

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:	European Fund and Asset Management Association (EFAMA)	
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>Introduction: We acknowledge that EIOPA has been thinking out of the box by proposing many different options with potentially far-reaching consequences. However, 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 take a firm view on the specific questions covered in the draft advice. We hope nevertheless that our general comments will be useful to help EIOPA finalize its advice.</p>	

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Cross-border activity: The IORP Directive was presented as a first step on the way to an internal market for occupational retirement provision organized on a European scale. With less than 100 IORPs operating across different Member States, the distance travelled so far towards a single market has been minimal. It is therefore fair to ask how much IORPs and employees 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. To tackle this problem, EIOPA should address the fundamental question as to why were there only 84 cross-border IORPs on 1 June 2011, whilst there are around 140,000 IORPs in Europe.

We agree with the European Commission that the legal, regulatory and administrative requirements for the cross-border activities and conditions of operations of IORPs should be simplified. And along with the European Parliament we trust that EIOPA will make full use of its competences and play an important role in the preparatory process for the Directive revamping.

In considering measures that would help reaching this goal, the authorities should assess their potential vis-à-vis the achievement of three objectives:

- Ensure a high degree of security for future pensioners, at a reasonable cost;
- Establish an internal market for occupational pension provision that leads to significant economies of scale for IORPs;
- Strengthen the mobility of pensions, thereby contributing to economic growth, job creation and sustainable pension systems in the European Union.

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: "*The main purpose of the IORP Directive is to enable an employer in one Member*

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	<p><i>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> <p>Without prejudice to national social, labour and tax legislation, we consider that the lack of transparency of the relevant regulatory requirements that cross-border IORPs need to comply with is an important obstacle to the expansion of their activities in other Member States. Such requirements concern the social and labour laws that are applicable to pension schemes operated by IORPs authorized in other Member States, as well the amount of information that has to be submitted to the supervisory authority, the frequency of reporting and the entity on which the reporting obligation lies. Some Member States also impose different reporting requirements for different types of schemes. The diversity between reporting requirements tends to create a non-level playing field between Member States. It also imposes barriers of entry for new entrants to national pension markets, thereby preventing the emergence of a single market by curbing the offering of cross-border pension products.</p> <p>Clearly, proper disclosure of the relevant regulatory requirements that IORPs need to follow when operating cross-border occupational pension schemes, and removal of cumbersome and superfluous administrative burdens and information constraints in establishing cross-border IORPs would facilitate cross-border activity.</p> <p>Scope of the Directive: 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> <p>Regarding the proposed 7 options discussed in section 6, in light of our general comment about the</p>	

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	<p>lack of an impact assessment study and the length of the consultation period, we are not in a position to advise EIOPA on which option is preferable. We do not believe however that there is a need to extend the scope of the IORP Directive to all providers of pension schemes, as option 5 suggests. 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> <p>DC schemes: We have two fundamental questions regarding the prospect that the IORP Directive be adjusted to better address the specific needs for the regulation and supervision of occupational DC schemes that do not offer a principal and/or investment guarantee:</p> <ul style="list-style-type: none"> • What do the European authorities wish to achieve by pursuing this goal? • How would it be possible to adopt a regulatory regime for DC schemes whilst respecting the principle of subsidiarity? <p>In our view, given the different starting points and national specificities of pension systems across the Union, it is not realistic to expect converging towards a common consistent legislative framework covering all pension schemes and products.</p> <p>We also consider that the idea that pure DC schemes should be regulated at the EU level because these schemes tend to shift risks to scheme members is wrong even if it may be well intentioned. The reality is that there are different approaches for scheme members to mitigate the risks they face, e.g. furnishing the members with all the presumptive information to help them in their decisions, limiting the number of choices, providing education on pension schemes, offering a default option, promoting auto-enrolment of all citizens with an opt-out clause, and minimum guarantees. As shown in a paper recently published by EIOPA on <i>risk mitigation mechanisms for DC related risk</i> (see EIOPA-BoS/025), Member States use such mechanisms to strengthen their occupational pension systems taking into account their specific situations and priorities.</p> <p>Instead of aiming to regulate all DC schemes at the European level, the European authorities should take on a more pragmatic approach and undertake the preparation of a consistent regulation and</p>	

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	<p>supervision of pan-European individual pension accounts, <u>functioning alongside the current pension systems</u>. Taking pure DC schemes as a starting point, the authorities should try to converge towards a set of features that all pan-European schemes should comply with. If the Commission and the EIOPA would propose to embark on this project – in the context of the IORP review or in parallel – they would open a door on the way to a true single market for occupational retirement provision organized on a European scale.</p> <p><u>Questions of governance</u>: We agree with EIOPA’s view that the revised IORP Directive should contain a general proportionality clause applicable to all elements of the governance requirements.</p> <p>We consider that the Level 1 framework for governance set out in the Solvency II framework should not be the only framework of reference. It is important to ensure that the new governance rules should not contradict governance rules that apply to other financial institutions, which are covered by an EU prudential regulation and are offering occupational pension services at national level, directly or as 3rd party service provider to IORPs.</p>	
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