

<p align="center"><b>Comments Template on EIOPA-CP-11/001</b>  <b>Draft response to Call for Advice on the review of Directive 2003/41/EC</b>  <i>Scope, cross-border activity, prudential regulation and governance</i></p>		<p align="center"><b>Deadline</b>  <b>15.08.2011</b>  <b>18:00 CET</b></p>
Company name:	European Metalworkers Federation (EMF) <a href="http://www.emf-fem.org">www.emf-fem.org</a>	
		Public
<b>Reference</b>	<b>Comment</b>	
General Comment	<p>Unfortunate timing of the consultation, that is to say from July 8<sup>th</sup> up to August 15<sup>th</sup> 2011; a period where people are enjoying well deserved holidays and convening meetings with affiliates is nigh on impossible. Our reply is therefor incomplete.</p>	
1.	<p><b>"Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?"</b></p> <p>We agree with the analysis of the options as laid down in this advice. Extending the IORP Directive to non-occupational pension schemes would have such an impact in several member states that it would slow down the entire process of review of the IORP Directive. The revised IORP should be tailor made and clearly distinguish the differences between "not for profit" retirement provisions and commercial insurance products. A situation where pension funds become insurance institutions and/or vice-versa is undesirable.</p>	

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2.	<p><b>"Are there any other options that should be considered? Please provide details including where possible in respect of impact."</b></p> <p>EMF considers taking in account the spirit of the IORP-directive "to guarantee a high degree of security for future pensioners" that EIOPA and the Commission must equally consider the option to review article 2 (d) and (e) of the actual directive.</p> <p>In order to guarantee a high degree of security for future pensioners the "institutions where employees of the sponsoring undertakings have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits" and "the use of book-reserve schemes" should also be regulated by the IORP directive</p>	
3.	<p><b>"Which Option is preferable"</b></p> <p>Taking in consideration our answer on question 2:</p> <p>EMF considers that option 2 ("clarify what should be considered as an occupational pension scheme") is the most preferable option. The scope of the directive should cover all second tier occupational retirement provisions. It should not exclude book reserve funds and should not include basic social provisions directly or indirectly provided by the state.</p>	
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 Regulation EEC N° 883/2004 and</b></p>	

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	<b>EEC N° 987/2009?"</b>  <p>Pension fund schemes are often based on collective agreements or individual remuneration packages and are, in fact, postponed salary. The accumulated second tier pension capital is the compensation for labour already performed: workers' money. Therefor all employment-related pension schemes that are funded directly or indirectly through employer's and/or employee contributions and that supplement a basic social security pension are to be considered as occupational pension plans, regardless as to whether they are mandatory or voluntarily.</p>	
5.	<b>"Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?"</b>  <p>We underwrite the need for a clear and broadly agreed definition of cross-border activities but are concerned about the impact that brouthening of cross border activities might have on social labour law. Cross-border activities should never become an instrument to circumvent social labour law in the hosting country.</p>	
6.	<b>"Are there any other options that should be considered?"</b>  <p>No comment</p>	
7.	<b>"Do you agree with EIOPA that option 2 is preferable?"</b>  <p>No comment</p>	
8.	<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</b>	

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	<b>also between the Home member state and the member state of the applicable social and labour law?"</b>  In any event.	
9.	<b>"Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?"</b>  EMF agrees with the conclusion of EIOPA in paragraph 8.3.7 that some areas that might be on a list of prudential law might eventually also considered as social and labour law, but wishes to underline that a clear difference would be preferable as this will lower the compliance costs for IORPs (and thus either lower the burden or increase the benefits for the members).	
10.	<b>"Are there any other options that should be considered?"</b>  No comment	
11.	<b>"Do you agree with EIOPA that option 2 is preferable?"</b>  Yes	
12.	<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>  Yes	
13.	<b>"What is the view of stakeholders on the proposed principles of the revised IORP</b>	

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	<p><b>Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of proposed general governance requirements?"</b></p> <p>EMF is in favour of a good governance of IORPs, and agrees that OECD and IOPS principles guidelines and good practices offer a good starting point. We agree with the principles putted forward by EIOPA. EMF agrees with the principle that the management of the occupational pension promise needs to be legally separated from the sponsoring undertaking We agree with EIOPA that the risk lies in too burdensome governance requirements for small or less complex IORPS. It should be avoided that small IORPS would consider to wind-up because of the governance requirements. Therefore, a clear and unambiguous confirmation of the proportionality principle in the revised IORP Directive is of the utmost importance.</p>	
14.	<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 fit and proper requirements?"</b></p> <p>EMF does not agree with the introduction of the introduction mutis mutandis of article 42(1) of the Solvency II Framework Directive. We do agree that all persons who effectively run the IORP and who have other key functions need always and at any time to be of good repute and integrity (proper). We agree that all persons who effectively run the IORP should be qualified to do so (fit). Qualification requirements for pension fund board members should never be a barrier for participation of workers and/or their representatives and an invitation for "financial experts" to take over the governance of pension funds. Therefor adequate trainingprogrammes for elected or appointed representatives should be in place.</p>	

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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>No comment</p>	
16.	<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 an internal audit function?"</b></p> <p>EMF agrees with the analysis and advice of EIOPA.</p> <p>Negative impacts : the requirement of an internal audit function may be too burdensome for small IORPs or IORPs with little complexity. Therefore it is of the utmost importance to provide for sufficient flexibility in the performance of the internal audit function.</p>	
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>No comment</p>	
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>No comment.</p>	