

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:	Chris Barnard	
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<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>Please note that the comments expressed herein are solely my personal views.</p> <p>Thank you for giving us the opportunity to comment on your draft response to Call for Advice on the review of Directive 2003/41/EC (Scope, cross-border activity, prudential regulation and governance).</p>	
1.	I agree with the analysis of the options presented in Section 6 on scope.	

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2.		
3.	I would support option 5. This would cover more schemes, ensuring a level playing field thereon.	
4.	<p>This is a difficult issue. As an example, I have experience of working with the mandatory second pillar schemes set up in new member states (re para 6.3.3). These schemes are managed by private pension companies (normally subsidiaries of insurance companies). They receive a fee from employee (member) contributions and / or the employee (member) personal accounts, and also take on some risk in the form of investment guarantees on the funds of the employee (member) personal accounts.</p> <p>-One view here is that the second pillar schemes are social security schemes run by the governments, which are outsourced to private pension companies. This view is supported by the enabling legislation which is social-security type legislation. The private pension companies also utilise parts of the social-security infrastructure. Importantly, the government can change the law on, for example, amounts of contributions, fees etc and this can affect the final payout to the member of the scheme. This contrasts with private insurance for example, where the contract between the individual and the insurance company is protected, and law changes normally act prospectively, and only for new contracts. Furthermore, the contributions to the second pillar are not voluntary, but compulsory.</p> <p>-Another view considers the main feature here to be that private companies provide services, take on risks (the government has passed on the risk and responsibility for final payouts to the private companies and members) and receive fees from / to the members. The private companies have a strong profit motive. In this view the second pillar is not outsourced, but privatised. The bearing of risk and profit motive are the critical points here.</p> <p>I would recommend that you consider the following: the determination of whether a compulsory employment-related pension scheme is to be considered a social-security scheme should consider who bears the risk and where the "profit motive" lies. If the risk is borne by "government", then it is a social-security scheme. If the risk lies with private entities or individuals then it should not be considered a social-security scheme.</p>	
5.	Yes. More emphasis could be given to the diversity and complexity of pension arrangements, and the difficulty in integrating a pension arrangement with different member states' SLL and tax treatments.	
6.	There should be a clear definition of activities which do not amount to an IORP engaging in cross-border activity. For example, an employee in the pension scheme of his / her home member state	

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	should be permitted to remain in that pension scheme if he / she moves to work in the host member state, and if the employer is in agreement.	
7.	This is a good start. It might require a long transition to allow time for legislators and IORPs to make any necessary changes.	
8.		
9.	Yes.	
10.		
11.	Yes. This would determine the scope of prudential regulation.	
12.		
13.	The proposed principles of the revised IORP Directive are reasonable and well-suited to pension funds. I agree that the principle of proportionality needs to apply here in order not to unduly burden small and less complex pension schemes.	
14.	I agree with the proposed principles of the revised IORP Directive. Introducing fit and proper requirements for IORPs is overwhelmingly positive. I do not believe that this would be burdensome or costly to implement. Either persons who have key functions are fit and proper, which is good, or they are not, in which case they should be retrained or replaced. I would suggest limiting the key functions to those included in the system of governance.	
15.	I agree with the proposed principles of the revised IORP Directive. I would go further and recommend that IORPs should be required to have a chief compliance officer (subject to proportionality). The specific duties of the compliance function should include, but not be limited to: <ul style="list-style-type: none"> - reviewing and reporting to the board on the IORP's compliance with relevant regulations, rules and principles - establishing procedures for the remediation of noncompliance issues - identifying and reporting to the board any conflicts of interest that may arise - establishing procedures for the resolution of such conflicts of interest It is important that job descriptions, rules, structures and procedures act to secure and maintain the compliance function's independence. For example the compliance function should have a single compliance role and no other competing role or responsibility that could create conflicts of interest or threaten its independence. Furthermore the remuneration of the compliance function should be	

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	specifically designed in such a way that avoids potential conflicts of interest with its compliance role. Para 12.3.4 specifically refers to responsibility (see also paras 14.3.1, 15.2.3, 15.3.2 etc). It is a general principle that no matter how much decision-making or functionality is outsourced, overall responsibility remains firmly with the IORP. (Therefore I agree with para 15.3.2 that this principle should be explicitly prescribed in the revised IORP Directive.)	
16.	I agree with the proposed principles of the revised IORP Directive. My comments from 15. above on avoiding conflicts of interest and maintaining independence are relevant here.	
17.	I agree with the proposed principles of the revised IORP Directive. I agree that when the service provider is located in a non-EEA country, it is the responsibility of the IORP to ensure the access of the supervisory authority. This would require a reasonable transition in order to allow IORPs time to make contractual changes.	
18.	I agree with the proposed principles of the revised IORP Directive. Both options regarding the role of supervisory authority are reasonable.	