORPs we believe should be considered. We cannot think of any further issues that EIOPA should have considered at this stage. However, we note that under item 7 dealing with administrative ring-fencing "in principle no allowance for transfer of assets" the term 'transfer' is not defined. For example there needs to be allowance for the transfer of assets within an IORP from one section to another when an individual changes country of employment and wishes to transfer his assets and liabilities within the IORP (other situations can be envisaged). Also we note that the interaction of ringfencing options with the requirement that IORPs undertaking cross-border activity be fully funded at all times is not dealt with in sufficient clarity in the response and, in particular, whether fully funded is defined at the level of the IORP or at the level of each ringfenced (administratively or otherwise) section within the IORP and what this means for members' reliance on surpluses or deficits within the IORP and the potential 'transfer' of assets within the IORP. This is an area where some multinationals have expressed concerns as to the practicality and desirability of operating a cross border IORP as ringfencing may take away the liability pooling opportunity that cross border	

	provision can provide. In particular, we note that EIOPA has identified that "there should be no advantage for cross-border members compared to local members" but equally EIOPA should be clear whether (with a harmonisation objective in mind) there should be no disadvantage for cross-border members compared to local members. This is a particular example of the question whether and to what extent a level playing field should exist between cross border and single country IORPs. This question should be addressed before consideration of possible harmonisation of the IORP Directive with Directives for financial products like insurance or banking.	
7.	No response	
8.	Mandatory ringfencing in cross border plans (either of assets or liabilities under article 16.3, or of assets under article 18.7) would act against the Internal Market's harmonisation objective since it would negate many of the perceived advantages of cross-border activity for multinational employers, such as pooling of assets and liabilities, and consequently impact their employees.	
9.	No response as the issues are not sufficiently clear at this stage.	
10.	Yes, this provides clarity to the operation of cross border IORPs and broadly aligns with current practice.	
11.	We do not believe the issues are sufficiently clear at this stage to enable us to compile a meaningful response. We would hope EIOPA can reconsult on this question in the future once a further level of detail is available.	
12.	We believe that the concept of the holistic balance sheet has merit. However the potential practical consequences of a an inflexible adoption of such a model are significant. More thought and research is needed to assess the consequences of adopting different variations and applications of the concept both in terms of the practicality and in terms of the costs of such proposal. It may be that the aim of a single regime to cover all three types of IORPs is not achievable in practice but the concept of the holistic	

	balance sheet should be developed further to investigate its feasibility before any change is made. It is our understanding that, in effect, the UK Pensions Regulator already carries out such holistic assessments, but inevitably on a largely qualitative basis, when assessing the funding plans of UK sponsor-backed IORPs. There is merit in seeking some more objective assessment of the support available from employers to support member security (see also our response to Q33), although we have doubts as to just how objective such quantitative measures are capable of being. We also consider that the communication of such holistic assessments to members needs further investigation. We do wonder what the consequences of an insolvent holistic balance sheet would be. IORPs are not profit making organisations and cannot raise additional capital other than from the sponsoring employer (this would simply transfer the value of the employer covenant from the sponsor to the IORP and thereby have a neutral impact on the holistic balance sheet overall). If all future possible support from a sponsor is already factored into the asset valuation as per Components 6 and 7, where can any further support for the IORP come from? Do the limited options available justify the change in regulatory regime? A very long transitional period (perhaps of 20 years or so) would be required to implement such holistic assessments for practical and other reasons.	
13.	Yes, financial assets should be valued on a market-consistent basis.	
14.	There is no standard basis for transfers between sponsor-backed IORPs. In the UK we do have the concept of transfer to insurance companies but this is at full buy-out costs and arguably does not apply to the largest IORPs, owing to lack of market capacity. Using the concept of risk-free rates brings up the question of what is really risk-free? Should it be the higher of swap or government bond rates? Should it allow for liquidity premiums of investible high-quality bonds (as is being proposed for insurers' annuity business)? If the objectives of consistency and harmonisation are to be achieved, considerable work including detailed impact assessments will be required to agree on risk-free measures and allowances for illiquidity etc.	
15.	Yes, particularly for sponsor-backed IORPs where it is the standing of the sponsor that is important from	

	a security standpoint. Many IORPs do not have an objectively measured credit standing.	
16.	Accounting standards were not created for funding purposes and so are not appropriate as a basis for funding. However opportunities should be sought alongside any future changes to accounting standards to align the two (although that is a matter for those responsible for setting accounting standards).	
17.	If a Solvency II approach is to apply as per articles 77 to 82 then this is the correct procedure. It does of course depend upon if and how many of articles 77 to 82, and 86, are to be imported. We would encourage a selective approach, to avoid unnecessary complexity. This will clearly require very detailed consideration.	
18.	In addressing this question, firstly the question of what risk margins are trying to achieve should be addressed. It would be sensible to step back and consider just what the security of IORP benefits is intended to be before setting any prescriptive risk margins. Option 1 is to make the present element of prudence in the technical provisions explicit. This is not a necessary step if the IORP Directive is to remain largely unchanged. However it would represent a development of the Directive. Option 2 is valid if a full Solvency II approach is to be adopted – but we would suggest that an independent assessment of what is appropriate for IORPs be made, along with an impact assessment. There is not harmonisation between banking institutions and insurers in this respect, and so it is not automatic that there should be harmonisation between insurers and IORPs. Option 3 is a risk-free basis as per Option 2 for liabilities, but with no risk margin. This may in particular be appropriate for larger IORPs where there is no realistic prospect of transfer of liabilities to any other party, subject to impact assessments. But see also our comment in Q14 regarding the need for work on measures of risk-free rates etc.	
19.	Future accruals should only be taken into account if all future contributions are pre-defined and contractual, with no possibility of their cessation.	

20.	Yes. Liabilities should be gross liabilities, and such items as recoverables from (re)insurance contracts and SPVs should be taken into account as assets. In the UK smaller defined benefit IORPs will often buy an annuity from an insurance company to meet payments due to members once they retire. In addition a number of larger IORPs are putting into place longevity hedges. In both cases the intention is to protect the IORP's solvency from further improvements in longevity. EIOPA needs to consider the implications for the IORP and insurers if both were required to hold capital to back these promises.	
21.	If any change is to be imposed on UK IORPs, we would consider the Level A / Level B method to be the approach best suited to the UK market, given our history and where we are today. Indeed if harmonisation is an over-arching goal, we believe that the only way in which such change could reasonably be implemented in the UK would be to replace: • the current requirement to calculate a solvency estimate with a requirement to calculate Level A technical provisions and • the current requirement to calculate technical provisions with a requirement to calculate Level B technical provisions. (The present governance requirements around setting technical provisions would then need to be retained in respect of the Level B technical provisions.) Even so we see a need for an orderly and long transitional regime (of some 15-20 years) and to allow time for a practical and agreed system for evaluating sponsor support (see Q33). We consider a comprehensive and detailed impact assessment particularly important on these issues. Moreover a key component of the scope of such an assessment would be a clarity on what regulators would require when looking both at Level A and Level B funding positions.	
22.	If any change is to be imposed on UK IORPs then where expenses are met by IORP sponsors (either explicitly or implicitly via funding plans), they should be treated in a manner consistent with the way in	

	which sponsor support is recognised: i.e. only if sponsor support is included on the asset side of the balance sheet should future expenses be included on the liability side.	
23.	We agree that conditional and discretionary benefits should be treated separately from unconditional benefits. Discretionary benefits (where the discretion lies with the sponsor) should not be included – otherwise this will lead sponsors to stop granting such discretionary benefits (as we are already seeing in the UK under the present regime). The consultation appears to be silent on whether or not allowance for future salary increases in final salary IORPs should be included in technical provisions. The impact of such increases on pension benefits are a conditional benefit, since it is conditional on their being granted by employers. For this reason, and for reasons of compatibility with insured benefits, we would not view such future benefits as being part of technical provisions in any "risk-free" calculation.	
24.	This is one of the areas in which we believe it is important that proportionality is considered. We hope EIOPA is able to consult on these proposals again once it is clearer how proportionality will be interpreted.	
25.	If any change is to be imposed on UK IORPs then the definition of different risk groups needs to be made clear. If different groups within the same IORP have segregated calls on assets (e.g. separate defined benefit and defined contribution sections, or segregated sections for different employers in multi-employer IORPs) then such segmentation is logical.	
26.	These should be treated as assets.	
27.	Yes, this is sensible.	
28.	This is one of the areas where we believe it is important that proportionality is considered. We hope EIOPA is able to consult on these proposals again once it is clearer how proportionality will be	

	interpreted.	
29.	In effect, this is already in place in UK. Such requests from regulators should be subject to a reasonability test.	
30.	This is essentially a political question. However it is not too different from what is already in the IORP Directive. We wonder whether such a power should be a two-way power (i.e. whether regulators should also have the power to lower the level of technical provisions in adverse market situations)?	
31.	As shown by insurance, the effect of changes to Level 2 provisions can be very substantial. If any change is to be imposed on UK IORPs we would therefore say that Level 2 provisions should subject to the same open and detailed consultation with stakeholders as for Level 1 provisions. Our further observation on the implementation of Solvency II within the insurance industry is that very substantial resource has had to be deployed. We recommend that analysis of the experience of implementing Solvency II in the insurance industry be studied so that lessons learned can be applied to any implementation for IORPs.	
32.	This is essentially a political question. If harmonisation of measurement is the key goal then it should not be allowed. However if a practical outcome dictates that the unique circumstances of social and labour laws in some Member States requires it then it should be allowed.	
33.	If any change is to be imposed on UK IORPs then the valuation of sponsor support could, subject to overcoming the not insignificant difficulties of specifying a practical system for doing so, be a means to bring the regime for sponsor-backed IORPs more into line with that for 17(1) IORPs. However we see great practical difficulties in formulating specific rules for the evaluation of Component 6 (Contingent assets) and particularly Component 7 (Sponsor covenant and Protection schemes). Even if such rules can be formulated to cover all the different types of sponsoring employers (listed companies, private companies, charities, other not-for-profit organisations, etc), the costs of carrying out such	

	calculations on a regular basis may be excessive. The UK is as experienced as any in its use of employer covenant as a support to an IORP but even in the UK there is no generally accepted methodology for placing a single value on the covenant. A starting point might be the ratings given to a company for its corporate debt (although many sponsoring employers do not have rated debt). However as covenants are not traded it is difficult to see how these could be converted to a values which are market consistent. It may be that the practical way forward is for the value of sponsor support needed to support the IORP to be calculated as the balancing item in a holistic balance sheet. The ability of the sponsor to deliver the support this number implies would then be tested by reference to a qualitative assessment or by reference to quantitative measures such as relevant accounting ratios. This could then lead to requirements for disclosure of this balancing item and justification to supervisors and for disclosures to members about the implications for benefit security. We would welcome an opportunity to work with the Commission and EIOPA to investigate how these issues may be addressed in a practical and realistic manner.	
34.	In the UK most IORPs do not have "own funds" as there are few IORPs with assets in excess of liabilities measured on a "Solvency II basis". (Any that did would buy out and so UK IORPs should not have to fund more than the buy out cost, whatever the regime). We recognise however that if employer covenant is taken into account in assessing whether there are "own funds", which we would not support, then "own fund" restrictions could affect UK IORPs and would then potentially have a direct and significant impact on UK capital markets etc. We note, in particular, that an IORP would not be able to influence the sponsor capital allocations unless the IORP Directive applied directly to the sponsor for this purpose, which again we would not support.	
35.	Yes, but subordinated loans from employers are not a current feature of UK Pensions industry.	
36.	Security measurement is a political issue at all levels whether this is confidence level or otherwise. The consequences are of not having assets (in the IORP or otherwise) is unclear and so the need for	

complete prescription is also unclear.

Furthermore not all benefits are uniform in nature or were even established in a risk-focused environment. So whilst we might agree that a uniform risk focused regulatory structure may be suitable for future benefits (also suitably defined) we find it hard to comment on an appropriate security level for historic benefits without a full understanding of the consequences of a failure to meet any particular test.

Benefit provision and security are intertwined, for example an inflation linked benefit provides greater security of purchasing power compared to a non-indexed benefit. The overall level of capital required to back a pension promise (ie the level of security) should reflect the nature of the promise itself. In some Member States conditional benefits are a feature, and these can be reduced if financial conditions are unfavourable or if the employer's financial commitment is subject to a limit.

In the UK, discretionary benefits have become less common over time as legislation has imposed additional commitments on IORPs. However, due to the social nature of pension provision and the employee-employer relationship, we believe that it is recognised that the nature of the pension 'promise' is not as 'hard' as a contractual guarantee. In particular, employers have given pension promises in the past in the knowledge that they were not required to fund such promises at a level that guaranteed those promises with a high degree of certainty. To impose a high probability now therefore would be retroactive, and would imply a reinterpretation of pension promises made in the past, perhaps many years ago.

One approach would therefore be to apply a consistent level of probability only to pension promises made after a specified date. This would ensure that the security of the promise can be properly taken into account by employers and employees in their pension planning.

Whilst we can see the rationale for a consistent level of security for pension promises, we do not believe that 'consistent' means 'the same'. In particular, a flexible approach would be needed to reflect the different nature of pension promises in Member States. Furthermore, security in different Member States is provided in part by a range of mechanisms such as the UK's Pension Protection Fund and various IORP-specific contingent funding arrangements. Such mechanisms are in many cases hard to value. A wide-ranging discretion would need to be available to national regulators to decide how such mechanisms

	should be taken into account in assessing security. If a specific probability were imposed , the value used must be set in the context of the term of the assessment.	
37.	A measure of security should be available. This is not necessarily a confidence level. If it is politically decided to be a confidence level then the time horizon is also a political decision. The time horizon should be determined by the purpose of the test: • at one extreme if the purpose is a "Solvency II" approach, which we would not necessarily support, then one-year seems appropriate by definition; • if a more generic test of "will the benefits be paid" is intended, longer horizons may be appropriate. The consequence of this level not being met needs to be made clear. A sensible consequence may be simply disclosure to appropriate parties. A consequence requiring the transfer of capital may not be appropriate. This is a question of practicality rather than politics. If a risk-based solvency capital requirement is introduced then whether it should be measured over a one-year time horizon, or a longer period, the time horizon would still be relatively short compared to the duration of the IORP's liabilities.	
38.	Taking into account the position of sponsor-backed IORPs in the UK, we believe there is a strong argument that it would not be proportionate to introduce an complete Solvency II solvency capital requirement (SCR). If Solvency II rules were to be used to calculate an IORP equivalent of an SCR, the calculation would need to be proportionate in its application. What constitutes a proportionate approach would largely depend on the consequences of the calculation.	
39.	A three year cycle with annual reviews appears proportionate. This is the current UK system.	
40.	Our view on the imposition of a minimum capital requirement (MCR) depends on the consequences of an	

	IORP falling short of such a measure. If the sensible consequence of SCR is disclosure then the MCR probably adds little or no value. If the consequence of MCR "failure" is to transfer resources from sponsor to IORP then this needs further analysis and such intervention, if required, should be at a national level and scheme specific.	
41.	In the UK the Pension Protection Fund (PPF) does exist and does provide additional (and in some cases significant) security to the beneficiary and so we believe there is a case for its inclusion as either an asset or as a liability-offset on the holistic balance sheet. However there are practical difficulties in placing a value on this security which would need to be solved before such an approach could be implemented. Similarly we believe there is a case for taking the existence of the PPF into account in the setting of the security level (by confidence level or otherwise), which should be to be determined at a national level.	
42.	We believe that any measure concerning capital requirements for occupational risk for DC IORPs must be proportionate and that in practice this means that it should be covered by employer covenant. We note that contract-based DC arrangements to which the sponsor contributes (or provides a payroll deduction facility) also carry operational risk to the sponsor so we believe that these should also be considered in this section.	
43.	Any additional reporting should be proportionate to the consequences that flow and the likely actions of the regulator. It seems to us that the actions available to supervisors in the UK are likely to be limited: future benefit accrual has already ceased in the majority of UK private sector defined benefit IORPs which means that it is not possible to restrict them further, leaving only actions that do not require transfer of capital from sponsor to the IORP.	
44.	As covered in other comments we do not accept that the direct impostion of Solvency II SCR or MCR are automatically appropriate funding targets in respect of the significant historic benefits in the UK. There should be a clear political acknowledgement that the significant enhancement of security is required before agreeing the methodology for achieving this goal. The current UK system has a proportionate and flexible regime aimed at a gradual improvement in solvency (and is demonstrably achieving that aim).	

	Additional regulatory burdens would not necessarily enhance this. If significantly higher security than present is sought then significant transition must be allowed as flexibility for national regulators. It must also be recognised that IORPs do not, in general, have the ability to raise further capital.	
45.	As discussed in Q34 UK IORPs cannot distribute assets until all benefits are secured. However sponsors may and if restrictions were applied to them (via the holistic balance sheet or otherwise) this would have an impact on capital markets.	
46.	Recovery Plans are part of benefit security and as such are a political decision and should be considered in same way as confidence level. We believe this is probably most appropriately done at a national level. Any requirements should be proportionate to the objective being sought. For example, forecasts of income and expenditure do not seem particularly appropriate for an IORP regime focused on reaching long-term solvency. More relevant would be the level of future contributions agreed with the sponsor and the main assumptions being made about future asset returns.	
47.	Making explicit the principle of 'ensuring knowledge and understanding of the assets in which to invest' would be in line with current UK practice. Option 2 (for 7.1) suggests an extended responsibility of the IORP to " identify, measure, monitor , manage and control and report" while option 3 emphasises the oversight and supervision responsibilities. In the UK IORPs operate under a trust system where it is usual for significant elements of the investment process to be outsourced while the Trustees retain ultimate responsibility. Option 3 better reflects the UK system of Governance. Option 2 may imply expertise that may not be available in the Trustee body; requiring this could potentially lead to Trustees resigning and being replaced by professional trustees resulting in an increased cost. The current governance structure in the UK with the ultimate oversight by the regulatory authorities is considered fit for purpose; as a result option 3 represents a lower cost and standard of governance deemed suitable by the regulatory authorities. Option 3 also mitigates the legal risk to IORPs as identified by EIOPA in the case where outsourcing occurs (11.3.6).	

48.	The right to impose scheme specific limitations may be necessary in the interests of prudential oversight or protecting member interests. This would be similar to the ladder of intervention for Member State insurance regulators under Solvency II. This is also true for host States also. However, if the intervention is able to be cast too broadly then it will impair the regulation harmonisation objective. Accordingly we consider that such powers should be limited to circumstances where there are specific reasons for intervention, which in turn should be justifiable, for example, to the EU regulator.	
49.	Defined benefit regulation (at least for larger IORPs – for small IORPs the costs may be disproportionate) can be risk based, with IORPs applying the framework to select investments that are suitable for the profile of the liabilities. By contrast it is unlikely that many DC investors can individually make decisions along similar lines, given limited investment experience and resources. Accordingly, more prescriptive regulation for default funds and lifestyling in DC would appear appropriate, along with the "safe harbour" proposal, to help direct DC investors who do not feel suitably qualified to proactively select other options to manage their own risk profile against individual objectives. It is not clear that small DB IORPs should be subject to a full risk based regime because the costs could outweigh the gains, with average expertise and resourcing somewhere between large DB IORPs and DC investors. Accordingly, an alternative which provides a "safe harbour" equivalent for small DB IORPs in conjunction with a national fund to provide DB members' protection in the case of scheme default could be a more efficient alternative below a certain threshold.	
50.	The overall direction of regulation in general is towards a principles based approach: specific restrictions on individual asset classes appear contrary to that aim. Specific restrictions, if required, are arguably more appropriate to level 2 text. Intervention would need to be targeted to avoid rendering the wider Directive's aims of harmonisation ineffective. In a risk based system intervention would be required in the event of risk-based parameters being exceeded - see our answer to Q49. A balance is required between permitting restrictions to protect members' benefits and complexity. This is	

	particularly an issue for cross-border IORPs where different funds/options/defaults apply. For DC IORPs the application of minimum standards for default options/lifestyle seems consistent with a risk-based approach. The use of funds that comply with principles and are considered "safe-harbour" are potentially important for encouraging provision. Where possible, disclosure (with suitable options) rather than compulsion is considered appropriate for creating a risk-based DC system. Minimum standards may have the undesired affect of increasing homogeneity of approach and potentially creating systemic risk.	
51.	Controlling the maximum risk taken by IORPs would generally be expected to improve security for IORP members. However, controlling the concept of leverage through a rule of this sort may not achieve that. For the following reasons: • Derivative contracts used for risk reduction and efficient portfolio management could be indirectly prohibited by the proposal. • In addition, the proposal does not address indirect leverage (such as owning equity in companies that issue debt securities). • It would also exclude certain forms of investment, such as accessing illiquid loan portfolios currently funded by banks, which do not appear riskier than equity investment. We believe that EIOPA's objective can be met through the principles based regime. Imposing extra restrictions could have unintended consequences and costs to IORPs.	
52.	It is important that EIOPA considers how any rules that are eventually adopted will affect the operation of markets and whether they maximise chances for solvent institutions to ride out temporary price adjustments or extreme circumstances. This is particularly true in the UK where IORPs are a significant investor in all investment markets. We would disagree with the statement in 12.3.13 "Although the impact	

	of IORPs on financial systems is probably limited compared to the role of insurance companies". In the UK IORPs will be systemically relevant. The implicit assumption within this section seems to be that it is only equity markets that can give rise to the overshooting that requires something like an equity dampener to moderate systemic risks. This assumption is misguided: it is also possible for other asset classes. The extent to which true solvency for IORPs is affected by the price movements in government backed securities used as proxies for risk free assets is something EIOPA should consider when building rules in this area. Experience would suggest that it is very difficult to predict the next combination of circumstances that would require IORPs across Europe to take similar actions and create systematic risks to the financial system. To some extent trying to predict these and then specify actions regulators would take in each circumstance may not be the most effective way of dealing with such risks. An alternative approach would be to ensure regulators are sufficiently resourced to monitor the system and empowered to relax some rules temporarily in order to prevent systemic realignment of assets or other rapidly implemented changes to the IORP that may have long term repercussions for IORP members. EIOPA would need to consider if this is best done at a pan-European level or by individual countrys' regulators who may be better placed to access information about each individual countrys' stock market. Whichever approach is taken, EIOPA will need to consider the different economic circumstances of countries inside and outside of the eurozone. Whilst it may have many other benefits, the existence of a tighter, more prescriptive IORP Directive for individual regulators to apply does by its nature increase systemic risk. Governing all smaller IORPs by the same rules makes it more likely that their actions will be more closely aligned. This close alignment of actions would create systemic risks that are not in the current system.	
53.	We believe that supervision should be based on a risk-based approach under which the impact of the requirements on an IORP is proportionate not simply to the risks faced by that IORP in isolation but to the risk of adverse outcomes for members (taking account the resources available to the IORP including recourse to a sponsoring employer). This would be consistent with the principles set out in paragraph 3.4 of our general comments.	

	The number and diversity of IORPs means that proportionality can only be achieved with a principles-based approach and that it would be ineffective and inefficient to adopt detailed rules adapted from the regulatory regime for insurance companies. Appropriate checks and balances would be required to ensure consistent application of the principles and a key feature of such a regime would be transparency and accountability in decision-making. The concept of "verification on a continuous basis" seems unlikely to be compatible with our preferred risk-based principles-based approach. We would therefore encourage EIOPA and the Commission to consult further on the subject of verification once the possible interpretations of this phrase have been identified.	
54.	The issues EIOPA has identified are correct but incomplete: • Firstly we would add that UK IORPs are not financial institutions in the same sense as banks and insurers, for whom the customer-provider relationship is commercial and contractual and, in particular, where customers choose between providers and need corresponding "consumer protection". By contrast an IORP is part of the social security and employment framework delivering "deferred pay" and the member-provider relationship is fiduciary, which means the primary duty of those running the IORP is to act in the best interest of the members, not a third party, such as shareholders. This difference means that it is not clear that further "member protection" is required in order to achieve the same level of security. • We would also point out that currently all UK retirement benefit provision by employers is voluntary, which means that it would be inappropriate to make any changes to the IORP Directive without assessing the likely impact on the adequacy of future provision.	
55.	We agree that supervisory authorities should have powers to require IORPs to conduct stress tests but such tests can be expensive and for small IORPs the idiosyncratic risk is proportionately higher than for similar large IORPs. For both these reasons there needs to be appropriate checks and balances on such powers to ensure that they are not used in a way that would result in small IORPs having reduced benefit security and/or benefit levels for members: i.e. the nature of the tests and the frequency of testing needs	

	to be proportionate.	
56.	We believe that the sanctions available to the UK regulator are already adequate. However we question whether the conditions that need to be satisfied for those sanctions to be imposed are sufficiently well-defined and, if so, whether they are appropriate. Any powers to impose sanctions should be subject to appropriate checks and balances. Particular care is required for financial sanctions to the extent that they would reduce the resources available to satisfy benefit obligations. In general sanctions should be timely, proportionate, meaningful, consistent and transparent.	
57.	We believe there is certainly a role for the potential publication of sanctions in ensuring good governance of IORPs and so we do believe that supervisory authorities should have powers to make public the imposition of penalties when it is in the public interest to do so but we also believe that such powers should be subject to appropriate checks and balances. We suggest that a distinction be drawn between publication by the supervisory authority itself, which would normally be appropriate only for serious offences (particularly if a financial penalty would be inappropriate because it would prejudice the security of member benefits), and disclosure to members at their request or, for example, in the IORP's annual report.	
58.	The checks and balances on such powers need to be strong enough to ensure that they are only exercised in extreme circumstances otherwise such provisions would act as a major disincentive to operating cross-border IORPs In particular we think it important that: • a Host state should only be able to impose sanctions if the Home state does not impose sanctions and does not have a good reason for failing to do so • the Home state should then cease to have jurisdiction in the particular matter at issue.	

	otherwise there can never be absolute certainty as to the rules that are to be followed.	
59.	Convergence of supervisory review processes is potentially welcome but, as noted in our response to Question 53, we believe that the number and diversity of IORPs means that proportionality can only be achieved with an approach based on principles and risk management and that it would be ineffective and inefficient to adopt detailed rules adapted from the regulatory regime for insurance companies. Naturally appropriate checks and balances would be required to ensure consistent application of the principles and a key feature of such a regime would be transparency and accountability in decision-making.	
60.	We believe that the supervisory authority should have the power to impose additional funding requirements for defined benefit IORPs but we favour a more flexible approach than provided under Solvency II, reflecting the limited capital-raising powers of IORPs. We have a concern that transcribing the Solvency II capital add-ons provisions to IORPs could make defined benefit IORPs much less attractive to sponsoring employers. We consider that the current UK provisions for "Contribution Notices" or "Financial Support Directions" achieve a good balance and that it would therefore be unfortunate if transcribing the Solvency II 'capital add on' requirement resulted in immediate capital injection becoming the only supervisory tool available. We therefore consider it essential that the potential impact of any changes to the current provisions be thoroughly assessed. We note also that the Technical Provisions may already include margins to allow for the risks inherent in the actual investments and so it may be inappropriate to allow capital add-ons by reference to the actual investments alone.	
61.	We agree in principle that the material elements of the requirements on insurers in respect of supervision of outsourcing should apply also to IORPs but, as noted in our response to Question 53, we believe that the number and diversity of IORPs means that proportionality can only be achieved with an approach based on principles and risk management and that it would be ineffective and inefficient to adopt detailed rules adapted from the regulatory regime for insurance companies.	
62.	We consider that the proposed changes to the definition of home state and rules on chain outsourcing	

	would be an improvement to the current provisions of the IORP Directive.	
63.	It is difficult to answer this question without understanding how proportionality will be interpreted in practice. We agree in principle that the material elements of the Solvency II requirements for governance should apply to IORPs, subject to proportionality. However whether or not we agree in practice depends on how "proportionality" is interpreted. As noted in our response to Question 53, we believe that the number and diversity of IORPs means that proportionality can only be achieved with an approach based on principles and risk management and that it would be ineffective and inefficient to adopt detailed rules adapted from the regulatory regime for insurance companies. We therefore believe that, in general, the best approach is to define high-level objectives in the legislation and then to hold those running the IORP responsible for meeting those objectives in the way most appropriate for that IORP.	
64.	The areas EIOPA has identified are correct but incomplete: • Firstly we repeat the comment made in our response to Question 54 that UK IORPs are not a financial institutions in the same sense as banks and insurers, rather they are part of the social security and employment framework and, crucially, the primary duty of those running the IORP is to act in the best interest of the members, not a third party. This difference means that it is not clear that the same general governance requirements are required or appropriate. • We also echo the second bullet of 18.3.21 that most of the individuals who make up the trustee bodies who govern UK IORPs are unpaid volunteers and suggest that, in consequence, the governance requirements for charitable bodies are arguably a more appropriate reference than the governance requirements for insurance companies.	
65.	We agree that the management of IORPs should be undertaken by fit and proper people. We think that the phrase "Persons who effectively run the IORP" will need to be well-defined in law and that all such persons should be "proper". However we also believe that "proportionality" requires that: • it should be made clear in the revised directive that "fitness" applies collectively to the body running the IORP (i.e. that it is not necessary for every individual on that body to possess all the	

	necessary skills) and • "fitness" is measured by reference to the skills and knowledge required to run only the specific IORP in question.	
66.	a. Yes, provided the conditions outlined in our response to Q65 are satisfied. (We note that this requirement would be stronger than currently applies in the UK where a period of 6 months is allowed to acquire the required knowledge and understanding.) b. Supervisory authorities should have the power to assess fitness and propriety but they should be subject to appropriate checks and balances so that these powers are used only as can be justified by the risk to the outcomes for members. In particular the assessment should be reasonable and proportionate in the context solely of the IORP in question. We consider that the definition of 'fitness" should be left to the national supervisor and that the qualification rules could be satisfied by completion of computer-based training in the case of lay trustees, although we recognise that a higher standard may be appropriate to individuals who are involved in the running in a professional capacity.	
67.	We consider that there should be a range of measures available to supervisory authorities in the event that the fit and/or proper requirements are not met, including the power to remove an individual from office, however: • where "fitness" is the issue, the primary focus should be on education first and enforcement, if required, thereafter • where "propriety" is the issue, enforcement to protect members' interests should be paramount. These supervisory powers should be subject to appropriate checks and balances.	
68.	As noted in our general comments on CfA9 we advocate applying Enterprise Risk Management techniques to IORPs. We therefore welcome the proposed risk management principles and support the	

	non-exhaustive list and applicability approach. However we believe that substantial further research needs to be done to establish how risk management can be applied to IORPs in a proportionate way and we would welcome an opportunity to work with EIOPA on this. We believe strongly that continuous assessment would not be proportionate except for the very largest IORPs and so we do not support the inclusion of this feature of Solvency II in the revised IORP Directive. We suggest that particular care is required to avoid creating a conflict in IORPs in which members bear the investment risks between members' chosen investment preferences and the requirements on the persons running the IORP to manage the risks. We welcome the comments on communication to the members in 20.3.31 and draw EIOPA's attention to our further comments on this subject in our response to CfA23.	
69.	We favour the application of Enterprise Risk Management techniques to IORPs. We therefore agree that ORSA is, in principle, suitable for IORPs but in practice we doubt that such a requirement can be transcribed to IORPs in a proportionate way unless it is cast in terms wide enough to allow a purely qualitative approach where appropriate.	
70.	For IORPs where members bear all the risks, we consider that there should be a requirement to communicate to the members the full implications of their exposure in terms of the risk to benefits but that then an ORSA would not be appropriate for such IORPs. In particular we have a concern that requiring an ORSA for IORPs where members bear all the risks may create an unlevel playing field and that the number of such IORPs would fall substantially (because they would be converted into insurance contracts).	
71.	We are not persuaded that it is necessary to perform ORSA in the event that the holistic balance sheet approach is adopted and we doubt that such a requirement can be transcribed to IORPs in a proportionate way. Nevertheless we believe that those running IORPs should be encouraged to embed risk management in their processes and that a demonstration of risk management to the supervisor that is proportionate to the risks the IORP is running in relation to the security of member benefits would be	

	appropriate where such a requirement would also be proportionate.	
72.	Our view is that if a compliance function is required, a whistle-blowing duty is a necessary requirement if, as we prefer, a principles-based approach is adopted. It is not clear to us why the whistle-blowing obligation should be an option for Member States This may cause uncertainty and confusion in the case of cross-border IORPs, and could create scope for regulatory arbitrage. The whistle-blowing requirement would need to be sufficiently flexible to allow for all the forms of compliance function that may be reasonably be adopted by IORPs. The revised Directive would need to make clear that the timescale for reporting should be appropriate to the risk to members benefits.	
73.	Our view is that if a compliance function is required, its scope should include all legislation to which the operations of the IORP are subject.	
74.	For the material requirements of internal audit in respect of insurers to also apply to IORPs,they need to be subject to proportionality and other changes. In particular we consider that a principles-based approach is required and that proportionality should be judged by reference to the benefit to IORP members and beneficiaries. Subject to these provisos internal audit could add to the running of the IORP.	
75.	We consider that a whistle-blowing requirement for the internal audit function is a necessary requirement if, as we prefer, a principles-based approach is adopted. However the whistle-blowing requirement would need to be sufficiently flexible to allow for all the forms of internal audit function that may be reasonably be adopted by IORPs.	
76.	We approve of the suggested adaptations of article 48(1) and 48(2).	
77.	Subject to the amendments proposed by EIOPA, we agree the requirements look sensible.	

78.	Yes we agree with the importance of independence of the actuarial function. The actuarial function's ability to provide objective actuarial information to the board of the IORP/its trustees must not be, and must not reasonably be seen to be, compromised. The actuarial function holder(s) must disqualify himself/herself/themselves if their duty to act in the best interests of the IORP conflicts with their own interests, the interest of their firm or the interests of other clients.	
79.	We believe that leaving the scope of the actuarial function to be clarified in local regulatory and actuarial standards would be the most robust and flexible way of addressing the diversity of IORPs in a proportionate way. Option 2 would be acceptable provided that the detailed requirements (including transitional requirements): • are proportionate to the benefit for IORP members and beneficiaries • take proper account of the diversity of IORPs, and • take proper account of the available actuarial resource. We agree the Option 1 is the minimum cost option and that Option 2 might have a positive effect on cross-border activity. We have a concern that overly-precise description of the tasks of the actuarial function may reduce the level of responsibility taken by the professionals best qualified to make judgements in relation to the management of IORPs. We advocate a principles-based approach. We reject the suggestion that leaving the IORP unchanged could result in an inability to make well informed decisions and that beneficiaries may suffer as a result. Of course if that gap is not filled, the consequences may be adverse. However we believe that leaving the scope of the actuarial function to be clarified in local regulatory and actuarial standards would be the most robust and flexible approach. We cannot support the assumption that Option 1 would require more supervisory resources than Option 2	

	– quite the reverse. In the UK far greater resources are required to supervise insurers than are required to regulate far greater numbers of IORPs. Moreover we consider that diversity in the information required by supervisors to be an inevitable consequence of the diversity of IORPs: we would be very concerned if the information collected did not reflect that diversity. It is not possible for us to comment on the additional administration burden until more details about the scope of the actuarial function are available. We accept in principle that if the scope, tasks and qualification requirements are largely unchanged by the proposed Level 1 changes, the impact should not be high.	
80.	Yes we consider that the requirements on insurers in respect of outsourcing represent a sensible template for the corresponding requirements in respect of IORPs but we also believe that the number and diversity of IORPs means that proportionality can only be achieved with a principles-based approach and that it would be ineffective and inefficient to adopt detailed rules adapted from the regulatory regime for insurance companies	
81.	We do not object to standardisation of the outsourcing process however we suspect that the diversity of IORPs may mean that a standardised process is likely to be suboptimal for a substantial number of IORPs. We therefore consider that a comprehensive and detailed impact assessment ought to be considered before any decisions are made on this. Moreover we believe that standardisation of outsourcing process will do nothing to enlarge the cross border activity but, despite this, that it is a worthy aspiration.	
82.	We consider that the number and diversity of IORPs means that prescribing minimum terms would be a suboptimal approach. Consistent with our response to Question 80, we believe that it would be better to have a principles-based approach in which the IORP Directive makes it clear that the persons running the IORP are responsible for ensuring that any outsourcing contract is appropriate and that IORP members and beneficiaries are appropriately protected.	
83.	Our view is that the number and diversity of IORPs means that the appropriate treatment of depositaries is a decision that needs to take account of the social and economic context of each IORP and is therefore	

	best left to Member States (Option 1).	
84.	In the time available we have not been able to research the likely positive and negative impacts of the proposals but we consider custodianship and the treatment of depositaries to be highly developed in the UK and so would be concerned if the proposed changes were expected to have a significant impact here. We therefore urge EIOPA to ensure that no such change is introduced without first considering the results of a detailed and comprehensive impact assessment.	
85.	As noted in our response to Question 84, we have not been able to research the likely positive and negative impacts of the proposals in the time available.	
86.	We have not been able to research the likely positive and negative impacts of the proposals in the time available.	
87.	The oversight functions in the list do seem reasonable and necessary to us.	
88.	We have not been able to research the likely positive and negative impacts of the proposals in the time available.	
89.	We are not persuaded that Option 2 provides comparable information because the structural differences between IORPs and the wider social security framework in which they operate could make a substantial difference to the significance of any set of standardised information. We are concerned about the comment “Provides for information that could in future be necessary” to the extent that it implies that EIOPA envisages collecting information, which is often costly to produce, when it is not necessary. We think that EIOPA should consider the extent to which the collection of data by supervisors has the effect of shifting responsibility from those running the IORP to the supervisor. We consider that a full impact assessment should be conducted once the process for supervisors agreeing their objectives has been agreed and a detailed proposal of the information that might be	

	collected has been formulated. That impact assessment should include the cost of producing the information, the potential changes to behaviour that such measurement might induce, the cost of processing the information and the value added by any regulatory action that might flow from that information. We suspect that the impact assesment will show Option 1 as favourable because of our concern about the feasibility of creating a standardised set of information requirements that is adequate for the supervision of the full range of IORPs. We think it particularly important that supervisors are not required to collect the information but simply have the power to do so, subject to appropriate checks and balances on the exercise of that power. We consider that there should be a requirement to review the information that should be collected in future at intervals of no more than 5 years.	
90.	We would favour convergence where it can be shown to be cost-effective. However, as noted, above we have a concern that convergence is potentially sub-optimal from a regulatory perspective in that standardised information may not adequately capture the relevant risks. Our view is that convergence is most likely to be achieved if standardisation were accomplished by specifying only the purpose that the required information is intended to serve: i.e. a risk-based approach.	
91.	As indicated by our general comments on the CfA response, we think it necessary to take a step back and consider the education requirements of the particular IORP's members. We favour a principles-based approach: for example requiring that "sufficient timely information is provided for the member to make a well-informed choice". We agree with the principles set out in the draft advice and, in particular, that for DB IORPs the contents of the information requirements under the current Directive remain appropriate but that any mechanisms for adjusting benefits should be made clear.	

	We believe that the structure of the IORP should dictate the information requirements: for example limited requirements for mandatory arrangements, extensive requirements for voluntary arrangements or where members are required to make many decisions It should also be recognised that: • Standardised projections are usually if not always wrong – they need to be more personalised. Members need to understand what replacement income they need in retirement and to understand how the levers of retirement age, contributions and investment risk together affect the expected outcome and the distribution of possible outcomes. • Good governance requires transparency: e.g. no hidden charges. • Providing members with too much information can be counter-productive. • Past performance figures are often a poor guide to future performance and, in our experience, are largely ignored by IORP members anyway.	
92.	We welcome the principle of a KIID-like document to the extent that it satisfies the conditions set out in our response to Q91. We have reservations about the extent to which it is proposed to standardise the information because we believe that the diversity of information requirements arises from diversity of IORPs and the wider social security framework in which they operate. We believe that the amount of information supplied to the member should be limited to the information relevant to the choices available to them. That information needs to be in a form designed to induce members to take appropriate retirement planning actions. Members therefore need to understand why they're receiving that information, the impact it will have on them and the action they need to or are expected to take.	

	We also have a concern that providing information in a KID could inappropriately shift responsibility from those running the IORP to members and encourage EIOPA to consider this point further. Standardisation of information is usually linked to a goal of ensuring comparability. Comparisons between IORPs are rarely relevant. Members only need information that is relevant to them. Moreover standardised information is usually sub-optimal -: i.e. standardisation may hinder innovation (and hence member choice) and result in some levelling down by those IORPs whose disclosures to members represent current best practice. Supervisors could play an important role by providing generic information for members – indeed, supervisors through economies of scale could usefully provide much more public education and relevant tools to IORP members. Any effect of charges on members' benefits should be disclosed to them. If the information requirement is as we describe above then we do believe that this information should be issued automatically.	
93.	We consider standardisation of the information requirements in respect of these details to be undesirable, unlikely to be cost-effective and potentially counter-productive – indeed many members will not understand it. We think it would be much better to define objectives that such disclosures are intended to meet with specific reference to the decisions actually available to members. Information should be relevant to members' lifestyles. Members need to understand what replacement income they need and the likely impact of changing retirement age, contributions and investment risk on the outcome.	

	Any information provided should therefore be in terms of education and provide appropriate tools such as models, short videos etc.	
94.	We consider that a mandatory annual statement would be inappropriate for pure defined benefit IORPs but we support the concept of a personalised annual statement to be delivered to each member of DC IORPs. However, many IORP members will be in receipt of both DB and DC benefits and need to understand the interaction between the two. The personalised Member Statement needs to consider the members' objectives (e.g. outcomes), needs to be educative, should induce members take appropriate retirement planning actions and should signpost other information and tools. We agree that cost is an important component in determining the outcome for the member and we do think that DC statements should show the effect of charges on the accumulating benefit (where these are non-zero) and that this should be done in a form that can be reconciled to the corresponding disclosure in the KID. However any information about the way in which cost and investment performance are influenced by the other should be presented in ways that fairly indicate the relationship between the two, otherwise members may be led to inappropriate decisions.	
95.	We do not believe that a useful level of harmonisation can be achieved without simultaneously harmonising the wider social security framework in which the IORPs operate.	
96.	We are in favour of improving information to members, however we consider that EIOPA may be too optimistic about the impact and we are not persuaded that providing members with more information necessarily leads to a better outcome in terms of their retirement provision, particularly when many members will not understand it. It simply shifts the responsibility to them and away from supervisors and the professionals running the IORP. It would helpful if EIOPA published the evidence that supports the contention that the additional costs are less significant than the benefits in terms of protection for members. Our experience is that even a small change to member disclosures can be costly to implement.	

	Similarly until there is harmonisation of the wider social security framework, we would not agree that the proposals will materially benefit the market for pension provision as, in practice, members are rarely choosing between IORPs and, where the choice is between an IORP and an alternative arrangement, it is usually skewed by the availability or otherwise of some attractive feature like enhanced employer contributions so that differences in the available information are not material to the members' decision.	