

<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:	Pensionskasse der Mitarbeiter der Hoechst-Gruppe VVaG; Frankfurt am Main	
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.	<b>Public</b>
<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 paragraph, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below.                             <ul style="list-style-type: none"> <li>○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.</li> <li>○ If your comment refers to sub-bullets/sub-paragraphs, 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 MSWord Format, (our IT tool does not allow processing of any other formats).</b></p> <p>The paragraph numbers below correspond to Consultation Paper No. 01 (EIOPA-CP-11/01).</p>		
<b>Reference</b>	<b>Comment</b>	
General Comment		

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1.	<b><u>Comment on CfA 1: Scope of the IORP Directive</u></b>  The EIOPA-advice on the scope of the IORP Directive deals with different options to extend the scope of the IORP Directive to other occupational pension schemes that operate on a funded basis. By considering all these options, there seems to be a strong tendency to extend the scope of the Directive to as much occupational pension systems as possible and to include almost all providers of occupational retirement provision.  However, there seems to exist a common understanding that book-reserve schemes as well as support funds with respect to their financing and insolvency protection mechanisms will not fall within the scope of the IORP Directive and this status should be maintained. Therefore, it should be clearly expressed in the wording of the reasoning, that book-reserve schemes and support funds like for example in Germany will not fall within the scope of the IORP Directive.	Public
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9.	<p style="text-align: center;"><b><u>Comment on CfA 4: Prudential Regulation and Social and Labour Law</u></b></p> <p>With chapter 4 of the Call for Advice, the European Commission intends to clarify the scope of prudential regulation at EU-Level trying to set up a proper distinction between prudential regulation and social and labour law (SLL), whose contents are being determined by the Member States.</p> <p>However, one has to question, if such an uniform single set of regulation can be set up across Europe with not impairing the national SLL-Systems and therefore being out of the competence of EU-Legislation. In fact, this will very likely be the case because the pension systems as well as the SLL-Systems in the different states have historically developed in country specific ways.</p> <p>The design of the pension promise, the delivery and protection of pension benefits, the methods of financing the pension benefits as well as the methods of surveillance of the IORPs are therefore inextricably linked with each other.</p>	<b>Public</b>

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	<p>Changing or redesigning the rules for only one of these beforesaid structural elements comprising the pension benefit will therefore have wide and strong repercussions like it is the case by communicating vessels.</p> <p>Therefore, on the area of occupational retirement provision, any changes in prudential regulation, for example on the area of calculating and certification of technical provisions, funding of technical provisions, regulatory own funds etc. will have a severe impact on the cost of financing defined benefit plans, like it is the case in Germany. This is because the methods of financing the pension promise - for example the discount rate to be applied or the biometrical tables to be used – are an integral part of the delivered pension promise. The sponsoring employer as well as the beneficiaries will and must have trust in a sustainable regulatory framework covering all the beforesaid areas.</p> <p>If one, as raised by the CfA (introducing risk based Supervision for IORPs), would apply the quantitative methods of Solvency II to IORPs, this would cause a tremendous increase of the necessary own regulatory funds. This will have an intense and severe impact in financing the pension promise, which might result in a reduction of benefits and / or increasing contributions as well as the closing of the pension schemes;</p>	

<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>
	<p>their regulatory framework being contained in the national SLL.</p> <p>From this follows, that changing prudential regulation will likewise also have a severe impact to SLL. As SLL covers the pension promises and its protection against insolvency, the co-determination, etc. in its entirety, prudential regulation can not prevail over SLL, because this would mean that in fact prudential regulation will play the decisive role wheter or not there will be a vital environment for pension schemes on a state level.</p> <p>As pointed out and also mentioned by EIOPA on the draft response (8.3.7), a precise definition of the scope of prudential law at EU-level would in effect result in an indirect limitation to the competences of the member states on the area of SLL. A positive scope-definition of prudential law would at the same time mean to limit the scope of SLL by reducing its scope to those parts, which are not to be determined as prudential law. However, such an indirect negative impact on SLL would not be covered by the competences conferred upon the European Union.</p> <p>The Treaty on European Union determines that “the limits of Union competences are governed by the principle of conferral” (Art. 5 p. 1). This principle means that “the Union shall act only within the limits of</p>	

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	<p>the competences conferred upon it by the Member States” while competences not conferred upon the Union “remain with the Member States” (Art. 5 p. 3). On the area of SLL, there was no conferral upon the European Union by the Member States that would give room for an indirect negative scope definition.</p> <p>Furthermore, Article 114 of the Treaty on the Functioning of the European Union (formerly Art. 95 TEC), which is the legislative competence for the current IORP Directive and will that probably be again for a “revised” IORP Directive, especially excludes measures on the area of SLL. Therefore, a “revised” IORP Directive cannot be used to limit the scope of the national SLL.</p>	
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**EF-17(2)/2011; Annex 2** – please remove the EFRP header when submitting a response to EIOPA