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:	**European Association of Public Sector Pension Institutions (EAPSPI)** Denninger Straße 37 – D-81925 Munich – Tel: +49 (0)89/9235-8077 Contact: Hagen Hügelschäffer, Secretary General hagen.huegelschaeffer@eapspi.eu www.eapspi.eu	
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.
  - o 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.
  - o If your comment refers to parts of a question, please indicate this in the comment itself.

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	Before answering in detail the questions of this consultation document, the European Association of Public Sector Pension Institutions (EAPSPI), which covers 25 pension institutions and associations of the public sector out of 16 European countries, would like to make the following general remarks: • EAPSPI fully agrees with the aim of the Commission in the Call for Advice of April 2011, according to which a risk-based supervisory system for IORPs should be developed on the basis of the IORP Directive as the starting point. This approach is justified due to the basic differences between IORPs and insurance undertakings, as EIOPA itself has identified several times in this consultation document. Therefore, EAPSPI has reservations that in spite of this commitment, this consultation document is built on the Solvency II structure. • Any legal initiative at EU-level has to respect the diversity of IORPs in the EU-Member States. This variety is due to cultural and historical reasons that have entailed quite different concepts of occupational pensions. This diversity was acknowledged in the Commission's Green Paper on Pensions of July 2010, which *"does not suggest that there is one 'ideal'* one-size-fits-all *pension system design".* This diversity continues with the different security rules and mechanisms that Member States have elaborated for beneficiaries' protection. • As a result of this uncontested diversity, EAPSPI wonders whether any harmonization of supervisory and also of solvency rules will be feasible. In this context EAPSPI would like to recall a recent OECD-study that also underlined the potential difficulty of a common approach to solvency. The study by Yermo and Severinson (2010), "The Impact of the Financial Crisis on Defined Benefit Plans and the Need for Counter-Cyclical Funding Regulations" came – among others – to the conclusion that "*international standardization of funding regulations is unlikely and that in any case it would risk being ill-fitting across jurisdictions."* • In the context of ageing societies and budgetary constraints, workplace pensions must generally be promoted to compensate the benefit cuts in social security schemes by means of cost-efficient additional benefits. Hence, excessive regulatory rules might be counterproductive for a further promotion of supplementary funded workplace pensions.	Public

	Furthermore, excessive regulatory rules might endanger already existing well-functioning pension schemes. Against this background, the principles of subsidiarity and proportionality deserve particular attention. • Due to these potential dangers for IORPs a thorough impact assessment prior to any legislative initiative is inevitable, including micro and macro-economic consequences. • Social partners have an important role in this field, e.g. in public sector pensions schemes in Scandinavian countries, in the Netherlands or in Germany. Social partners do not only help to promote supplementary pensions by means of collective agreements for large parts of the population, but they also play an important role in the governance by their representation in the internal supervisory bodies. Their function and importance should hence be considered in the further discussion. • Finally, EAPSPI regrets the very limited time frame of this consultation. EAPSPI therefore has decided to study only certain aspects of the consultation document.	
1.	***Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?*** EAPSPI agrees with EIOPA's analysis.	Public
2.	***Are there any other options that should be considered? Please provide details including where possible in respect of impact.*** EAPSPI does not see any further options to be considered. Since EIOPA already tabled this issue at the first consultation in July 2011 with five options including two further suboptions, EAPSPI is of the opinion that EIOPA has covered all conceivable possibilities, although it has to be admitted that due to the 140,000 pension institutions in the 27 EU Member States, their different embedding into the national pension framework and the still unsolved "pillar-classification", some pension schemes might still not be covered by these different options.	Public

	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
3.	***Which option is preferable?*** EAPSPI is in favour of option 1 and hence in line with EIOPA's conclusion in EIOPA's advice under n° 4.5 that *"the current scope of the IORP directive is not to be extended"*. EIOPA has thoroughly examined all conceivable alternatives both in the first consultation of this summer and in the present document. With respect to this examination, EAPSPI believes that option 1 would be the best solution since in contrast to the other options 2 and 3, it has no negative impacts. Even though option 1 offers no advantages, EAPSPI, however, wonders whether the positive impacts of options 2 and 3 are really advantages for all involved persons and institutions. Regarding option 2, the mere enlargement of the scope of the IORP Directive does not constitute an advantage *per se*. Furthermore, the choice of Member States whether to apply the IORP Directive on a voluntary basis is already possible under the current legislation as EIOPA has identified in 4.3.25. Regarding option 3, EAPSPI does not believe that the enlargement to all funded schemes would constitute a positive impact. EAPSPI is rather of the opinion that this would be a disadvantage since this would imply to remove the reference to "occupational" as EIOPA has underlined in 4.2.29 since it would basically change the character of the IORP Directive.	Public
4.	***Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?*** EAPSPI agrees with EIOPA's findings under n° 4.3.26 according to which such borderline cases might later be covered by the national legislator in transposing the revised IORP Directive. EAPSPI believes that especially due to the experience after the last financial crisis, beneficiaries' protection is of paramount interest both for the Member States and social partners. Therefore, EAPSPI is of the opinion that such borderline cases will be responsibly treated by transposing the revised IORP Directive into national legislation without any further EU legislation being necessary.	Public
5.		
6.		
7.		
8.		

9.		
10.		
11.		
12.	***What is the view of the stakeholders on the holistic balance sheet proposal? Do stakeholders think that the distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs should be retained or removed?*** The main problem of the Holistic Balance Sheet is that it contains the essential aspects of the Solvency II regime, i.e. the "mark-to-market" criteria for the valuation of assets and liabilities, a risk-sensitive calculation of the solvency capital requirement as the value-at-risk with a 1-year-horizon and a security level of 99.5%. The **main problems** related to these concepts are: • very high capital requirements due to the long duration of liabilities, guaranteed benefits and the IORP typical duration mismatch of assets and liabilities because of the longer duration of liabilities compared to assets • very high capital requirements in times of low interest rates • volatile and arbitrary capital requirements in times of fragile financial markets (interest rates, equity markets,…) • the long-term risk diversification behavior of IORPs is limited by the 1-year-horizon of the standard formula • too high capital requirements due to the 1-year-horizon given the long duration of liabilities and the marginal relevance of short term fluctuations • implementing the Solvency II structure and accomplishing all the legal and IT requirements will mean high additional financial costs and manpower efforts (For a more detailed discussion of the problems with the Solvency II rules for calculating the solvency requirement please refer to EAPSPI's answers to CfA 6, especially questions #37 and #38. For a more detailed discussion of the problems related to the long-term investment behavior of IORPs see the answers to CfA 7 and 8.)	Public

In the end the sum of the ingredients of Solvency II will have **serious consequences**. The requirements of pillar I entail severe or even life-threatening difficulties for some IORPs with respect to handling the organizational requirement and financing the capital requirements due to the existing retirement provisions. Forcing them to accomplish all the capital, legal and IT requirements following the Solvency II framework will lead to rising costs. This will in turn reduce the benefits for existing retirement provisions and / or increase the need of additional financial contributions of the sponsoring undertaking. In the medium-term a switch from defined-benefit- to defined-contribution-schemes due to excessive demands in defined-benefit schemes is very likely. The effect is a risk transfer from the IORP or the sponsoring undertaking to the employee. Or – even worse – this process leads to an entire termination of occupational pension covenants and the disappearance of IORPs. These consequences stand in direct contrast to the political objective of securing retirement provision and are surely not intended to be the outcome of a revised IORP Directive.

To sum up, this makes a veritable and unintended **paradox of the Solvency II regulatory approach**. If for security reasons the capital requirements for IORPs increase in the end the employee is penalised for his own future security. In other words: to avoid *unlikely benefit reductions in the future* we accept *definite benefit reductions in the present*.

With the **Holistic Balance Sheet (HBS)** EIOPA tries to cope with the problems mentioned above by taking into account some special characteristics of IORPs. This is done by integrating two additional assets–additional financial contributions of the employer and the pension protection schemes – as well as the possibility to reduce liabilities because of benefit reductions. But for the IORPs the **HBS does not change the situation for the better** for the following reasons:

1. Fundamental principles and problems of Solvency II remain unchanged

The general principles of Solvency II and especially of pillar I remain unchanged. And therefore the implied consequences mentioned above ("mark-to-market" valuation, 1-year-horizon, volatility, arbitrariness, interest rate sensitivity, financial costs and manpower efforts,…) remain problematic as well. The HBS might indeed reduce the capital requirements for IORPs but at this point serious difficulties arise.

2. Concrete problems with the design of the HBS

The concrete design and functioning of the HBS creates various problems. If the additional "security mechanism" of IORPs are valued according to a "market-value", what is the concrete "market" value of the subsequent payments of the sponsor or a possible pension protection mechanism in place? How much is it "worth" to be able to reduce benefits in case of a financial emergency? Shall these assets be allowed to appear on the balance sheet already in the unstressed market-value balance sheet or only to cover the losses of stressed assets?

All these questions exemplify the immense difficulties due to a plausible valuation, tiering and balancing of assets and the high degree of arbitrariness when it comes to quantifying these additional assets according to "market-values": there simply is no concrete balance sheet value due to the nature of these assets. So the attached values are highly arbitrary and therefore contradict the notion of a neutral, objective and informative balance sheet.

3. Are "new" assets "new" liabilities as well?

It is very likely that the concrete value of the additional assets will have to fill exactly that gap which the IORPs face because of the changeover to the Solvency II balance sheet. The difference is the outcome of the market valuation of assets and liabilities. So the seeming "market value" of the new assets is in the end predetermined by the increase in the capital requirements given the pillar I of Solvency II which is described above.

And this leads to a further problem: If these "new" assets enter the balance sheet of the IORP then "new" liabilities will also have enter the balance sheet of the sponsoring undertaking. Therefore the higher capital requirements of Solvency II – as described above – will move to the balance sheets of the employers. For example for employers in the public sector in Germany this would lead to a situation of financial over-indebtedness. Again, as EAPSPI argued in the pure-Solvency-II-situation, the consequence would be the termination of occupational pension provisions and the disappearance of IORPs on a large scale.

4. The "Holistic Balance Sheet Paradox": Same security as before, but dramatic consequences?

Finally, EAPSPI wants to point out the inherent paradox associated with the HBS: The security level

for the employees is exactly the same as before. Economically speaking *nothing changes*, it is only a question of accounting and the interplay of IORPs and employers, as was argued above. But due to the dramatic rise in costs it is likely that this level of security will not be affordable anymore.

In EAPSPI's opinion, EIOPA has correctly identified existing security mechanisms, which can be called upon in case of emergency so that the security of retirement provisions is guaranteed. And EIOPA has in particular pointed out the differences between IORPs and insurance undertakings. Additionally, EAPSPI would like to mention some **further distinctive features common to public sector IORPs** that differentiate institutions of the so-called "second" and "third" pillar as far as benefit security is concerned:

- IORPs have **specific inbuilt security mechanisms** that ensure the solvency position of pension schemes. In some pension schemes, contributions and the main benefit parameters can be modified by the employers and the employees' representatives.

- Many pension schemes, especially of the public sector in the Netherlands, Scandinavian countries or in Germany, foresee **paritarian management**. Paritarian management involves social partners on the Board of Directors of the IORP or in similar internal supervisory bodies. Due to paritarian representation, the interests both of the employers and of the employees and beneficiaries are well-balanced and the benefit security can therefore be ensured.

- Due to the fact that IORPs in the public sector are **social institutions** and therefore not chiefly for profit organizations, the possibility of a potential conflict of interests between member protection and profit maximizing behavior and dividend payments is minimized.

- The **long term investment horizon of IORPs** and the impossibility of capital withdrawal (no benefits before the occurrence of the insured event e.g. retirement, death, and disability) also strengthens benefit security.

- For DB- and hybrid DB-/DC-schemes, in at least some Member States, **employers have the ultimate responsibility** for the fulfilment of the pension promise as additional benefit security mechanism.

	EAPSPI's summary: • If the general idea of pillar I of Solvency II is to ensure that IORPs are assured against exceptional emergency cases then this protection, especially in case of public sector IORPs, already exists because of the additional security mechanisms in place. • If these mechanisms were to be quantified grave problems would arise which essentially contradict the initial idea: only pseudo-certainty and -precision prevails given the arbitrariness of the valuation of additional security mechanisms as assets. • And: lots of (small) IORPs will be unable to cope with the immense extra needs in manpower and financial effort • In the end: the existing security mechanisms today already safeguard with low cost exactly that level of security which would be created with supposed quantitative precision in the new regulatory regime for much higher costs (best case) if not for the price of termination of existing pension scheme arrangements (worst case). **RESULTS** • **Extreme effort and great uncertainty with respect to construction, valuation, etc. of the HBS.** • **No security surplus for employees but higher costs for employers.** • **EAPSPI strongly opposes the HBS in consideration of all these aspects.** • **For proposals for an alternative perspective on regulating IORPs see answer to question #52.**	
13.	***Do stakeholders agree that assets of IORPs should be valued on a market-consistent basis?*** The principle of the "mark-to-market" valuation rests on the notion of efficient financial markets and the assumption that prices in financial markets reflect real economic fundamentals and therefore allow for an economically sound pricing of assets. In consequence this would imply that the volatility of financial markets is "justified" economically speaking. In the light of the recent financial fluctuations and market disruptions, the short-term volatility of stock prices, interest rates and credit spreads of the financial crisis since 2008 and the current	Public

	sovereign debt crisis in Europe it is necessary to doubt that these grave fluctuations and down-turns are justified in economic terms. The main problem is that the "mark-to-market" valuation of assets directly maps these movements into the balance sheets and the calculation of the SCR although this short-term volatility is not of great importance especially for IORPs: IORPs typically have a long term investment horizon and follow a "buy-and-hold"-strategy with respect to several asset classes like equities, bonds, property, etc. For instance highly-rated fixed-interest securities, which are one of the key asset classes for IORPs, are normally held to maturity. So IORPs can cope with fluctuations in value based on short-term interest rate changes or stock market fluctuations and could therefore act as a counter-cyclical stabilizer in financial markets if not forced to "mark-to-market" valuation (see CfA 8). Therefore, EAPSI advises EIOPA that the valuation of assets should not always be valued marked-to-market: exemptions should be possible.	
14.	***What is the stakeholders' view on the two options regarding the starting principle for valuing liabilities? Do stakeholders agree that such a principle for IORPs should contain no reference to transfer value?*** In EAPSPI's opinion EIOPA has correctly identified the major drawbacks which are connected with the **transfer principle for valuing liabilities** (9.3.6.). In particular EAPSPI points out that within the German occupational pension arrangement in the public sector the concept of transfer as a concept makes no sense because pension contracts are not traded and there exists no market for pension contracts and therefore no "market value". Because of the involvement of the sponsoring undertaking (financial guarantee due to social and labor law) the concept of transfer has no conceptual meaning and is not the appropriate starting principle for valuing liabilities. In addition EAPSPI does not see any reason to use the transfer principle as a theoretical or "*intellectual concept*" as stated by EIOPA (9.3.7.). If a concept is not appropriate, not related to real conditions and without practical relevance why then use it? But EAPSPI also is critical to the **concept of market-consistent valuation**. As the occupational pensions organize intergenerational risk sharing and because of the long-run response possibility, there is no necessity to hold financial assets at all times measured at market value. The same holds	Public

	for a theoretical liquidation of assets and liabilities: A disposal to another IORP or an insurance company is virtually inexistent and alien to the system of occupational pensions in the public sector and makes no conceptual sense because of the commitment of the sponsoring undertaking. Hence also the concept of market-consistent valuation of liabilities and technical provisions is irrelevant and useless. Furthermore the **"risk free" interest rate term structure is highly problematic for practical reasons**: The very concept of such risk free interest rates must be doubted with respect to the volatility of capital markets and the dethronement of virtually all the former top-rated government bonds. But anyhow technical provisions would be calculated with these synthetically constructed long-term interest rates and would in the case of IORPs expectedly lead to a sharp increase in technical provisions. Also the resulting volatility of long-term interest rates due to the construction process of the interest rate term structure would have negative effects for IORPs. Last but not least EAPSPI wants to advise against a regulatory framework for IORPs sticking to the principle of market-consistent valuation **for the very reason of consistency in valuation criteria and the harmonization of regulation.** If the transfer principle and the market-consistency principle for the valuation of liabilities of IORPs is not appropriate and reasonable they should simply not be used. **EAPSPIs conclusion for the valuation of assets and liabilities (#13 and #14):** All this culminates in the conclusion that the valuation criteria must not be separated from the very purpose a balance sheet is dedicated to: For IORPs the purpose of the solvency balancing cannot be the evaluation of a market value in case of disposal or transfer because of the specific structure and relation between employee, employer and pension fund. Delivering this kind of information for capital markets is therefore not relevant and using these valuation criteria for the control and governance of IORPs has very negative consequences.	
15.	***Do stakeholders agree that the own credit standing of IORPs should not be taken into account when valuing liabilities?*** EAPSPI agrees that the own credit standing should not be taken into account when valuating	Public

	liabilities. Additionally EAPSPI wants to point out that the very consideration to take into account the own credit standing is implied by the market-consistent valuation principle: In case of a down-grading of the credit-standing of a pension fund the market-value of the assets, which another institution holds, decreases. Therefore, to be market-consistent, the IORP can decrease the value of liabilities in its own balance sheets and in the end the net equity of the IORPs increase even though its own credit standing has declined. This exemplifies the problematic aspects of market-consistent valuation if applied in a consistent manner and illustrates that there is no single valuation approach on "sound economic principles" for all purpose.	
16.	***What is the stakeholders' view on inserting a recital in the IORP Directive saying that supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards?*** EAPSPI appreciates that supervision valuation standards and accounting standards should in general be compatible. But the point of reference for the supervisory valuation standards must strictly reflect the very purpose of balancing: For IORPs the purpose of the solvency balancing cannot be the evaluation of a market value in case of disposal or transfer because of the specific structure and relation between employee, employer and pension fund. Delivering this kind of information for capital markets is therefore not relevant and using these valuation criteria for the control and governance of IORPs would have negative consequences. Therefore **the standards for a solvency balance sheet must be in line with the existing national accounting standards**, as these standards are central for internal and external accounting purposes of IORPs. The second reason for using national standards is the fundamental inadequateness of a market-consistent valuation in case of IORPs due to the specific business model, no disposal or transfer because of the specific structure and relation between employee, employer and pension fund, the nature of liabilities as well as the long-term investment strategy (see answers 13 and 14 above for an argumentation in length). In addition diverging solvency and national standards give contrary impulses to the controlling and governance of IORPs.	Public

17.	***Do stakeholders agree with the EIOPA view to adopt Articles 76(1), (4) and (5) with appropriate amendments into a revised IORP Directive? What is the stakeholders' view on the two proposed options regarding Article 76(3)?*** EAPSPI wants to point out that the way to calculate technical provisions should not be harmonized. As argued above (14) market valuation and the transfer of liabilities is not appropriate for IORPs, therefore there is no need for 1. the distinction of hedgeable and non-hedgeable risks and 2. a risk margin upon the best estimate component for the calculation of technical provisions as the risk margin reflects the external cost-of-capital fraction necessary only in case of the disposal and transfer of liabilities of a IORP to another financial institution. In the end the notion of non-hedgeable risks and therefore the calculation of the best estimate plus the risk margin as cost-of-capital component only reflects the notion of the approach of a market-valuation of liabilities (see 9.3.9.) which is obvious in the case of hedgeable risks (see Solvency II, Art. 77 (4) para. 2). For these reasons EAPSPI objects to all the articles related to the best-estimate calculation of technical provisions (see Solvency II, Art. 76 (5) and Art. 77-82).	Public
18.	***What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?*** The risk margin upon the best estimate component for the calculation of technical provisions reflects the external cost-of-capital fraction necessary only in case of the disposal and transfer of liabilities of a IORP to another financial institution. This is not relevant for IORPs as liabilities are not sold and there is no market. Hence no external capital premium is needed. And a additional and explicit risk margin as an additional security buffer against wrong assumptions in the calculation of technical provisions is not necessary if the best estimate concept is not implemented. Within the existing provisions of the IORP Directive (Art. 15 and 16) the prudent calculation principles are sufficient.	Public
19.	***Do stakeholders agree with the proposed conditions defining in what cases IORPs should take into account future accruals or not when establishing technical provisions?***	Public

	EAPSPI suggests not including future accruals in the calculation of technical provisions because of the uncertainty of the concrete amounts of these payments and the fact that they are not guaranteed. Only guaranteed benefits should be accounted for. These expected future payments can serve as management tool also to buffer adverse developments.	
20.	***Do stakeholders agree that the best estimate of IORPs should be calculated gross without deduction of amount recoverable from reinsurance contracts and special purpose vehicles?*** EIOPA agrees that technical provisions should be calculated gross without including amounts of recoverable or alike. However, these additional assets shall be considered somehow (i.e. as auxillary own funds) as well as risk-mitigating techniques for the calculation of technical provisions.	Public
21.	***What is the stakeholders' view on the two options presented regarding the interest rate used to establish technical provisions (including the positive and negative impacts)?*** EAPSPI strongly opposes to concept of one single risk free interest rate term structure set by EIOPA. The very concept of such risk free interest rates must be doubted and the low level of interest rates and the volatility especially of the synthetically constructed long-term interest rates would have negative effects on the amount and volatility of technical provisions. This problem is amplified by the conceptual uncertainty with respect to the construction of the term structure and the aribitrariness of the interest rates at the reference dates. Due to the long duration of technical provisions these fluctuations have extreme consequences and arbitrary consequences for the balance sheets of IORPs. The same holds for the weaker concept of the two-level interest rate scheme suggested by EIOPA. The arbitrariness problem of the risk free concept spills over and therefore cannot hide the general problem of the strong dependence of technical provisions on interest rate assumptions. EAPSPI therefore suggests maintaining existing provisions in Article 15 (4) b of the IORP Directive which allows to choose "prudent rates of interest" taking into account 1. the yield on the corresponding assets held by the institution and the future investment returns and/or 2. the market yields of high-quality or government bonds. These provisions also reflect the varying national pension schemes and the differences in Social and Labor law.	Public

22.	***Do stakeholders agree that expenses incurred by the IORP in servicing accrued pension right should be taken into account in technical provisions as introduced by Article 78 of Solvency II?*** EAPSPI agrees that the service costs due to accrued benefits should be included in the calculation of technical provisions.	Public
23.	***Do the stakeholders agree with the analysis regarding the inclusion of unconditional, conditional and discretionary benefits in technical provisions as introduced by Article 78 of Solvency II? Do stakeholders find that discretionary benefits should be included in the best estimate of technical provisions? Is the Solvency II Article on surplus funds useful for IORPs in this respect?*** First of all EAPSPI suggests making a very clear distinction between unconditional and conditional benefits. Furthermore EAPSPI suggests not including conditional and discretionary benefits in the calculation of technical provisions because of the uncertainty of the concrete amounts of these payments and the fact that they are not guaranteed. EAPSPI supports the idea of informing the insured persons about the general possibility of future benefit increases. But this should not be reflected in the calculation of technical provisions or a separate surplus fund for discretionary benefits. Only guaranteed benefits which are sufficiently certain in value should be accounted for. The possibility to indirectly reduce discount rates by including uncertain future benefits and therefore delivering a security buffer is in contrast to the neutral information perspective of the best estimate. Uncertain expected future payments can better serve as a management tool to buffer adverse developments.	Public
24.	***Do stakeholders agree with EIOPA's view of introducing Article 79 of Solvency II with appropriate amendments into a revised IORP Directive regarding allowances for financial guarantees and contractual options when establishing technical provisions?*** EAPSPI agrees with the inclusion of contractual options in the calculation of technical provisions.	Public

	With respect to long-term guarantees EAPSPI in general sees major difficulties for IORPs: The risk-based and mark-to-market valuation of assets and liabilities leads to a highly volatile and compromised calculation of own funds, as has often been argued before by EAPSPI. This problem culminates in the question of long-term guarantees due to the non-hedgeable duration mismatch between assets and liabilities for IORPs. Given the very long-term guarantees of defined benefit (DB) pension schemes the resulting capital requirements are immense. It is important to point out that the security for the guaranteed benefit in case of DB schemes is already captured in the calculation of technical provisions. Therefore no additional buffer is required for long-term guarantees as in case of guarantees in the sense of Solvency II Art. 79.	
25.	***Do stakeholders agree that it would be useful to introduce Article 80 of Solvency II with appropriate amendments into a revised IORP Directive regarding appropriate segmentation of risk groups when calculating technical provisions?*** EAPSPI does not see any advantages of a mandatory rule for risk segmentation into homogenous risk groups and wants to point to the additional cost for small IORPs. Furthermore the notion of collective risk sharing as an expression of solidarity is important for public sector IORPs.	Public
26.	***What is the view of stakeholders on the two options regarding recoverables form reinsurance contracts and special purpose vehicles as introduced by Article 81 of Solvency II?*** EAPSPI in general agrees with option 1: not to include Article 81 in any future IORP II but incorporate the general principle. This means that recoverables from reinsurance contracts and special purpose vehicles shall be calculated separable and adequately considering the effects of counterparty default or credit risk and account for time differences. The concrete values are subject to the individual estimation of the IORP based on experience and rating information. In EAPSPI's opinion it is important to avoid a mechanical adjustment requirement of technical provisions due to adjustments of rating in order to avoid pro-cyclical effects.	Public

27.	***Do stakeholders agree that it would be useful to introduce Article 82 of Solvency II with appropriate amendments into a revised IORP Directive regarding the availability of data and the use of approximations in the calculation of technical provisions?*** EAPSPI agrees that it is useful to have an Article regarding the availability of data and the use of approximations in the calculation of technical provisions. But EAPSPI also wants to stress that the adequate use of data processing is well-established and already characterizes the reality of the calculation of technical provisions within IORPs. Such a procedure is not restricted to a Solvency-II-like regulatory structure.	Public
28.	***Do stakeholders believe that it would be useful to introduce Article 83 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for assumptions to calculate technical provisions to be regularly compared against experience and adjustments made when appropriate?*** Yes, EAPSPI agrees. But this is already well-established and not restricted to a Solvency-II-like regulatory structure.	Public
29.	***Do stakeholders agree that it would be useful to introduce Article 84 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions?*** Yes, EAPSPI agrees that the adequateness of the amount of technical provisions as well as the methods and assumptions for its calculations are disclosed on request from the supervisory authority. By means of the national supervisory review of amount and calculation of technical provisions a greater variety and diversification of methods and internal models can be enabled. Again, this is already well-established and not restricted to a Solvency-II-like regulatory structure.	Public
30.	***Do stakeholders agree that it would be useful to introduce Article 85 of Solvency II with appropriate amendments into a revised IORP Directive regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory***	Public

	law? EAPSPI agrees that in general the supervisor shall have the power to require IORPs to raise the amount of technical provisions if the relevant requirements are not fulfilled. Important are sufficient reaction periods and if necessary a well-ordered inclusion of the sponsoring undertaking. Again, this is not restricted to a Solvency-II-like regulatory structure.	
31.	***Do stakeholders agree 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?*** EAPSPI strongly suggests that the first steps to carry out in the review of the IORP Directive are Quantitative Impact Studies *before any Level 1 decisions are taken*. With respect to the essential consequences on the individual IORPs as well as on the pension system of Member States it is absolutely necessary to get impression of these changes in advance due to the variety of pension scheme arrangements and differences in benefits. Furthermore EAPSPI has strong objections to allow the Commission on the recommendation of EIOPA to adopt Level 2 implementing measures. The specific characteristics at the level of the Member States in form of security mechanisms and the relations of technical provisions regulations to Social and Labor Law must be respected. It must be seriously doubted that this is still possible if the Commission and EIOPA are enabled to adopt detailed Level 2 implementing measures as well as Level 3 technical specifications. This applies particularly with regard to the actuarial and statistical methodologies for calculating the best estimate and the relevant risk-free interest rate term structure to be used to calculate the best estimate. In addition it is essential to take into account the specific possibilities of benefit reductions in the Member States and the different security levels, which are often, in the case of public sector IORPs, the result of paritarian negotiations of representatives of employees and employers. In the end it must be accepted that an increase of security comes at the expense of a decrease of benefits – and the level of benefits is a political decision at the national level of Member States and not a technical implementing measure.	Public

32.	***Do stakeholders agree that individual Member States should not be permitted to set additional rules in relation to the calculation of technical provisions as currently allowed under Article 15(5) of the IORP Directive?*** EAPSPI strongly disagrees. The main message of the answer to question #31 applies here as well: Security and benefit aspects cannot be separated; therefore changing the former implies changing the latter. But this is a strictly political issue and must remain under Member State competence to assure the consideration of national characteristics.	Public
33.	***What is the stakeholders' view on the analysis regarding sponsor support? Do stakeholders agree with EIOPA that IORPs should value all forms of sponsor support as an asset and take account of their risk-mitigating effect in the calculation of the solvency capital requirement?*** EIOPA has introduced a possibility to integrate the sponsor support as additional asset in form of the **Holistic Balance Sheet (HBS).** A comprehensive argumentation why a valuation of sponsor support in form of **the HBS does not change the situation for the better but makes it worse** is delivered in the answer to question #12. EAPSPI wants to recall the main points with respect to the sponsor support: It is impossible to find serious quantitative values for the sponsor support due to the nature of this asset. If there exists a legal obligation to pay in cases of emergency in full this indeed would mean that a new liability up to the amount of which the IORP will need to close its market-value balance sheets appears in the balance sheets of the sponsor – the sponsor would be immediately financially over-indebted. The consequence would be the termination of occupational pension retirement provisions and the disappearance of many IORPs on a large scale. Left over is what could be named the **"Holistic Balance Sheet Paradox":** The security level for the employees is exactly the same as before, economically speaking nothing changes, but with the HBS costs have increased dramatically. The existing security mechanisms today already safeguard with low cost exactly that level of security which shall be created with pretended quantitative precision in	Public

	the new regulatory regime for much higher cost (better case) if not for the price of termination of existing pension scheme arrangements (worst case).	
34.	***Do the stakeholders agree that Articles 87-99 of Solvency II on own funds should be applied to IORPs? What amendments, other than the ones suggested by EIOPA, should be made?*** EAPSPI strongly disagrees. The provisions on own funds as laid down in Articles 87-99 of Solvency II is in general not applicable to public sector IORPs. For instance many public sector IORPs are social institutions under public law, not incorporated companies. This means those IORPs have in most cases no external "owner" or shareholder but only members. Therefore they have no own shares. In addition the legal basis for IORPs is as varied as the diversity of institutional settings which also involve very different accounting standards. So in consequence the Articles on (basic and ancillary) own funds, the tiering of own funds and the eligibility of own funds does have no meaning in the context of IORPs.	Public
35.	***Do stakeholders agree that subordinated loans from employers to the IORP should be explicitly allowed in a revised IORP Directive?*** EAPSPI agrees and wants to stress that the discussion to allow for subordinated loans is directly connected to the question of security mechanisms for IORPs: Subordinated loans can be seen as a variant of sponsor support in difficult situations under the going-concern-premise but are better quantifiable than those security mechanisms discussed within the HBS by EIOPA.	Public
36.	***What is the stakeholders' view on the analysis whether to introduce or not a uniform security level for IORPs across Europe? Do the stakeholders agree with EIOPA's decision not to recommend a specific probability? If not, what specific probability should be imposed upon IORPs?*** EAPSPI strongly disagrees with the introduction of a uniform security level for IORPs across Europe. The main problem is: security and benefit aspects cannot be separated; in the end an increase of security comes at the expense of a decrease of benefits – changing the former implies changing the	Public

	latter. As the level of benefits is a political decision at the national level of Member States a uniform security level is not only a technical decision, but a strictly political issue and must remain under Member State competence to ensure the consideration of national characteristics and the relations of technical provisions regulations to Social and Labor Law. For the answer to the second and third sub-question please refer to answer #37.	
37.	***Do the stakeholders agree that the confidence level should apply to a one-year time horizon?*** EAPSPI strongly disagrees. The essential reasons why especially the structure of the first Pillar of the regulatory structure for Basel II (banking) and Solvency II (insurance) were constructed are not of particular relevance for IORPs (the problem of term- and liquidity-transformation in banking and the problem of prevention for sudden adverse developments for insurance; see answer to question #12 for a reasoning at length). Central to the specific position of IORPs is the **extremely long duration of liabilities** due to retirement provisions and the **impossibility of capital withdrawals at short notice** (no benefits before the occurrence of the insured event e.g. retirement, death or disability). This in turn **enforces and protects the long term investment horizon** of IORPs. Because of the long duration of liabilities also on the asset side, long-term developments are more important than short-term fluctuations of markets or interest rates that have to be considered by banks, insurance companies and other financial companies: The duration of liabilities of those institutions is more uncertain and even endogenously affected in times of financial distress (for instance for banks, short term investments or life insurance products with lump-sum option). This is not the case for IORPs. Given the long and stable duration of liabilities, IORPs have a longer reaction period in case of adverse developments of the relevant risks. This has to be accounted for when calculating the capital requirements: A Value-at-risk-measure with a confidence level of 99.5% for a 1-year-perspective and the implied capital requirements is therefore not an appropriate risk measure for IORPs. To reduce the relevant solvency capital planning horizon to a period of 12 months drastically limits the possibilities and advantages of a long-term oriented risk management and risk diversification (see for instance the wealth of economic literature	Public

	on mean reversion and the autocorrelations of equity returns, bonds returns, etc. as a function of the time period considered). For IORPs it is therefore *not* necessary to hold the short-term, measured risk-sensitive solvency capital requirements of Solvency II in full at all times. A concrete quantification of these parameters does in general not seem practicable to this purpose as risk, when measured over a 12-month period, deviates from risk when measured over longer periods. **For these reasons EAPSPI suggests not recommending a specific level of confidence or specific time-horizon for IORPs**.	
38.	***What is the stakeholders' view on applying the Solvency II-rules for calculating the solvency capital requirement (SCR) to IORPs, taking into account their specific security and benefit adjustment mechanisms?*** EAPSPI objects to the essential elements of the Solvency II-rules for the SCR, in particular to the "mark-to-market" or market-consistent approach for the valuation of assets and liabilities and to the risk-sensitive calculation of the solvency capital requirement as the value-at-risk with a 1-year-horizon and a security level of 99.5%. The **main problems** related to these concepts and due to the structure of the standard formula can be categorized as follows: **1. Exaggerated capital requirements** The basic notion of a market-consistent valuation of assets and liabilities and a subsequent risk-sensitive calculation of capital requirements is in general problematic due to volatile capital requirements not only in times of fragile financial and capital markets. IORPs are notably affected by these problems and capital requirements are drastically elevated. Due to the long duration of liabilities, guaranteed benefits and the non-hedgeable duration mismatch of assets and liabilities which is typical for IORPs because of the longer duration of liabilities compared to assets, very high capital requirements are the result. In addition very high capital requirements are also caused by low interest rates, which are to be expected in the foreseeable future because of the monetary policy of the relevant central banks in the world (FED, ECB, Bank of England, Bank of Japan, etc.). Last but not least, too high capital requirements are generated by the 1-year-horizon given the long duration of liabilities and the marginal relevance of short term fluctuations (see detailed answer to question #37).	Public

2. Implicit impact on individual investment decisions and regulatory arbitrage

The capital requirements of the Solvency II structure are not well suited to address the specific aspects of IORPs' investment behavior. If the design of the capital requirements for IORPs is similar to the current SCR-formula of Solvency II and the Technical Specifications of QIS 5, there *definitely exist investment decision biases* for several reasons.

The concrete design and calibration of the SCR has a strong influence on investment decisions due to different solvency capital requirements of different asset classes. For example investments in real property or alternative investments are negatively affected. The SCR structure hinders IORPs in carrying out their long-term investment strategies. This is especially problematic because of the importance of long-term investments for IORPs. But this is also detrimental with respect to macroeconomic and growth aspects as IORPs are deterred from financing infrastructure development, green growth initiatives, etc. (see detailed answer to question #12). The same holds for the 1-year-horizon of the standard formula, which drastically limits the long-term risk diversification behavior and potential of IORPs.

3. Pro-cyclical incentives on the macroeconomic level

The Solvency II-rules for calculating the SCR also lead on the macroeconomic level to a reduction of the essential contribution which IORPs could provide with respect to stabilizing financial markets and the macroeconomic performance. EAPSPI wants to point out that the standard formula of the Solvency II SCR is problematic with respect to pro-cyclical investment behavior:

The standard formula implements the same investment incentives for all IORPs, who are a considerable group of institutional investors. This leads to a reduction in the diversity of investment strategies and leads to less diversification of market reactions. Especially in times of financial distress the SCR enforces systematic herding behavior of IORPs, and therefore pro-cyclical tendencies, because of the regulatory structure.

The one-year-horizon of the SCR also aggravates the pro-cyclical-tendencies, as IORPs might be forced to sell assets in order to meet the SCR because of the decrease in equity markets. This means that the "potential" loss (due i.e. to volatile or collapsing stock prices) turns into actual and realized losses. Furthermore the 1-year-horizon also drastically limits the long-term risk diversification

potential of IORPs.

Both these aspects of the SCR-standard formula are detrimental to the potential anti-cyclical role that IORPs could perform in financial markets because of their long-term horizon investment behavior. Therefore the construction of the Solvency II SCR standard formula has in principle a negative impact on the stabilizing function of IORPs for financial markets and is not in line with macro-prudential and financial stability objectives. (see a more detailed analysis in answer to question #52 and #12)

4. Proportionality and the Solvency II capital requirements

EAPSPI wants to stress that many IORPs would have to set up an extra mark-to-market balance sheet for solvency aspects in addition to the annual accounts required by commercial law. Implementing the Solvency II structure and accomplishing all the legal and IT requirements (data availability and management) is related to immense additional financial costs and manpower efforts. Big insurance companies might easily shoulder these burdens, but the majority of small IORPs will definitely be overcharged.

In consequence the increase in implementing effort and capital requirements leads to higher costs and lower returns. This will in turn reduce the benefits for existing retirement provisions and / or increase the need for additional financial contributions of the sponsoring undertaking. In the medium-term a changeover from defined-benefit- to defined-contribution-schemes due to excessive demands in defined-benefit-schemes is very likely. The effect is a risk transfer from the IORP respectively the sponsoring undertaking to the employee. Or – even worse – this process leads to a broad termination of occupational pension covenants and the disappearance of IORPs.

These consequences stand in direct contrast to the political objective target of securing retirement provisions and are surely not intended to be the outcome of a revised IORP Directive. Therefore EAPSPI strongly advises to strictly and adequately apply the principle of proportionality. And due to the huge number of IORPs in Europe compared to insurance undertakings (140,000 IORPs vs. 4,800 insurance undertakings according to EIOPA) the principle of proportionality is also advisable with respect to the supervisory capacity.

5. The consequence: IORP I Directive as starting point

The adoption of some aspects of Solvency II, e.g. risk-oriented management requirements according

to Pillar II, is appropriate and therefore to be appreciated. But with respect to the severe problems when adopting the Solvency II SCR and because of the existence of risk-mitigating elements and additional security mechanism in case of IORPs (see discussion of question #12 to HBS) EAPSPI can see no need for a SCR calculation according to Solvency II.
Therefore EAPSPI once more wants to stress the fact that a different regulatory perspective and regime for IORPs and insurance is necessary and that the starting point for the regulation of IORPs has to be the IORP I Directive and not the Solvency II Directive.

6. Fundamental systematic problems with the quantification and calibration of the SCR
In addition the accumulated criticisms in the Solvency II discussion cast serious doubts on the appropriateness of the standard formula for calculating the SCR. These criticisms have shown severe weaknesses with respect to the calculation of the concrete values of stress factors and correlation parameters. The most staggering criticism was brought forward by Mittnik 2011* who concludes that "*the calibration of the input–parameters for the equity–risk module is seriously flawed and that it gives rise to spurious parameter values. As a result, an implementation of the Standard Formula with the currently proposed calibration settings is likely to produce biased and inaccurate capital requirements for equity–risk.*" (Mittnik 2011: iv). It is important to add that the same problems holds true for all the risk sub-modules, where the same procedure of data-processing, the so called "*rolling–window annualization*", is used.

EAPSPI wants to stress that these discussions are not only technical bagatelles but reach to the core of Pillar I of the Solvency II structure: These criticisms lead to the conclusion that the aim of the SCR to provide for a financially quantifiable risk-provision according to the specific risk profile of an insurance company and the chosen security level *has been essentially missed*. A serious measurement of the capital required to secure against adverse developments at the claimed security level is not possible.

In case of the adoption of the SCR formula for IORPs EAPSPI wants to highlight that it would be especially problematic if IORPs were subject to the devastating effects as described above *given that these devastating effects are caused by a flawed formula that does not provide for the promised goal*. Therefore EAPSPI agrees with Mittnik (2011: 40): "*In view of the calibration deficits presented here and their far–reaching consequences (…) there should be no considerations at the moment to extend Solvency II–type regulation to European pension funds."*

	* Reference to the study : Stefan Mittnik (2011) Solvency II Calibrations: Where Curiosity Meets Spuriosity. Working Paper Number 04/2011, *Center for Quantitative Risk Analysis (CEQURA &, Department of Statistics*, University of Munich.	
39.	***Do the stakeholders believe that IORPs should assess the SCR on an annual or three-yearly basis?*** According to EAPSPI no SCR is needed (see answer to #38).	Public
40.	***What is the stakeholders' view on imposing a minimum capital requirement (MCR) upon IORPs? What adjustments to the Solvency II rules are needed regarding the structure and frequency of the calculation?*** In EAPSPI's opinion no MCR according to Solvency II is needed. The existing provisions in the IORP I Directive (Article 17) are sufficient. And in addition the severe problems when adopting Solvency II's SCR and MCR as well as the existence of risk-mitigating elements and additional security mechanism in case of IORPs make a MCR according to Solvency II undesirable (see discussion of question #12 on HBS).	Public
41.	***What is the stakeholders' view on the analysis regarding pension protection schemes? If included in the holistic balance sheet, should pension protection schemes be taken into account by reducing the sponsor's insolvency risk or by valuing it as a separate asset?*** In EAPSPI's opinion there exist various risk-mitigating elements and additional security mechanism in case of IORPs. If one of these elements is in place this has to be accounted for in terms of capital requirements. But there is no need to quantify and integrate these mechanisms within a HBS similar to a Solvency II-SCR-type balance sheet; here complexities and subjectivities in determining necessary parameters abound (see a detailed discussion of the related problems within the answer to question #12).	Public

	Therefore in EAPSPI's opinion a more heuristic method of consideration and capital requirement reduction is necessary.	
42.	***Do stakeholders agree that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members? Should these capital requirements be uniform or tailored to the actual risk profile? Do stakeholders find it sensible to distinguish between DC and other schemes in the area of operational risk?*** EAPSPI in general agrees with the principle that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members. The capital requirement for operational risk shall not be risk-sensitive and shall be shaped to incentivize the implementation of risk-management structures within the IORPs. Therefore EIOPA should incorporate the possibility to reduce the capital add-on for operational risks if an IORP demonstrates the adequateness of its operational risk handling.	Public
43.	***What is the stakeholders' view on the analysis regarding the duties of IORPs and the powers of supervisors in the case of deteriorating financial conditions as introduced by Article 136 and 141 of Solvency II?*** EAPSPI agrees. IORPs must be able to measure their financial position in general as well as the specific case of deteriorating conditions. Furthermore IORPs have to inform the supervisor who can take measures to improve the situation. But these measures have to account for the actual solvency situation as well as the fact that there is no conflict of interest for IORPs between stakeholders or policyholders and shareholders due to its not-mainly-for-profit nature.	Public
44.	***What is the stakeholders' view on the analysis regarding the submission of recovery plans and the length of recovery periods as introduced by Articles 138 and 139 of Solvency II? Should the recovery periods – with regard to the SCR and possibly the MCR – for IORPs be flexible, fixed or a combination of both? What would be the reasons – if any – to allow IORPs longer recovery periods than prescribed by Solvency II?*** EAPSPI sees the main difference between insurance undertakings and IORPs as the duration of	Public

	liabilities. Because of the very long and stable duration of IORPs' liabilities recovery periods in times of an adverse development of the financial conditions might cover a longer time span, too. This essential difference must be considered. The length of the recovery period should be flexible and at the discretion of the supervisory authority in due consideration of the specific situation of the IORP. Therefore EAPSPI suggests choosing Option 1. Furthermore EAPSPI wants recall the possibility of pro-cyclical effects if IORPs are forced into herding behavior because of too short recovery plans. IORPs in general are more able to cope with short-term fluctuations than other institutions in financial markets; hence this advantage and its macroeconomic stabilizing effect should be facilitated (see answers to CfA 8 for a more detailed argumentation).	
45.	***Do stakeholders agree that the IORP Directive should be extended with stipulations introduced by Article 137 and 140 allowing supervisors to prohibit the free disposal of assets when IORPs do not comply with the capital requirements or the rules for establishing technical provisions?*** EAPSPIs suggests allowing supervisors to prohibit the free disposal of assets only as the means of last resort. At first the articles of the IORP's statutes covering financial rehabilitation shall be enforced.	Public
46.	***Do stakeholders agree that it should be specified in the IORP Directive what constitutes a recovery plan as introduced by Article 142 of Solvency II? How should the contents differ from those of insurance companies?*** EAPSPI in general agrees with Article 142. However appropriate amendments to the points listed in Article 142 would have to be made with respect to the simplified business model of IORPs. And EAPSPI wants to stress that there is a large variety of articles in the statutes of IORPs covering financial recovery as well as existing supervisory practices in the Member States which are often coordinated. It must be safeguarded that in case of emergency these harmonized courses of action are not impaired. This renders a "one-fits-all" regulatory approach very complicated, not to say impossible.	Public

47.	***Do stakeholders believe that the prudent person principle is a sufficient basis for the investment of IORPs or is additional provision needed?*** The goal of any investment rules for IORPs should be consistency with the retirement objective of IORPs. Therefore EAPSPI accepts the abandoning of rule-based regulation aspects with quantitative limits on several types of investments and the emphasis of the prudent person principle, as it offers in general the possibility for a reasonable and long-term oriented asset management in the specific asset-liability context of IORPs. No further provision on investment decisions is needed. In addition EAPSPI wants to point out the difficulties of imposing quantitative provisions to different schemes from different Member States with varied and heterogeneous pension systems, with different pillar compositions and different retirement provision aims. However: Although there might be less limiting quantitative rules in place, under a principle-based supervision the disclosure requirements to the supervisor are likely to increase and it is left to the supervisor's discretion if the goal of a prudent and appropriate asset management is sufficiently adhered to. Therefore we want to accentuate that a general change-over to a principle-based supervisory system must not lead along the way to severe disturbances with respect to the long-term investment horizon (see argumentation in the answer to question #50).	Public
48.	***Do stakeholders feel that Member States should have the option to impose limitations on investments in addition to those set out in the IORP Directive? What about host member states?*** Although the qualitative criterion of the prudent person principle is a sufficient basis, we think the Member States should be given the possibility to offer to the IORP at least two options: 1. Prudent person principle without any further quantitative limitations on investments 2. Rule-based quantitative limitations similar to those in the existing IORP Directive	Public

	Additional quantitative limitations to the existing rules in the IORP Directive are not necessary, neither at national or European level. It should be the intention of the investment supervision to allow for different investment policies across IORPs in Europe, which leads to a better diversification of risks.	
49.		
50.	***Do stakeholders agree with the analysis of the options (including the pros and cons) as laid out in this advice? Are there any other impacts that should be considered?*** The debate concerning investment rules, and that means, the answers to the CfA 7, must not be separated from the discussion of the adoption of the Solvency II structure in the planned IORP II Directive. This holds especially for the core elements of Solvency's Pillar 1 and the new Solvency Capital Requirement (SCR), which are discussed more deeply in CfA 5 and CfA 6. EAPSPI wants to accentuate that an adoption of the SCR would have **severe direct impacts on investment decisions, both at the individual and the macroeconomic level**: **1. Investment risk provision via SCR** One of the basic ideas of pillar 1 of Solvency II is the determination of a *firm specific risk profile,* which directly leads to a *risk sensitive calculation of the SCR*. That means the SCR is calculated according to the specific liabilities and assets and the specific investment strategy of a firm: a more risky investment strategy leads to a higher SCR. Therefore in the logic of the Solvency II structure there is *no more necessity for quantitative investment limits*, as investment risk provisioning is warranted by the specific amount of SCR (See Solvency II Directive, Recital 68). EAPSPI wants to unequivocally object to the adoption of the SCR according to Solvency II into the revised IORP II Directive (see the answers to question #37 and #38 for an argumentation at length). At the same time EAPSPI wants to clarify by the argumentation above the context of investment provisions: If IORP II would be modified according to Solvency II any quantitative investment limits *in addition to the SCR* would be twofold and redundant.	Public

2. Implicit impact on investment decisions and regulatory arbitrage

However, the pillar I of the Solvency II structure is not well suited to address the specific aspects of IORP's investment behavior. If the design of the capital requirements to IORPs is similar to the current SCR-formula of Solvency II and the Technical Specifications of QIS 5, there *definitely exist investment decision biases* for several reasons.

For example:

- Investments in different asset classes lead to different solvency capital requirements. For example real property, alternative investments and long-term investments, which are especially important for IORPs because of their long term investment horizon, are negatively affected.

- The same holds for the 1-year-horizon of the standard formula, which drastically limits the long-term risk diversification perspective of IORPs.

- The typical duration mismatch of assets and liabilities, which is common for IORPs due to the longer duration of liabilities compared to assets, also has severe negative influences on investment decisions of IORPs.

These impacts on investment decisions on the individual level due to the structure of the pillar 1 regulatory framework with its implicit but essential biases of decisions has to be kept in mind when discussing the replacement of explicit restrictions in CfA 7.

3. Pro-cyclical incentives

In consequence this leads on the macroeconomic level to a reduction of the essential contribution which IORPs could provide with respect to stabilizing financial markets and the macroeconomic performance. Therefore EAPSPI wants to additionally point out that the standard formula of the Solvency II SCR is **problematic with respect to pro-cyclical investment behavior**:

- The standard formula implements the *same investment incentives* for all IORPs, who are a considerable group of institutional investors. This leads to a reduction in the diversity of investment strategies and leads to less diversification of market reactions. Especially in

	times of financial distress the SCR enforces *pro-cyclical behavior of IORPs*. • The one-year-horizon of the SCR also aggravates the pro-cyclical-tendencies, as IORPs might be forced to sell assets in order to meet the SCR because of the decrease in equity markets. This means that the "potential" loss (due i.e. to volatile or collapsing stock prices) turn into actual losses. Additionally the 1-year-horizon drastically limits the long-term risk diversification potential of IORPs. Both of these aspects of the SCR-standard formula are **detrimental to the potential anti-cyclical role that IORPs could perform in financial markets** because of their long-term horizon investment behavior. Therefore the construction of the Solvency II SCR standard formula has in principle a negative impact on the stabilizing function of IORPs for financial markets and is not in line with macro-prudential and financial stability objectives. Please especially reconsider EIOPAs answer to questions #52 (pro-cyclicality) and #12 (Holistic Balance Sheet) in this respect.	
51.	***What is stakeholders' view of the current prohibition on borrowing in Article 18(2)?*** Borrowing in general should be allowed for if the objective of borrowing is due to risk management and the hedging of liabilities, similar to the provisions for the use of derivatives (see Art. 18, 1d of the current IORP Directive). To avoid excessive risk taking borrowing could be subject to the approval of the national supervisory authority. Moreover subordinated loans should be excluded from the prohibition of borrowing.	Public
52.	***What is the stakeholders' view on the analysis regarding the objective of supervision and the measures to avoid pro-cyclical behavior?*** **1. The objective of supervision and the standard formula of the SCR in Solvency II** In general EAPSPI strongly supports the notion that the supervisory structure should avoid pro-cyclical behavior. Hence we think that the standard formula of the Solvency Capital Requirement (SCR) as the core element of pillar I of the Solvency II structure (see CfA 5 and 6) is **very**	Public

problematic with respect to investment behavior for several reasons:

1. The standard formula implements the *same investment incentives* for all IORPs, who are a considerable group of institutional investors. This leads to a reduction in the diversity of investment strategies and leads to less diversification of market reactions. Especially in times of financial distress the SCR enforces *pro-cyclical behavior of IORPs*.

2. The one-year-horizon of the SCR also aggravates the pro-cyclical-tendencies, as IORPs might be forced to sell assets in order to meet the SCR because of the decrease in equity markets. This means that the "potential" loss (due i.e. to volatile or collapsing stock prices) turn into actual losses. Additionally the 1-year-horizon drastically limits the long-term risk diversification potential of IORPs.

Both of these aspects are **detrimental to the potential anti-cyclical role** that IORPs could perform in financial markets because of their long-term horizon investment behavior. Therefore the construction of the Solvency II SCR standard formula has in principle a negative impact on the stabilizing function of IORPs for financial markets and is not in line with macro-prudential and financial stability objectives.

EAPSPI's analysis is supported by the **Global Financial Stability Report** of the **IMF** (2009: 43-44*): *"Several factors (...) have also affected (...) pension funds. For instance, (1) solvency, accounting, and valuation policies have been procyclical (...), solvency pressures can lead to rapid asset sales in order to reduce risk — as was the case in 2001–03 when stock market falls led to massive equity liquidations. (...) Efforts of (...) pension funds to rebuild solvency are likely to add to the market pressures arising from the need of banks to rebuild capital and reduce leverage".* Therefore the IMF concludes: "*Policies should aim to reduce the risk of solvency pressures exacerbating the deleveraging process (...) As such, potential links between (...) pension funds and financial stability need to be considered in designing public support measures."*

With respect to the stabilizing potential of long-term investment strategies and risk diversification by IORPs EAPSPI wants to stress that **especially the great quantity and variety of small IORPs** all over Europe contributes to these financial and macroeconomic stability goals. A large amount of IORPs avoids the systemic problems of a failing "global player" and the great variety of IORPs

amplifies the risk diversification potential due to different investment strategies. Forcing those small IORPs to accomplish all the legal and IT requirements following the Solvency II framework would lead to the disappearance of many institutions due to the lack of capacity and the rise of costs. With respect to the macro stability perspective variety and quantity of IORPs should definitely be appreciated and supported and decreased.

2. The discussed tools to avoid pro-cyclical behavior

We agree with EIOPA that the main tool to handle financial distress is a **longer recovery period** so that the IORP concerned can reach the capital requirements. It is important to point out that this so called pillar II dampener of Art. 138 in the Solvency II Directive must be seen detached from the question how exactly the solvency capital requirement is determined and therefore not necessarily connected to the pillar I structure of Solvency II. In case that the SCR standard formula of Solvency II is being adopted EAPSPI strongly supports applying at least the **duration dampener** (Art. 304 Solvency II) to account for the long term horizon of asset holding.

We do not fully agree with EIOPA with respect to the **equity dampener** (Art. 106 Solvency II). The equity dampener reduces the capital requirements in times of financial crisis, given that EIOPA defines something as "crisis", but, due to the symmetric nature of the dampener, the capital requirements rises even more in "good" times. This means more volatility and insecurity of the capital requirements in general and leads to additional effort.

This holds true even more for the actual discussion of a counter cyclical premium in form of an **interest rate add-on** to the risk-free interest rate with respect to Solvency II in order to decrease technical provisions in times of crisis (see Gabriel Bernardino, Opening Speech, EIOPA 1st Annual Conference, Frankfurt a. M., 16.11.2011). We do not support this tool.

3. Remark

The general notion of the counter-cyclical premium is an essential contradiction to the mark-to-market-principle, which is the basic valuation principle of Solvency II. The reason is that the counter-cyclical-premium calls into doubt the assumption that prices in financial markets reflect real economic fundamentals and that in consequence the volatility of financial markets is "justified" economically speaking. Consequently this means that the valuation criterion "market-consistency" is only valid until the involved volatility of stock prices, market disruptions and credit spreads is limited. And not

	only in the light of the financial fluctuations of the financial crisis since 2008 and the actual sovereign debt crisis in Europe it is necessary to ask again if these grave fluctuations and down-turns are justified in economic terms and if we should really map these movements to the balance sheets and the calculation of the SCR? We therefore strongly suggest **rethinking the adequacy of the concept of "market-consistency" as the only criterion for the valuation of assets and liabilities, especially in the context of IORPs**, as it directly carries the problem of volatility into the solvency balance sheets of the IORPs. * Reference: IMF (2009) Global Financial Stability Report. Responding to the Financial Crisis and Measuring Systemic Risk. *World Economic and Financial Surveys. International Monetary Funds.* April 2009.	
53.	***Do stakeholders agree with the principle that the material elements of the Solvency II requirements in respect of the general principles of supervision, and in relation to transparency and accountability should also apply to IORPs?*** EAPSPI principally endorses the general principles laid down in Art. 29 and 31 of the Directive 2009/138/EC. However, EAPSPI would like to remember that the Solvency II Directive should not be the basis of any modification of the IORP-Directive. Instead of that and in line with EIOPA's Call for Advice of April 2011, EAPSPI would like to advocate for developing a supervisory regime *sui generis*, taking the IORP Directive as the starting point. Further elements to be taken into consideration in developing general principles of supervision are international standards developed by the OECD, IOPS and other entities, which are described in this chapter (e.g. the long-term nature of pension funds and the avoidance of pro-cyclical behavior in Principle 6 of IOPS) This approach is justified by the main differences between IORPs and insurance institutions as also identified in this chapter (e.g. 14.3.13 – 14.3.16). Furthermore this opinion is endorsed by the findings of the OPC reports that showed a large variety of supervisory practice without unveiling any evident lack in security for beneficiaries. The respective pension scheme and business objectives have to go along with suitable supervisory approaches. On the one hand, IORPs have limited business spectrum, particularly they have no diversified non-life business. But diversity is requited by the Solvency II regime. On the other hand, IORPs have additional security mechanisms compared to insurance companies.	Public

	Against this background, EAPSPI would therefore support option 1 of this section if a decision had to be taken. This point of view is additionally in line with EIOPA's statement in 14.3.8 *("In the context of the supervision of IORPs, it is possible that the goals of Articles 29 and 31 of the Solvency II Directive may be best achieved by means other than revisions to the IORP Directive.")*.	
54.	***Has EIOPA identified correctly those issues – need to enhance benefit security, differences between IORP and insurance supervision, and diversity of IORPs - where there should be differences between insurers and IORPs on supervision and transparency and accountability?*** In EAPSPI's opinion, EIOPA has correctly identified those issues and in particular the differences between IORPs and insurance undertakings. Additionally, EAPSPI would like to mention further distinctive features that differentiate institutions of the so-called "second" and "third" pillar as far as benefit security is concerned. IORPs have got specific inbuilt security mechanisms that ensure the solvency position of pension schemes. In some pension schemes, contributions and the main benefit parameters can be modified by the employers and the employees' representatives. Many pension schemes, especially of the public sector in the Netherlands, the Scandinavian countries or in Germany, foresee paritarian management. Paritarian management involves social partners in the Board of Directors of the IORP or in similar internal supervisory bodies. Due to paritarian representation, the interests both of the employers and of the employees and beneficiaries are well-balanced and the benefit security can therefore be ensured. Another element, which strengthens benefit security, is the long term investment horizon of IORPs given that they uniquely administrate pensions. Therefore, long-term developments are more important than short term evolutions that have to be considered by other companies submitted under the Solvency II regime. And for DB- and hybrid DB-/DC-schemes, in at least some Member States, employers have the ultimate responsibility for the fulfilment of the pension promise as additional benefit security mechanism. Additionally to this responsibility for the fulfilment, many IORPs have the possibility to adjust the premium or benefit by threat to solvency. Hence, IORPs require less capital resources than life	Public

	insurers with a bounded relation between premium and benefit. Particularly with regard to an interest rate scenario reduction, this adjustment mechanism institutes an adequate approach to "close" a potential duration gap. In contrast to insurance tariffs, business lines of IORPs have almost no embedded policy holder options. Consequently, speculation against the community of policyholders just as much the antiselection risk are negligible.	
55.	***Do stakeholders agree with the recommendation that supervisory authorities should have broadly the same powers to require IORPs to conduct stress tests as it has in respect of insurers?*** EAPSPI is of the opinion that supervisory authorities should also have powers to require IORPs to conduct stress tests. However, any EU rules in this field should only contain basic principles because of the uncontested divergences in the calculation of liabilities and others, which are typical for the European occupational pension landscape and which have prevented EIOPA to conduct an EU-wide stress-test on all IOPRs. Before discussing the introduction of any EU wide regulation in this field, EAPSPI suggests that EIOPA analyses thoroughly the different national supervisory approaches to stress testing as mentioned in 15.2.6 and 15.2.7. Even though half of the participating countries have apparently not introduced such a procedure, EAPSPI proposes that EIOPA considers whether the reasons for a lack of national regulation in this field might also apply for any EU-wide rules. Especially because of the diversity of the pension funds in the EU Member States, EAPSPI is also in line with EIOPA's findings in 15.3.5 according to which the principle of proportionality has definitely to be taken into consideration because of the wide diversity of pension funds in size, type of pension benefits, level of capital cover, restructuring options and the level of risk-taking. Hence, EAPSPI endorses EIOPA's suggestion to integrate explicitly the principle of proportionality and diversity of business lines in any future regulation for stress tests for clarification purpose.	Public
56.	***Do stakeholders agree with reinforcing the sanctions regime for IORPs?*** EAPSPI is not of the opinion that the sanction regime should be enforced. EAPSPI has not seen any evidence of severe irregularities of pension institution in the recent past that would require enhanced	Public

	sanctions beyond the current rules in the IORP Directive.	
57.	***Should knowledge of the imposition of penalties be public or restricted?*** Due to the fact that EAPSPI does not endorse any modification of the existing penalty system of the IORP Directive, EAPSPI advocates that the knowledge of any imposition of penalties should remain restricted.	Public
58.	***Should host states be able to impose sanctions on IORPs without going through the home state?*** Since the main business of EAPSPI's members, the public sector pension institutions, is regularly restricted to the domestic level, EAPSPI does not have any experience in cross border activities to answer to this question.	Public
59.	***What is the view of stakeholders on whether the requirements for the supervisory review process for insurers should also apply to IORPs?*** EAPSPI is of the opinion that the current powers of intervention of the IORP Directive are adequate and should therefore be retained (option 3). This solution has, above all, the advantage that Member States are able to determine the suitable supervisory powers for their population (see 16.3.5). Such a flexible approach is necessary to cope with the divergences of occupational pension schemes within the European Union and to optimize beneficiaries' protection. Considering the diversity of business lines with different complexity across European IORPs, EAPSPI would prefer an optimization approach. But such an approach is inconsistent with European standardization to evaluate technical provisions, capital requirements and investment rules. In EAPSPI's point of view, EIOPA has correctly analysed the negative impacts of an introduction both of the supervisory review process and the imposition of capital add-ons. EAPSPI is in line with EIOPA's findings that there are different ways in which pensions are successfully delivered and that any changes will have cost impacts. Consequently, it is questionable to change regulations that have revealed to be successful in practice.	Public

	If ever EIOPA does not follow EAPSPI's opinion and recommends a supervisory process along the lines of Art. 36 of the Solvency II Directive (option 2), EAPSPI strongly recommends considering the uncontested particularities of IORPs in relationship to insurance undertakings as EIOPA has identified under 16.3.4.	
60.	***What is the view of stakeholders on whether the requirements for capital add ons for insurers should also apply to IORPs?*** Due to the reasons explained in answering to question 59, EAPSPI is against any capital add-ons and therefore rejects option 1. Furthermore, the prerequisite of capital add-ons is that the Solvency II structure also applies to IORPs about which EAPSPI has serious concerns (see above answers to questions #13, 14, 37 and 38). Solvency II as risk adjusted supervisory regime tries to adopt equal capital requirements for the whole balance sheet. Hence, insurance companies should implement their tariffs unaffected from regulatory advantages. IORPs can neither manage their business lines nor select potential policy holders (obligation of contract). Also, IORPs and life insurers vary in corporate management, significantly.	Public
61.	***Do stakeholders agree that the material elements of the requirements on insurers in respect of supervision of outsourcing should apply also to IORPs?*** A reconstruction of historical business data is very complicated and time-consuming. Material elements should only focus on business functions with strategic impact. IORPs traditionally delivering supplementary pensions only for employees of a certain employers have less strategic functions than insurance companies operating on the open market. Hence, an automatic transfer all of these requirements on insurers to IORPs would only bring additional cost account to beneficiaries. EAPSPI advocates option 1- leave the IORP directive unchanged.	Public
62.	***What is the stakeholders` view on proposed changes to the definition of home state and rules on chain outsourcing?*** In case of amended chain outsourcing IORPs and supervisory authorities need the same controlling	Public

	powers vis-à-vis a subcontractee as vis-à-vis the service provider. A consistent definition of the "home state" used for other sectors would be eligible. EAPSPI advises option 2.	
63.		
64.		
65.		
66.		
67.		
68.		
69.		
70.		
71.		
72.		
73.		
74.		
75.		
76.		
77.		
78.		
79.		
80.		
81.		
82.		
83.		
84.		
85.		

86.		
87.		
88.		
89.		
90.		
91.	***Do stakeholders believe that additional information requirements - besides the current ones - are not only necessary for DC schemes, but also for DB schemes?*** EAPSPI believes the current information requirements in the IORP Directive are adequate. However, it must be pointed out that members of DC schemes have a right to the same level of information as members of DB schemes. Moreover, in the case where DC members have a degree of choice concerning investment vehicles, the need for reliable information is crucial. The simple 3 part definition of what information should be (1) correct, 2) understandable and 3) not misleading) is perfect in terms of best practice. However, despite the simplicity of these criteria, transforming these concepts into legislative measures would be a major challenge. Each Member State already has a corpus of legislation in the field of consumer protection and financial services. It is not clear that a European definition in the specific field of pensions would add any value to these national measures in place. Furthermore, many of the information requirements presented in the Call for Advice are essentially examples of best practice, and it is questionable if they should be enshrined in European law. For example, the OECD has for some time been managing a research project on the ways of communicating uncertainty in the context of DC pension schemes. The results are extremely interesting and they are providing input for debate on information obligations and, perhaps more important, financial education. However, there seems to be limited justification for legislation on these minimum information requirements at EU level, particularly since the recipients of this information may well be unable to use it to make informed decisions. The Open Method of Coordination, with its focus on exchange of good practice, seems to provide a cost-efficient platform.	Public

92.	***Are stakeholders happy with the potential introduction of a KIID-like document for DC schemes and with its contents as envisaged in the draft EIOPA advice? In particular are stakeholders happy with the introduction of a document (KID) that would contain information beyond investment? How important it is that this document facilitates comparisons between IORPs?*** The distinction made by EIOPA between financial products, notably UCITS, and IORPs is a key factor. While any initiative to increase awareness of occupational pensions is welcome, there is a real danger that, by providing a quantity of complex information, the potential member could actually be discouraged from joining a pension scheme. Human beings tend to put off making decisions in situations where information is complex and choices will make a difference relatively far in the future. Automatic enrolment is an example of best practice which seeks to transform individual inertia into a positive outcome. In pension savings, in the long run, the most important factors are the initial early decision to join an occupational pension scheme, the level of contributions paid in and the maintenance of contributions over the whole career of the person. EAPSPI agrees with the analysis of EIOPA concerning the impossibility to fully standardise information documents at EU level (29.2.27). Any Key Information Document should be regarded as an attempt to provide key information in a simple, clear way. The Open Method of Coordination would seem to be an efficient way of comparing best practice in this complex area.	Public
93.	***How would stakeholders suggest communicating in the KID the risk/reward profile and/or the time horizon of different investment options? Do they think that the risk ranking should be the same for all time horizons, or should vary with time horizons, allowing for a more favourable ranking of equity-oriented investment options for long horizons? How should performance scenarios be conceived? Should they vary for different asset allocations, allowing for a risk premium for equity-oriented investment options? What a reasonable measure of the risk premium would be?*** See also answer to question 92.	Public

	For the last few years, in the context of the turmoil on the markets, questions concerning the risk premium are particularly challenging, especially for investment professionals. The OECD project mentioned above provides interesting input for the questions, but to legislate on the basis of this input seems a little premature.	
94.	***Are stakeholders happy with the introduction of a personalised annual statement to be delivered to each member? Whether and how should it contain information on costs actually levied, and how should it be coordinated with the ex-ante information on costs to be included in the KID?*** Individualised pension information for all parts of the pension system is already an obligation in several Member States of the EU. The measures are in many cases relatively recent and evaluation of these policies has not been carried out in all States. It would therefore seem premature to legislate at EU level at present.	Public
95.	***What is the view of stakeholders as regards the level of harmonisation of information requirements that can be reasonably achieved with the revised IORP directive? Besides those envisaged by the EIOPA advice, are there other parts of the regulation that should be harmonized?*** Digital means of supplying information is clearly a vector that is becoming more and more common. However, different Member States may choose different arrangements. The added-value of EU legislation is unclear.	Public
96.	***Do stakeholders agree with the impact assessment of the EIOPA proposals?*** Applying some simple information requirements to DC schemes would seem to be a sensible step. However, it is not clear if EU legislation in the area would really add value.	Public

	Different pension misselling cases over the last 3 decades, most notably in the UK, should perhaps alert us to the danger of adopting apparently simple solutions without a solid impact assessment. The problems can take decades to resolve and destroy confidence in the system.	