

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:	Pan-European Insurance Forum (PEIF)	
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	The Pan-European Insurance Forum (PEIF) is a group of CEOs of major insurance companies in Europe, consisting of AEGON, Allianz, AVIVA, AXA, GENERALI, ING, MAPFRE, Munich Re, RSA, Swiss Re, UNIQA and ZURICH Financial Services. PEIF Members strive for a strongly competitive and fully integrated European insurance market. PEIF companies represent 68% of the STOXX® Europe Insurance.	

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	<p>Transparency of pension systems will foster effective competition within a true internal market</p> <p>PEIF supports the development of secure, adequate and sustainable pension systems based on a mix of state and private provision. To function effectively, these systems must be transparent and operate on a common methodology enabling meaningful comparisons and overviews. For the private sector to contribute to its full effect, transparency must support the operation of the market and effective competition within a true internal market.</p> <p>Life insurance companies are also providers of occupational pensions, ...</p> <p>The review of the IORP Directive should not be based on a view that only IORPs are involved in occupational pension provision and that life insurance companies are only involved in providing private pensions. Life insurance companies provide occupational pensions:</p> <ul style="list-style-type: none"> • under the Life Insurance Directive – soon to be replaced by Solvency II • via IORPs • as life insurance companies operating partly under the Life Insurance Directive and partly under the IORP Directive (Article 4, IORP Directive) <p>... manage IORPs and provide services to occupational pension funds ...</p> <p>In addition, life insurers also manage IORPs (Article 9(4), IORP Directive) as well as provide important services to occupational pension funds, for example, reinsurance. Often the pension fund operates as saving vehicle during the accumulation phase with life insurance companies providing an annuity during the pay-out phase. The Life Insurance Directive and the IORP Directive are parts of a single system and need to be considered, as the Commission says, 'holistically'. Following this view, the main objective of the review of both Directives should be to ensure an appropriate regime for the provision of occupational pensions, regardless of whether the provider is an IORP or an insurance company.</p>	

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	<p>... resulting in competitive issues between pension funds and insurers even if the competitive landscape varies across the EU</p> <p>The competitive relationship between IORPs and life insurance companies is complex and diverse. Sometimes they compete directly with each other. Elsewhere, even within one country, they may cooperate. Over a longer timeframe, government choices about what roles different types of providers play in the pension system also implies a competitive relationship. Furthermore, there is a competitive interaction between different pension pillars: the demand for private pension products is also determined by the adequacy, security and affordability of state and workplace pensions. Increased transparency is key for real pension planning by Europe's future pensioners. Therefore, the same methodology for description and measurement should be applied to all providers of pensions to ensure comparability and to prevent the opportunity of regulatory arbitrage.</p> <p>As part of Europe's pension systems, both IORPs and life insurance companies have social and economic functions.</p> <p>They provide pensions by making capital available to Europe's economy, generating the wealth needed to sustain our European social model. As providers of financial products with social objectives both IORPs and life insurance companies have an interest in ensuring that sponsors can afford to provide occupational pensions.</p> <p>To realize the social and economic benefits of a true internal market in pensions, national pension systems need to become more connected</p> <p>PEIF recognizes the diversity of national pension systems but wish to see this diversity become more manageable. National systems must become more connected, so that the social and economic benefits of a true internal market in pensions are realized. Europe's citizens are increasingly mobile in all senses, changing jobs, switching between employment and self-employment, moving across borders whether as workers or as pensioners. Europe's regulatory framework must facilitate this increasing connectivity. As pan-European providers we already see real demand for pan-European products from multinational companies, via IORP or via life insurance solutions. Providing solutions here will help kick start a real single market in pensions accessible to wider groups. This is the backdrop to the review of the IORP Directive.</p>	

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	<p>A common European methodology for pensions concerning risk assessment is needed</p> <p>Solvency II will introduce a new, risk-based economic prudential framework for Europe’s insurance sector. PEIF therefore welcomes the recognition by the EU that there is a need to modernize the framework for European pension provision for the wider occupational sector. The Solvency II Framework Directive, if well designed and calibrated, gives a good orientation to create a common European methodology for risk assessment concerning pensions. Therefore, it is necessary to identify relevant similarities and differences between the parts of pension systems in Europe, increase transparency to all and ensure that consistent regulatory solutions are found for similar risks. A common European methodology should maintain consistency for providers of similar pension products regardless of how they are formally classified as financial institutions and ensure that similar risks covered by the provider of pensions are subject to similar assessments.</p> <p>EIOPA’s Insurance and Reinsurance Stakeholder Group should contribute on a systematic basis in the assessment of the IORP Directive</p> <p>As life insurance companies are deeply involved in all forms pension provision including occupational pension provision, they should be fully involved in the review of the IORP Directive. EIOPA’s Insurance and Reinsurance Stakeholder Group should therefore also contribute on a systematic basis in the assessment of the IORP Directive.</p>	
1.	<p>PEIF welcomes the European Commission’s and EIOPA’s willingness to open up discussion on the scope of the IORP Directive. This discussion should be more explicit about the institutions to be considered for inclusion in the scope. In this discussion it could also be useful to provide advice on the application and operation of Article 4 to life insurance companies as well as on the experience of group pensions by life insurance companies as a form of occupational pension provision.</p> <p>PEIF notes that the European Commission’s Call for Advice requests a minimum core of advice from EIOPA and that input on wider issues pertaining to scope is possible. The Commission refers to scope as being determined by Article 2 to 4. As EIOPA correctly notes, scope is also determined by Article 6, in particular Article 6(a). In this context we note that life insurance companies providing pensions</p>	

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	<p>in an occupational context satisfy the definition of an IORP.</p> <p>Therefore, we believe that it would be useful to provide advice on the application and operation of Article 4 to life insurance companies as well as on the experience of group pensions by life insurance companies as a form of occupational pension provision. This is not only the spirit of the Commission's 'holistic' approach but would also provide a useful technical backdrop to considering EIOPA's Option 4 which we believe needs more comprehensive explicit discussion in EIOPA's second, main consultation. The function of Article 4 in its current (or amended form) overlaps closely with the proposal in Option 4 (possibly beginning by applying Articles 9 through to 20).</p> <p>Like Option 4, Option 5 is also in the 'holistic' spirit and requires a more comprehensive discussion in the second consultation to understand the objectives and consequences of this option.</p> <p>Regarding Option 2, we would prefer more clarification within the discussion as to what should be considered as occupational pension schemes. (Please see also question 3).</p> <p>The issue of how consumer protection provisions are to be demarcated from social and labour law is raised by EIOPA in relation to Option 5 (highlighting the "possible interference with the PRIPS project"). However, the demarcation between these two systems of protection is not specific to Option 5 and needs to be addressed at some point in the development of an EU regulatory framework for funded pension provision regardless of whether Option 5 is accepted or not. It might, for example, be possible to treat EU consumer rules as default protection rules in the absence clearly identified social and labour law provisions.</p>	
2.	<p>As the European Union's Court of Justice has made it clear, both pension funds and life insurers operate "in accordance with the principle of capitalisation" and as such not only engage in economic activity falling within the scope of EU competition rules, but that they can also compete with each other.</p> <p>PEIF believes that as concepts from EU competition law which, like that of "economic activity", also form part of the legal framework of the internal market they may also be relevant to determining</p>	

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	<p>scope. The Court of Justice's case law makes that provision of services via pure solidarity mechanisms do not constitute economic activity. EU competition law also makes clear that whether a provider is public or private is irrelevant to the assessment of whether it carries out economic activity even though in some cases it may enjoy a privileged status as a provider of services of general economic interest.</p> <p>We believe that provision of pensions in an occupational context on the basis of "a system of capitalisation" carry out economic activity and, prima facie, should be subject to the same or consistent prudential rules. On the other hand pure solidarity-based systems, also identifiable using criteria developed by the European Union's Court of Justice do not carry out "economic activity".</p> <p>Neither Regulation 1408/71 nor Regulation 883/2004 refer to economic mechanisms and therefore a trying to define the scope of the IORP Directive by reference to them alone is not adequate. They could be reinforced by reference to the "economic activity" concept with particular reference to the "principle of capitalisation".</p> <p>More broadly, concepts derived from the European Union's case law concerning solidarity and its different degrees as well as around the provision of services of economic interest in highly regulated sectors may otherwise be relevant to the development of a consistent prudential framework in the area of pension provision. This may also provide useful guidance for identifying the demarcation line between prudential regulation on the one hand and social and labour law on the other.</p>	
3.	<p>We believe that the options presented in the consultation document require deeper and more comprehensive discussion in the second consultation (see e.g. also our comments on questions 1 and 2). For this reason, the PEIF refrains from expressing a preference for any of the options at this stage without further discussion.</p> <p>PEIF believes that the review of the IORP Directive in parallel to the development of the Solvency II regime is a historic opportunity to develop a system of overarching principles for pension provision. The approach, as recommended by the Commission, should be 'holistic' and therefore the</p>	

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	assessment should also fully involve the life insurance industry as key stakeholders in pension provision.	
4.	This question should not just be considered from a technical perspective. Any decision on inclusion requires further consideration which also takes into account Member State powers as regards the organization of their pension systems. Negative, unintended consequences of covering providers of compulsory employment-related pension schemes that have been classed as social-security schemes covered by Regulations 883/2004 and 987/2009 should be avoided.	
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