

| <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> |
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| <b>Reference</b>  | <b>Comment</b>  |  |
| General Comment   | <p>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, welcomes the opportunity to comment on the consultation since especially its supplementary pension institutions are affected by the ongoing discussion at EU-level about the review of the IORP-Directive and therefore by the questions in the Call for Advice (CfA) of April 2011 as well as by the questions in this EIOPA consultation.</p> <p>In general terms, EAPSPI is of the opinion that <b>workplace pensions must generally be promoted</b> to compensate the reductions in the social security (pension) schemes. EAPSPI believes that IORPs are able to help in compensating the benefit cuts in social security schemes. At a mid- or long-term horizon, workplace pensions will therefore become indispensable to ensure an adequate pension level in many or even in most European countries. The existing IORP Directive will help to promote the development of workplace pensions, especially since it adopts a principle-based approach, which on the one hand sets out a basic set of rules, but which on the other hand allows Member States to interpret these principles in the light of the different types of workplace pension provision that exist under their Social and Labour Law (SLL). <b>Hence, excessive regulatory rules might be counterproductive for a further promotion of supplementary funded workplace pensions.</b></p> <p>EAPSPI would like to underline that workplace pensions are, above all, <b>an issue at national and sectorial level as the following figures might demonstrate</b>. Currently, there are around 140,000 IORPs registered in the 27 EU-Member States. Apart from the IORPs established by multinational companies, most of them have a limited business area, restricted to one or several companies or to an industry sector. Cross-border activities of IORPs, however, are quite limited. According to EIOPA's recent report on market developments, only 84 cross-border cases were registered in 2011.</p> <p>EAPSPI would furthermore like to recall the <b>diversity of pension design</b> in the 27 Member States <b>due to cultural and historical reasons</b> that have entailed quite different concepts of pensions. Some countries have opted for a generous pension system especially of the "first pillar" with a quite</p> |  |

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|   | <p>poor level of workplace pensions, whereas others have decided to introduce a basic "first pillar" income with stronger supplementary pensions. This leads to a different importance of workplace pensions in the context of the entire old-age pension schemes of the single countries that should be kept in mind while amending the IORP Directive.</p> <p>EAPSPI would like to remember <b>the important role of social partners</b> in this field. In the public sector, workplace pension schemes have been established sometimes many decades ago e.g. in the Scandinavian countries, in the Netherlands or in Germany. Being based on collective agreements, such schemes cover large parts of the population and thus help to promote the overall introduction of supplementary pensions with very low costs.</p> <p>Due to the initial statement in the Commission's Green Paper on Pensions of July 2010 that "<i>Member States and social partners are responsible for pension provision</i>" and that the Green Paper "<i>does not suggest that there is one 'ideal' one-size-fits-all pension system design</i>" the Commission acknowledges <b>the ultimate responsibility of the Member States and the social partners</b> and accepts the existing differences also of workplace pension schemes in Europe. Since workplace pensions are – as shown above – primarily a national or sectorial business, they are mainly ruled by the national SLL. Therefore, there should be a <b>priority of the SLL over prudential regulations</b>.</p> <p>EAPSPI would finally like to remember a recent <b>OECD-study</b> that also underlined the <b>potential difficulty of a common approach to solvency</b>. The study of Yermo and Severinson (2010), "The Impact of the Financial Crisis on Defined Benefit Plans and the Need for Counter-Cyclical Funding Regulations" (OECD Working Papers on Finance, Insurance and Private Pensions, No. 3) came to the conclusion that "<i>international standardization of funding regulations is unlikely and that in any case it would risk being ill-fitting across jurisdictions. However, some convergence of over-arching funding principles to promote counter-cyclical features [...] could strengthen DB systems. This could be complemented by general international best-practices and guidelines on how to determine minimum funding contributions and assets and liabilities [...].</i>"</p> |  |
| 1.  | <b>Do stakeholders agree with the analysis of the options (including the positive and negative</b>  | Public   |

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|   | <b>impacts) as laid out in this advice? Are there any other impacts that should be considered?</b><br><p>EAPSPI is of the opinion that the CfA 1 (Scope of the IORP Directive) is one of the most important aspects of this consultation due to the arrival of the new Member States from Central and Eastern Europe in the EU. These Member States have introduced a new model of pension provision. A further important development in many Member States since the adoption of the IORP Directive in 2003 is the increasing number of DC-schemes that nowadays cover around 60 million persons all over Europe (see Green Paper of July 2010; page 14). Against this background, the original scope of the IORP Directive is possibly no longer appropriate and EAPSPI is of the opinion that EIOPA has fairly and comprehensively analysed the options.</p>  |  |
| 2.  | <b>Are there any other options that should be considered? Please provide details including where possible in respect of impact.</b><br><p>None identified</p>  | Public   |
| 3.  | <b>Which option is preferable?</b><br><p>EAPSPI is in favour of option 2 since it would increase the consistency in the application of the IORP Directive. In particular, option 2 creates more legal certainty by means of the suggested modification of the IORP Directive for unfunded or underfunded schemes that should not – to EAPSPI's point of view – be covered by the IORP Directive.</p> <p>EAPSPI alternatively endorses option 3 that would permit the optional application of the IORP Directive to those pension schemes currently falling outside its scope if the Member States are of the opinion that this is necessary for the sake of beneficiaries' protection. EAPSPI believes that especially after the last financial crisis, beneficiaries' protection is of paramount importance. In practice, this protection is nowadays achieved by a large range of protection mechanisms, like the involvement of social partners, pension protection funds, SLL etc. These protection mechanisms, however, are different from one Member State to the other. But as a result, they mostly achieve the aim, i.e. an</p> | Public   |

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|   | adequate protection of the beneficiaries. This diversity, that has proven its efficiency in practice notably during the last years, would be taken into consideration by option 3.   |  |
| 4.  | <p><b>How should it be determined whether a compulsory employment-related pension scheme is to be considered as a social-security scheme covered by Regulations (EEC) No 883/2004 and (EEC) No 987/2009 (see Art. 3)?</b></p> <p>The determination could be achieved by an explicit legal and direct State involvement, usually from central or local Government. To EAPSPI's understanding, social security schemes fulfil activities, which are based on the principle of national solidarity and which are entirely non-for-profit. They are administered by entities of social security authorities under control of respective ministries and are no "undertakings" in the meaning of EU competition law. The contributions to social security schemes are not unilaterally fixed by the institution itself, but by decision or approval of the legislator or the supervising ministry.</p> | Public   |
| 5.  | <p><b>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?</b></p> <p>EAPSPI agrees with the analysis in this chapter as well as with the conclusion of EIOPA that option 2 is preferable.</p>   | Public   |
| 6.  | <p><b>Are there any other options that should be considered?</b></p> <p>None identified</p>  | Public   |
| 7.  | <p><b>Do you agree with EIOPA that option 2 is preferable?</b></p> <p>See above, answer to question 5. EAPSPI agrees that option 2 is preferable.</p>  | Public   |

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| 8.  | <p><b>Even with defining the sponsoring undertaking, problems of overlapping or contradicting regulation between member states could emerge. Should the revised Directive include procedures to settle such problems between the Home and the Host member states and/or also between the Home member state and the member state of the applicable social and labour law?</b></p> <p>This would be practically difficult to do (i.e. not all contingencies can be addressed) but would be advisable to have as much general principles and clarity in the IORP Directive as possible.</p> <p>EAPSPI is of the opinion that the situations, where the member is located in a third country and neither in the host nor in the home country are very limited in number. More important and yet affecting cross border activity is the situation of overlapping or contradicting of regulation and SLL between Member States: It can happen that one and the same rule is seen as SLL in the one country whereas it constitutes regulatory/supervisory law in another state (e.g.: lump sum payments are SLL in state A and the member have a right to receive them; in state B lump sum payments are regulatory/supervisory law and must not be paid under a certain margin. It is impossible to serve both rules at the same time). Therefore, EAPSPI suggests a deepened cooperation or a procedure between national supervisors, within the institutional framework of the European System of Financial Supervision.</p> | Public |
| 9.  | <p><b>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?</b></p> <p>EAPSPI basically supports EIOPA's analysis as far as cross border cases are concerned. EAPSPI would, however, highlight that the pension promises are primarily defined by the Social and Labour Law (SLL) and not by prudential regulation and that therefore, prudential regulations must be adopted according to the national SLL and not vice versa.</p>   | Public |
| 10. | <p><b>Are there any other options that should be considered?</b></p> <p>None identified</p>  | Public |

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| 11. | <p><b>Do you agree with EIOPA that option 2 is preferable?</b></p> <p>EAPSPI endorses option 2 by underlining that any new regulation in the IORP Directive as to prudential regulation should contain a basic principle according to which prudential regulation is limited to the financial solidity and stability of the pension scheme and that SLL is not overruled.</p>  | Public |
| 12. | <p><b>Even with defining the scope of prudential regulation, problems of overlapping or contradicting regulation between member states could emerge. Should the revised Directive include procedures to settle such problems between the Home and the Host member states and/or also between the Home member state and the member state of the applicable social and labour law?</b></p> <p>See above, answer to question 8. EAPSPI is of the opinion that there should be procedures to settle such problems.</p>   | Public |
| 13. | <p><b>What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of proposed general governance requirements?</b></p> <p>EAPSPI is broadly in favour of all the principles in 13, 14, 17 and 18 since they have already been introduced – at least for the most part – in public sector pension institutions that are offering workplace pensions. Care needs to be taken to <b>respect and have regard for national arrangements</b>. Member States have their own compliance, fit and proper, audit and governance laws and regulations. Ireland, for example, has seen significant reform in this area recently. Given the use of Trusts to provide pension benefits in Ireland, the area is complex and not amenable to generalized rules. In Norway, as another example, pension providers are developing own solvency stress tests scenarios apart from QIS 5. In Germany, the legislator has already introduced a risk-management system for insurance companies and pension funds that corresponds to the second pillar of Solvency II. Since 1 January 2008, the legal framework in the Insurance Supervisory Act (Versicherungsaufsichtsgesetz – VAG) foresees core principles for risk management that were later developed in detail in a 44-page circular of the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin). Besides a consistent and binding</p> | Public |

interpretation of the legal requirements, this circular provides details about the principle of proportionality that is of paramount importance for IORPs. This principle provides that *"the requirements must always take the undertaking-specific risks, the nature and the scale of the business operations, as well as the complexity of the undertaking's business model, into account"*. This approach, therefore, does not impose a single model but leaves it up to each undertaking to implement an individual system, taking into account the specificities of the undertaking and of its business environment. To EAPSPI's point of view, **this principle of proportionality is an adequate approach** for the introduction of enhanced government requirements, but also for the other principles mentioned in the following questions (i.e. fit and proper requirements, compliance, internal audit and outsourcing principles).

Additionally, **good governance is already achieved** in practice by means of **paritarian management** in some public pension institutions, as for example in the Netherlands, the Scandinavian countries or in Germany. Paritarian management involves social partners in the Board of Directors of the IORP or in similar internal supervisory bodies. Due to paritarian representation, the interest both of the employers and of the employees and beneficiaries are well-balanced and the solvency margins can therefore be assessed at all times in the best interest especially of participants and pensioners.

With respect to the introduction of enhanced governance requirements, EAPSPI, however, would like to remember that any additional conditions for risk management often entail increasing costs. Therefore, EAPSPI advocates for a **thorough cost-benefit analysis** prior to any modification of the IORP Directive in this point. IORPs are mostly organized at company (or sectorial) level and they are therefore relatively small entities with little staff and hence with low costs that are passed to beneficiaries through higher benefits. This advantage should be kept especially against the background that supplementary pensions are becoming increasingly important.

Finally EAPSPI would like to stress that although some principles of the second pillar of the Solvency II regime deserve to be supported, the Solvency II Directive should not be the starting point 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**. This approach is justified by the main differences between IORPs and insurance institutions:



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|     | <ul style="list-style-type: none"> <li>• IORPs are social institutions since they are deemed to provide old-age income additionally to the pensions out of the state-run general schemes.</li> <li>• IORPs provide a better coverage especially through collective agreements than individual solutions. These pension schemes cover parts of the population that otherwise would not benefit from any supplementary pensions.</li> <li>• IORPs are therefore characterized by great efficiency and by low internal costs, in particular due to the fact that almost all the employees in a given company or even sector are covered.</li> <li>• Solidarity is often a further core element of pension schemes. Contributions are mostly calculated without considering the age, gender and specific professional risks. A further element of solidarity is the compulsory participation that prevents participants from leaving the scheme as it is the case for individual solutions. And finally, pension schemes frequently contain "solidarity elements" whereby pension rights are acquired even during periods with no contributions, such as times of sickness, maternity leave etc.</li> <li>• 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. IORPs have a long term investment horizon since 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.</li> </ul> |        |
| 14. | <p><b>What is the view of the stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of proposed fit and proper requirements?</b></p> <p>See above answer to question 13.</p>  | Public |

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| 15. | <p><b>What is the view of the stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of a compliance function?</b></p> <p>See above answer to question 13. Additionally, EAPSPI would like to remember that the frequent paritarian representation in the Board of Directors of public sector pension institutions already ascertains that the IORP management always respects all kinds of regulatory requirements. And even without any paritarian representation, the risk-management system, as described above under n° 13, ensures the ongoing compliance.</p> | Public |
| 16. | <p><b>What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of an internal audit function?</b></p> <p>See above answer to question 13.</p>  | Public |
| 17. | <p><b>What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of revised outsourcing principles?</b></p> <p>EAPSPI believes that the positive and negative impacts are well identified; outsourcing must be carefully monitored but there is no doubt scale is very important for IORPs generally.</p>  | Public |
| 18. | <p><b>What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of revised outsourcing principles?</b></p> <p>See above answer to n° 17.</p>  | Public |