

<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> <b>Scope, cross-border activity, prudential regulation and governance</b>		<b>Deadline</b> <b>15.08.2011</b> <b>18:00 CET</b>
Company name:	<b>The Polish Chamber of Pension Funds (IGTE, Izba Gospodarcza Towarzystw Emerytalnych)</b> Izba Gospodarcza Towarzystw Emerytalnych 00-141 Warszawa Al. Jana Pawła II 34 lok. 7 Phone /Fax: (+48-22) 620 67 68 / (+48-22) 620 67 38 E-mail: <a href="mailto:igte@igte.com.pl">igte@igte.com.pl</a> <a href="http://www.igte.com.pl/">http://www.igte.com.pl/</a>	Public
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"> <li>⇒ <b>Do not</b> change the numbering 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 <u>MSWord Format</u>, (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>	

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General Comment	<p>The proposal of extending the IORP Directive over the mandatory pension systems which are not occupational by their very nature <b>begs the question of the rationale of such change</b>. It seems to us that this motivation has not been clearly voiced in the EC CfA and in the EIOPA's response. Thus we would like, as a general comment, to point out several important arguments that in our view disqualify this proposal.</p> <p><b>1) Mandatory pension systems in the CEE region <u>are</u> already regulated and supervised.</b></p> <p>The mandatory pension systems in the CEE countries were created in late 1990s as structures coherent with and adequate to the social situation and social needs of each country at that time. Two important issues had been taken into account: the very initial stage of development of local capital markets and the highly limited experience of population with regard to financial knowledge and investment decision skills.</p> <p>In result, designers of these systems took highly cautious approach by creating modern and cautious prudential regulations over pension fund administrators that in many if not most aspects are stricter than corresponding IORP rules. Such regulations are, for example:</p> <ul style="list-style-type: none"> <li>• licensing process;</li> <li>• fit and proper mechanisms,</li> <li>• trading restrictions on shares of pension managing companies;</li> <li>• regulation of fees;</li> <li>• requirements to disclose information to media, members and supervisory office;</li> <li>• guarantees of return;</li> <li>• solvency capital requirements;</li> <li>• guarantee funds;</li> <li>• investment and concentration limits;</li> <li>• bank depositary institutions as additional watchdogs over daily activities of pension managing companies.</li> </ul> <p>Our Chamber believes that leaving the mandatory CEE pension systems out of the IORP Directive will not result in worsening pension fund members' safety compared to the IORP rules. Whereas the opposite might be true.</p>	Public

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**2) Mandatory pension systems in the CEE region are not occupational.**

The systems are one of results of the pension reforms undertaken in 1990s and constitute a part of mandatory social security systems. Participation in funded system is mandatory and the pillar itself is organized by the state. Even though there are private institutions operating there, they carry out the tasks entrusted to them by the state on the basis of public-private partnership.

The CEE mandatory funded systems are not occupational due to the absence of typical relationship between a member of occupational pension plan and his or her employer (the sponsor organizing a scheme). Pension contributions paid to pension funds in funded systems of the new Member States come exclusively from salaries of employees; the employer in no way affects the performance of this system nor is responsible for its operation.

The mandatory pension system in Poland fits rather with the OECD definition of (mandatory) personal pension funds and has nothing in common with the occupational definition suggested by the EIOPA – there is no possibility for any collective bargaining on purchase of pension fund services and there is no possibility for employers to match employees contributions.

The CEE mandatory funded systems are not supplementary in the meaning of an “extra” layer over the existing state old-age security systems since the contribution that goes into funded pension funds has been carved out from the compulsory pension contribution of the statutory system. They do not offer “retirement benefits based on an occupational activity as a supplement to social security pensions” (point 6.3.7.) because worker’s money going to mandatory CEE pension funds is not an additional contribution that would increase the scope of the old-age protection (as argued in point 6.3.7. of EIOPA’s document) but the part of the current old-age mandatory contribution that is merely channelled to capital market.

**3) The “one size fits all” rule will create conflicts with local social and labour laws and should not be applied.**

Our Chamber believes that by introducing the IORP prudential norms upon the mandatory CEE pension systems there might emerge a problem of legislation arbitrage. When faced with double prudential rules framework, pension fund operators may choose the IORP rules over the domestic ones as less strict and easier to comply. In effect, such a change may turn out to be against the

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	<p>interests of pension fund members. Also, the Member States might see such development as negative since in many cases it is the government that provides additional guarantees for the mandatory pension system (such as minimum pensions).</p> <p>Pension fund operators in the CEE region are subject to state-imposed limits on fees they can charge which clearly defines constraints on their potential incomes. Most if not all occupational pension plans do not face such constraints. Thus, introduction of the IORP Directive rules on both type of operators do not seem to meet the standards of "common principles" and "level play ground".</p> <p><b>4) There are <u>no</u> legislation reasons, especially in the light of <u>the subsidiarity principle</u>, to seek finer clarification of the CEE mandatory pension schemes.</b></p> <p>It should be stressed here that there are no gaps in the CEE countries' national legislation and that the legal frameworks clearly delineate the boundaries between all national schemes: supplementary voluntary retirement provision, which is covered by the Pensions Directive, and supplementary mandatory retirement provision, which falls within the scope of the Regulation 883/2004 and Regulation 987/2009. Therefore, the assumption of the European Commission about unclear borders between: social security schemes and private schemes, occupational and individual schemes; and voluntary and mandatory schemes (expressed on the page 13. point 3 of the Green Paper) is not justified in the case of the funded systems of EU-10 countries.</p> <p>The attempt to extend the scope of the IORP Directive over the mandatory CEE pension systems is not justified by the need to fill up missing legislation or prudential rules. It may severely limit competencies of Member States in shaping their own social policies. It also gives them an incentive to withdraw from pension reforms and to move pension assets back to their unfunded schemes.</p>	
1.	<p>Option 2 (and any variations that subject non-occupational pension plans to the occupational pension directive) do have several negative impacts because they include CEE mandatory pension schemes which are <u>not</u> occupational and in result create room for unnecessary conflicts with Member States social and labour laws, legislation arbitrage to detriment of pension fund members, and incentives to revoke pension reforms taken in the CEE countries.</p>	Public
2.	<p>It seems that the EIOPA's analysis should be based upon better investigation of the nature of mandatory CEE pension systems. We would like to stress that such description has been provided in the Opinion on the EC Green Paper "Towards Adequate, Sustainable and Safe European Pension Systems". This document represents the voice of 6 pension associations from Bulgaria, Croatia,</p>	Public

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	Czech Republic, Lithuania, Latvia, Poland and a bank from Ukraine ( <a href="http://ec.europa.eu/employment_social/empl_portal/pensions/written_responses.zip">http://ec.europa.eu/employment_social/empl_portal/pensions/written_responses.zip</a> , file <i>Polish Chamber of Pension Funds IGTE.pdf.</i> ).	
3.	Option 2 is <u>not</u> preferable at current shape. We share the opinion of the Romanian pension funds association that any option can be supported as long as the mandatory private pension schemes in the New Member states are not wrongly considered as "occupational". We do think that striving for legal uniformity should ignore important socio-economic contexts of these systems.	Public
4.	In our view, when determining whether to consider a pension scheme as a social-security one covered by Regulations (EEC) No. 883/2004 and (EEC) No 987/2009 one should focus on <ul style="list-style-type: none"> <li>• if such scheme replaces (completely or partly) state functions and responsibilities embedded in its statutory pension system that existed before the introduction of the scheme in question;</li> <li>• if mandatory character of a scheme brings about pension provider or State guarantees to its members;</li> <li>• if such scheme has or does not have occupational character defined as "providing benefits based on an occupational activity as a supplement to social security pensions".</li> </ul> Finally, it seems advisable to leave to the Member States the final decision whether they want or not to have a particular pension scheme covered by above-mentioned Regulations.	Public
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