

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC Scope, cross-border activity, prudential regulation and governance		Deadline 15.08.2011 18:00 CET
Company name:	The Association of British Insurers	
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
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in column "Reference". ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a question, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below. <ul style="list-style-type: none"> ○ 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. ○ If your comment refers to parts of a question, please indicate this in the comment itself. <p>Please send the completed template to firstconsultationiorpca@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The question numbers below correspond to Consultation Paper No. 01 (EIOPA-CP-11/01).</p>		
Reference	Comment	
General Comment	<p>The UK Insurance Industry</p> <p>The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 24% of the UK's total net worth and contributing the fourth highest corporation tax of any sector. Employing over 275,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with a fifth of its net premium income coming from overseas business.</p>	

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	<p>Insurance helps individuals and businesses protect themselves against the everyday risks they face, enabling people to own homes, travel overseas, provide for a financially secure future and run businesses. Insurance underpins a healthy and prosperous society, enabling businesses and individuals to thrive, safe in the knowledge that problems can be handled and risks carefully managed. Every day, our members pay out £155 million in benefits to pensioners and long - term savers as well as £58 million in general insurance claims.</p> <p>The ABI</p> <p>The ABI is the voice of insurance, representing the general insurance, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.</p> <p>The ABI's role is to:</p> <ol style="list-style-type: none"> a. Be the voice of the UK insurance industry, leading debate and speaking up for insurers. b. Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation. c. Advocate high standards of customer service within the industry and provide useful information to the public about insurance. d. Promote the benefits of insurance to the government, regulators, policy makers and the public. <p>Executive Summary</p> <p>The ABI welcomes the opportunity to respond to EIOPA's consultation on its draft response to Call for Advice on the review of Directive 2003/41 (Scope, cross-border activity, prudential regulation and governance) (the CP). We support the Commission's aim of creating an internal market for occupational retirement provision organised on a European scale. It is right to explore whether the IORP-Directive can be improved to enable this.</p> <p>The timetable set by the Commission for EIOPA is very ambitious, and as a result EIOPA has had to</p>	

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	<p>impose an extremely short consultation period. We do not believe this is helpful in understanding the extremely complex issues in sufficient detail to give a fully considered response. Our response to the CP therefore reflects our best efforts to provide our initial views. We are extremely concerned that the prospective consultation period for the autumn consultation on security mechanisms is expected to be only four weeks. Considering the hugely important and complex issues at stake, we feel this is unacceptably short.</p> <p>That said, we are pleased that for many questions EIOPA is considering all options, including no change. We believe it is important to consider carefully whether a change will lead to demonstrable improvements. A rigorous impact assessment will be a crucial part of the review process.</p> <p>More generally, whilst Solvency II requirements can be helpful for improving certain areas of the IORP-Directive, for example on governance requirements, this does by no means apply to all areas of the IORP-Directive, as pension funds and insurers are fundamentally different entities. They also operate very differently in different member states. For example, as EIOPA will be aware, IORPs in the UK are offered by employers to their staff and benefit from the employer's covenant meaning that the employer, whilst solvent, has to support the liabilities of the pension fund.</p> <p>We broadly support the draft advice in a number of areas, including the need to improve the definition of cross-border activity, the need to better delineate prudential and social and labour law, and a number of governance requirements.</p> <p>However, we believe the implications for changing the scope of the IORP-Directive need much deeper analysis of the consequences before any changes should be considered.</p> <p>We also feel that imposing professional qualifications on all individuals effectively running the IORP is disproportionate as it excludes member-nominated trustees.</p> <p>We are also concerned that the proposed new powers for supervisory authorities in relation to outsourcing could lead to duplication of regulation where the entities performing the outsourced</p>	

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	<p>functions are themselves regulated by financial regulators. Such duplication should be avoided by requiring the regulators to co-ordinate information requests so that the entity performing the outsourced function only has to deal with its primary regulator.</p> <p>For questions or clarification, please contact:</p> <p>Dr Yvonne Braun Assistant Director, Savings and Retirement Yvonne.braun@abi.org.uk; tel: +44 (0)20 7216 7414</p>	
1.	<p>We think the analysis of the options to amend the scope of the IORP-Directive is incomplete and misses some important unintended consequences. For example, option 2, which would re-define IORPs to include schemes where the provision of retirement benefits is based on a legal obligation, could potentially extend the reach of the IORP-Directive to pension schemes used for automatic enrolment in the UK (these schemes must be set up by employers, and they are semi-compulsory for employees).</p> <p>Similarly, option 5 would extend the scope of the IORP-Directive to all providers of pension schemes, including personal pension schemes provided by insurance companies. As EIOPA rightly identifies, this cuts across the PRIP-Directive. It would also mean that insurers would then be regulated through both the IORP-Directive and the Directive 2002/83 (to be recast by the Solvency II Directive). This has the potential to create considerable confusion, unless the requirements are identical. This could then prejudice the entire set of questions related to how best to regulate IORPs and how this relates to Solvency II. These important impacts need to be considered as well.</p>	
2.	In the short time available, we have not been able to do sufficient analysis to develop other options.	
3.	We believe the implications for changing the scope of the IORP-Directive need much deeper analysis of the consequences before any changes should be considered. We urge EIOPA to undertake this	

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	analysis before any advice on scope is presented to the European Commission.	
4.	No comment.	
5.	<p>We agree with the analysis. It is not helpful to the development of cross-border activity if member states use different definitions of what cross-border activity is, and this creates difficulties with the notification, authorisation and approval processes for IORPs. However, the CP rightly highlights that, while the legal environment is not perfect, it is adequate for some cross-border activity, and that it is possible the lack of take-up is not due to failings of the IORP-Directive but to lack of demand due to the differences in member states' overall legal systems, specifically taxation.</p> <p>We also agree that option 2 is a complex solution because several competent authorities are able to act against the same IORP.</p>	
6.	In the short time available, we have not been able to do sufficient analysis to develop other options.	
7.	Option 2 improves the current wording of the IORP-Directive.	
8.	Yes. A revised IORP-Directive would need to include a mechanism for the supervisory authorities to co-operate in resolving such contradictions swiftly. Otherwise they will continue to be an obstacle to any further development of cross-border activity.	
9.	Yes. In particular, Option 1 does not provide a solution to address the existing confusion around the difference between prudential law and social and labour law.	
10.	In the short time available, we have not been able to do sufficient analysis to develop other options.	
11.	Yes. However, and as the CP points out, further analysis is needed to ensure that the list provided in the CP is limited to issues of a real prudential nature. For example, there is no question that technical	

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	provisions, regulatory own funds and investment rules are prudential in nature. But disclosure rules could be seen as conduct of business issues rather than either prudential law or social and labour law.	
12.	Yes. A revised IORP-Directive would need to include a mechanism for the supervisory authorities to co-operate in resolving such contradictions swiftly. Otherwise they will continue to be an obstacle to any further development of cross-border activity.	
13.	<p>We believe the draft advice on general governance is appropriate. In particular, we agree with the CP that there are vast differences in the nature, scale and complexity of IORPs among member states and within the same member state, and that a proportionality clause applicable to all elements of the governance framework is therefore vital. We also agree that this proportionality clause may need to be construed and applied more broadly than under the Solvency II regime.</p> <p>We also agree with the CP that the general governance system should not prevent members' participation in governance. The CP also suggests including provisions to ensure a sound remuneration policy, provided the characteristics of the IORP (such as unpaid trustees) does not make this irrelevant. Again, we agree with this.</p> <p>However, we strongly disagree with the analysis in 10.3.21 that there are no major differences between defined benefits and defined contribution schemes. There is a world of difference between the two types of schemes. For example, defined contribution schemes in the UK need to include a default fund for purposes of automatic enrolment to protect disengaged members from volatility in the run-up to retirement. Such considerations are irrelevant in defined benefit schemes.</p>	
14.	<p>We believe the proposed principles are disproportionate.</p> <p>The current IORP-text states that the IORP must be run by people who have appropriate professional qualifications and experience or employ advisers with appropriate professional qualifications and experience. This is appropriate, especially where there are member-nominated trustees, as in the UK,</p>	

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	<p>who are advised by professional advisers.</p> <p>However, the draft advice would require that trustees have “professional qualifications” “adequate to enable sound and prudent management of the IORP or to properly perform their key function.” We disagree with this change and believe the IORP-Directive should stay unchanged so as not to impose a disproportionate burden on schemes. Alternatively, the “fit” requirements could be applied to those running an IORP as a group, which would not require all individually to meet this test.</p>	
15.	<p>The draft advice on internal control systems would introduce the requirement of a compliance function for IORPs, but on proportionality grounds would allow outsourcing or employing alternative measures of carrying out the function while meeting its general objectives.</p> <p>The advice is appropriate.</p>	
16.	<p>The draft advice proposes introducing an internal audit function into the IORP- Directive. It also envisages that IORPs should be allowed to outsource the internal audit function.</p> <p>The advice is appropriate.</p>	
17.	<p>The draft advice would make Art. 38(1) of the Solvency II Directive applicable to IORPs. This would introduce more explicit powers for the supervisors of pension funds to require co-operation from providers of outsourced services than under the current IORP-Directive.</p> <p>In the UK, this could introduce potential duplication of supervision for insurance companies acting as investment managers or administrators of pension funds. This is because in the UK the FSA is responsible for supervising outsourced functions such as fund management.</p> <p>We do not wish to see duplication of regulation for our members. The advice should therefore be amended to make clear that where the entity performing the outsourcing function is itself a regulated financial entity, any requests for information etc should come from its primary supervisor, not the</p>	

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	<p>supervisor of the IORP. The primary supervisory authority of the entity performing the outsourced function should co-operate with the supervisory authority of the IORP to obtain access to data etc.</p>	
18.	<p>The draft advice recognises that the level of outsourcing and the approach followed on the supervision of outsourced activities varies enormously between countries, and the solution should therefore guarantee a certain degree of flexibility in the system.</p> <p>The advice on Art. 49 of the Solvency II Directive is appropriate. However, in terms of the drafting options regarding the role of the supervisory authority, and as set out in our response to question 17, we believe it is necessary to make clear that where the entity performing the outsourcing function is itself a regulated financial entity, any requests for information etc. should come from its primary supervisor, not the supervisor of the IORP.</p>	