

| <b>Comments Template on EIOPA-CP-11/001</b><br><b>Draft response to Call for Advice on the review of Directive 2003/41/EC</b><br><b><i>Scope, cross-border activity, prudential regulation and governance</i></b>   |   | <b>Deadline</b><br><b>15.08.2011</b><br><b>18:00 CET</b> |
|---|---|--|
| Company name:   | BVI Bundesverband Investment und Asset Management e.V.  |  |
| Disclosure of comments:   | EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.<br><br>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"> <li>⇒ <b>Do not change the numbering</b> in column "Reference".</li> <li>⇒ 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>.</li> <li>⇒ 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"> <li>○ 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.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:firstconsultationiorpcf@eiopa.europa.eu">firstconsultationiorpcf@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p> <p>The question numbers below correspond to Consultation Paper No. 01 (EIOPA-CP-11/01).</p> |   |  |
| <b>Reference</b>  | <b>Comment</b>  |  |
| General Comment   | BVI welcomes the opportunity to comment on EIOPA's draft response to the EU Commission's Call for Advice on the review of Directive 2003/41/EC (the IORP Directive). BVI Bundesverband Investment und Asset Management e.V. represents the interests of the German investment fund and asset management industry. Its 85 members manage currently assets in excess of EUR 1.8 trillion both in investment funds and mandates. For more information, please visit <a href="http://www.bvi.de">www.bvi.de</a> . |  |

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|   | <p>We are of the opinion that the IORP Directive in its current shape has largely fallen short of its initial goal to achieve a single market for institutions of occupational retirement provision. With less than 100 IORPs operating across different Member States, the distance travelled so far towards that direction has been minimal. It is therefore legitimate to ask how much employees, employers and IORPs have benefited from the Directive. Against this background, one of the essential goals of the IORP review should be that cross-border activity of IORPs reach a meaningful level to ensure that the benefits of the Single Market outweigh the costs for the sponsoring undertakings.</p> <p>In considering measures that would help reaching this goal, the authorities should assess their potential vis-à-vis the achievement of three objectives:</p> <ul style="list-style-type: none"> <li>• Ensure a high degree of security for future pensioners, at a reasonable cost;</li> <li>• Establish an internal market for occupational pension provision that leads to significant economies of scale for IORPs;</li> <li>• Strengthen the mobility of pensions, thereby contributing to economic growth, job creation and sustainable pension systems in the European Union.</li> </ul> <p>Since the first objective falls under the primary responsibility of the Member States in accordance with the principle of subsidiarity, EIOPA should focus its attention on strengthening the IORP Directive to improve the cross-border functioning of the occupational pension market and labour-market mobility in the EU. Our position is in line the European Commission's view presented in the Call for Advice: <i>"The main purpose of the IORP Directive is to enable an employer in one Member State to sponsor an IORP located in another Member State"</i>. The impact assessment that should accompany the revision of the Directive should quantify the benefits of the proposed measures in relation to this fundamental objective, taking into account their costs and administrative burden.</p> |  |
| 1.  | <p>A proposal to change the scope of the Directive should also include a discussion of an amendment of Article 4 to extend the optional application of the Directive to other regulated financial institutions. To the extent that there are financial institutions other than life assurance companies that offer occupational pension services, it is important to extend the optional application of the Directive to these institutions to ensure that the Directive does not lead to distortions of competition. The prevention of asset managers and other institutions such as banks from competing with pension funds and life-assurance companies on equal terms has led indeed to pension markets being dominated by a limited number of providers belonging to the latter categories.</p>  |  |
| 2.  |   |  |

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| 3.  | <p>In the absence of a robust assessment of the positive and negative impacts of the proposed options and given the short consultation period, we are not in a position to advise EIOPA on which option is preferable. It appears helpful, however, to clarify what is to be considered as an occupational pension scheme on a European basis. We also agree with EIOPA to stick to pension schemes that are managed by private financial institutions. A further enlargement of the directive to all providers of occupational pension schemes operating at their own risk would not give enough attention to individual national regulations that have worked well in the past.</p> <p>Regarding an inclusion of 3<sup>rd</sup> pillar pensions, as discussed under option 5, the same problems occur, but even less potential benefits are conceivable. While in the area of occupational pensions the reason for setting up schemes in the sense of the IORP Directive is often the legitimate interest of large employers to consolidate their occupational pension business cross-border, this motive plays no role in the area of private pensions. <b>We therefore strongly advise against extending the scope of the IORP Directive to all providers of pension schemes, as option 5 suggests.</b> Before considering this option, the European authorities should focus on the intended purpose of the Directive to create an internal market for occupational retirement provision.</p> |  |
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| 13.   | <p>The EIOPA draft advice suggests that material elements of the respective articles of the Solvency II Framework Directive are generally applicable to IORPs. We agree insofar as the provisions of pillar 2 und 3 of the Solvency II framework are concerned and with due emphasis on the principle of proportionality. However, this must not be a precedent for pillar 1 (e.g. solvency capital requirement). We decidedly share the notion that there are significant differences in the risks that</p>   |  |

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|   | <p>insurance companies on the one hand and IORPs on the other hand are covering. Hence, any extension of pillar 1 solvency requirements to IORPs without consideration of their specific risk profile would be detrimental to the pension coverage of workforce within the EU and is therefore not acceptable.</p> <p>This comment also applies to questions 14 – 18.</p> |  |
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