

<p align="center">Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i></p>		<p align="center">Deadline 15.08.2011 18:00 CET</p>
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Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p>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.</p>	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 firstconsultationiorpcfa@eiopa.europa.eu, in <u>MSWord Format</u>, (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	I have a few general remarks at this stage of the discussion on the IORP review.	

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	<p>Above all I have to remark that I have not been able to submit my remarks to the Minister of Social Affairs and Employment, so I have to make a reservation about that.</p> <p>This issue has the following objectives in point 1.2 of the Commission's Call for advice (CFA):</p> <ul style="list-style-type: none"> - "measures that simplify the legal, regulatory and administrative requirements for setting-up cross-border pension schemes"; - "measures that would allow IORPs to benefit from the risk-mitigating security mechanisms at their disposal"; - (measures) "to modernise prudential regulation for IORPs that operate DC schemes". <p>This issue also faces the following conditions:</p> <ul style="list-style-type: none"> - "The new supervisory system for IORPs should not undermine the supply or the cost-efficiency of occupational retirement provision in the EU." (see point 1.3 of the CFA); - "The aim is to attain a level of harmonisation where EU legislation does not need additional requirements at the national level." (see point 7.1. of the CFA); - the primary aim to ensure the sustainability, safety and affordability of pensions, the approach taken by the European Commission in the Green Paper on Pensions; and - the point of view stressed in the reaction by the Netherlands on the Green Paper on Pensions that Member States are themselves responsible for their pension system and that the Netherlands will always explicitly examine the question whether Europe should take the initiative. <p>It is also not clear at this stage of the discussion which kind of measures are the responsibility of the home member state and which (additional) kind of measures are the responsibility of the host member state if cross border operations take place under the revised IORP Directive.</p> <p>Finally, more clarification is needed which principles should be set at EU level and what will remain the discretion of the Member States.</p> <p>It will be very useful to have a discussion in the coming period (for example by the European Insurance and Occupational Pensions Committee) about the relationship between these objectives and conditions.</p>

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	All my responses to the following questions are subject to the outcome of that discussion and the impact assessments of the different proposals.	
1.	<p>CfA 1 Scope of the IORP Directive</p> <p>1. 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?</p> <p>In general, I agree with the remark in point 1.2.4 (page 5) of the draft response to the CFA: "On issues of scope the challenge is to draw a coherent boundary between IORPs and other sorts of pension arrangements (social security on the one hand and individual pension provisions on the other hand.)". This means that a review of the scope of the directive should also take into account the current exemptions of the scope of the IORP Directive (art 2 par 2, + art 5).</p> <p>Given the ultimate objective to create an internal market for occupational retirement provisions, I believe the scope of the Directive should be as wide as possible. The motivations and volumes involved of desired exemptions to the scope should be clearly documented (and periodically reviewed). A review of the scope of the directive should also encompass a review of the optional applications in the articles 3 and 4 of the IORP Directive. It has to be determined if these optional applications are still effective and attribute to clear regulations.</p>	
2.	<p>CfA 1 Scope of the IORP Directive</p> <p>Are there any other options that should be considered? Please provide details including where possible in respect of impact.</p> <p>See the general remark and the answer to question 1.</p>	
3.	<p>CfA 1 Scope of the IORP Directive</p> <p>Which option is preferable?</p> <p>See the general remark.</p>	
4.	<p>CfA 1 Scope of the IORP Directive</p> <p>4. 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)?</p> <p>See the general remark.</p>	

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5.	CfA 2 Definition of cross border activity 5. Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Point 3.1 of the CFA states that the legal definition of cross-border activity should be clear. It will be useful to clarify the consequences of the proposed definitions of "sponsoring undertaking" and "host member state". Additionally, a comprehensive overview of all remaining restrictions to cross-border activities should remain part of the discussion.	
6.	CfA 2 Definition of cross border activity 6. Are there any other options that should be considered? See the general remark.	
7.	CfA 2 Definition of cross border activity 7. Do you agree with EIOPA that option 2 is preferable? See the general remark.	
8.	CfA 2 Definition of cross border activity 8. 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? See the general remark.	
9.	CfA 4 Prudential regulation and social and labour law 9. Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? The following reasons support the idea to realise a clear distinction between prudential legislation and social and labour law by high level EU principles (for example: "it is SLL, unless ..."): - IORPs in and between the different member states differ largely;	

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	<p>- especially the social and labour law rules and regulations in the different member states which apply to IORPs differ largely.</p> <p>On the other hand a comprehensive list of all issues of prudential legislation and social and labour law will not only be a complicated and a time consuming task, but is also questionable if such a comprehensive list of all issues of prudential legislation and social and labour law will be used extensively for the objectives of the IORP review.</p> <p>It will be the challenge to find the proper answers.</p>	
10.	<p>CfA 4 Prudential regulation and social and labour law</p> <p>10.Are there any other options that should be considered?</p> <p>See the general remark and the answer to question 9.</p>	
11.	<p>CfA 4 Prudential regulation and social and labour law</p> <p>11.Do you agree with EIOPA that option 2 is preferable?</p> <p>See the general remark.</p>	
12.	<p>CfA 4 Prudential regulation and social and labour law</p> <p>12.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?</p> <p>See the general remark.</p>	
13.	<p>CfA 13 General Governance Requirements</p> <p>13.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?</p> <p>I agree with the emphasis by EIOPA on proportionality in this respect.</p> <p>There are large differences among IORPs and large differences between IORPs and insurance companies concerning issues like:</p> <ul style="list-style-type: none"> - "ownership" and therefore accountability; - the specific characteristics of the contract; 	

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	<ul style="list-style-type: none"> - specific requirements in government rules; - the different sizes of IORPs (some are very small, others are very large). <p>Taking these differences into account: General Governance Requirements should be realised by high level EU principles.</p>	
14.	CfA 14 Fit and proper 14. 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? The answer to question 13 also applies to this question.	
15.	CfA 17 Internal control system 15. 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? The answer to question 13 also applies to this question.	
16.	CfA 18 Internal audit 16. 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? The answer to question 13 also applies to this question.	
17.	CfA 12 Supervision of outsourced functions and activities 17. 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? The answer to question 13 also applies to this question.	
18.	CfA 20 Outsourcing 18. 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	

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	principles? The answer to question 13 also applies to this question.	