

**Comments Template on EIOPA-CP-11/006  
Response to Call for Advice on the review of Directive 2003/41/EC: second consultation**

**Deadline  
02.01.2012  
18:00 CET**

Company name: **Association Française de la Gestion financière (AFG)**

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The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

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<b>Question</b>		
General comment	<p><b>AFG</b> is the representative association for the French investment management industry. AFG represents through its 600 members EUR 2,6 trillion assets under management of which EUR 1,4 trillion was managed by approximately 11,500 funds at end December 2010. French asset management industry ranks first in Europe.</p> <p><b>AFG is a member of EFAMA and EFRP.</b></p> <p><b>Reasons for reviewing the IORP Directive:</b> the European Commission gave three main objectives for reviewing the IORP Directive:</p> <ul style="list-style-type: none"> <li>• simplifying the setting-up of cross-border pension schemes;</li> <li>• securing modernisation of prudential regulation for IORPs which operate DC schemes; and</li> <li>• allowing IORPs to benefit from risk-mitigation mechanisms.</li> </ul> <p>It is vital to find the right balance between the objectives of wanting a high level of a high security level for all occupational schemes and of improving citizens' access to complementary occupational and private pensions.</p> <p><b>The application of Solvency II rules to pension schemes doesn't seem relevant</b> in many ways and we fear that these new rules would limit occupational pension schemes coverage.</p> <p><b>Differences between IORPs/Pension schemes and insurers:</b> there are huge differences between insurers and IORPs, especially where IORPs are DC pension schemes. In this last case, the IORP is not always an independant legal entity : employer and employees representatives select providers (asset anagers, plan administrator...) and set up a Pension scheme specifying the pension scheme rules (employer contribution, investment options offered...). The pension scheme is a contract and it has nothing in common with a life insurance undertaking.</p> <p>If the scheme is managed by entities already covered by a Directive, no additional requirement should be added (capital requirements for instance).</p>	

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The implementation of some of the proposed new regulatory, coming from Solvency II, would increase the administrative burden/financial costs for IORPs and employers and, therefore, discourage employers to set up DC schemes, accelerate the process of defined-benefit schemes closure in Europe and put at risk the objective of facilitating cross-border activity.

We would like to highlight the fact that in some Member States, like France, the word "Institution" **used by the IORP Directive is not appropriate.** Speaking of "Institution" does not seem relevant where pension schemes don't have a legal personality. The wording of the Directive should take into account occupational pension schemes designed as contracts signed between employer and employees representatives. In these contracts, the signatories select the providers (asset managers, administrator...).

**Cost to employers and beneficiaries:** there is considerable concern that the imposition of Solvency II style regulation on existing employer based pension schemes could add costs to employers or reduce the level of benefits for beneficiaries. In regards to DC pension schemes, the application of additional capital for operational risks and other similar measures would reduce the benefits payable on retirement. National regulation already takes into account operationa risk. In France, for instance, Perco operational risk is borne by the asset manager and the administrator of the scheme which are both regulated and have their own capital requirements to cover operational risk.

**Risk-based supervision for IORPs/Pension schemes:** We understand the desire of the European Commission that the level of security offered by all IORPs be similar across Europe. However, we believe that there can be differing ways to achieve the desired level of security. The European Commission has to take into account each national pension system and especially the global level of national pensions, including mandatory pay-as-you-go pensions and the design of pension savings schemes (mandatory or voluntary).

We would also like to stress the fact that a risk-based approach should not be interpreted as a capital-based approach. The rules on governance, the supervisory review process, the rules on

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information disclosure to supervisory authorities and to members/beneficiaries are also essential to protect pension scheme members and ensure that they are properly informed about the exact nature of the pension promise.

**Consistency across financial sectors:** AFG disagree with the position that the approach and rules used for the supervision of life assurance undertakings subject to the Solvency II Directive should be the main reference for the proposed new measures and mechanisms. The implicit goal of the IORP Directive review should not be to harmonize the prudential regime for IORPs/Pension schemes and life assurance undertakings.

**Quantitative Impact Study:** it is not possible to support the proposed new regulatory framework for IORPs/Pension Schemes without knowing what would be the likely quantitative impact of the new regime, in particular regarding the additional costs and administrative burden.

**Macroeconomic and financial impact:** It is clear that Solvency II is in favor of bonds but not in favor of equities despite the fact that this is an asset class which is needed to diversify and which is long term because it has an endless duration. This has already led to an overall reduction to insurance company asset allocation to equities, and other asset classes like real estate, and we fear that as the regulations come into force this trend could be accelerated. Applying Solvency II style regulation more broadly would weigh heavily on these asset classes and make it more difficult for companies to raise equity, thereby constraining the long-term financing companies and the growth potential of the European economy. It could also deny pension investors from investing in inflation hedging assets that are suited to matching long duration liabilities. For these reasons, the relative risk asset charges embedded in the Solvency II standard formulae are considered by many pension funds to be counterintuitive and likely to discourage them from holding non-government risky assets, including long-term credit, structured credit, equities and alternatives. Consequently, pension funds may sell a significant proportion of these assets over a relatively short period of time around the implementation date of Solvency II. Furthermore, for the market it would be very negative when all investors with long liabilities have to invest under the same rules, if even their structure is very different. This would lead to a very similar behavior of all market participants which would increase volatility and contribute to systemic risk. In this respect, we strongly agree with the view that IORPs/Pension schemes can serve as a stabilizer for markets if they are not regulated in a way that

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	<p>causes pro-cyclical effects. The QIS should therefore take into account the negative macroeconomic and financial impacts, in particular regarding market volatility and pro-cyclical effects.</p> <p><b>Conceptual approach to solvency rules:</b> AFG believes that the solvency framework for IORPs/Pension schemes should take into account at least the following aspects of the occupational pension market:</p> <ul style="list-style-type: none"> <li>• The various specificities of the vehicles in question. Each vehicle has different funding requirements and could operate in its own capacity, through an IORP subsidiary or through providers (i.e. a bank, asset management entity, an issuer etc.).</li> <li>• The specificities of the products run and offered through the vehicle and whether it is a pure DC scheme. If a scheme does not contain any guarantee and/or biometric risk coverage, the market and longevity risks are borne by the member.</li> <li>• The specificities of the risks involved. Traditionally, only financial risks have been taken into account. However, other factors could be considered. EIOPA has identified eight different types of risks in a recent study.</li> <li>• Who bears that risk, whether it is the employer, the employee, the providers or the vehicle itself? If it is the vehicle, capital should be required.</li> <li>• The specific role of the pension vehicle and whether it is to play an essential role in pension provision or to offer an additional source of retirement income.</li> </ul>	
1.	In general AFG agrees with the analysis of the options.	
2.	A proposal to change the <b>scope of the Directive</b> should also include a discussion of an amendment of Article 4 to extend the optional application of the Directive to other regulated financial institutions. To the extent that there are financial institutions other than life assurance companies that offer occupational pension services, it is important to extend the optional application of the Directive to	

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	<p>these institutions to ensure that the Directive does not lead to distortions of competition. The prevention of asset managers and other institutions such as banks from competing with pension funds and life-assurance companies on equal terms has led indeed to pension markets being dominated by a limited number of providers belonging to the latter categories.</p> <p>EIOPA should also address the fact that providers may be covered by another Directive, while being very active in the pension market. For instance, in France asset managers manage the funds of the Perco, and investment services companies and banks administrate the employees accounts. In these situations, it is unclear what rules should apply when a provider is covered by another directive and when this directive is not compatible with the IORP Directive.</p>	
3.	AFG supports option 2, but recommends to amend its formulation to a partial application of the IORP Directive to "all types of occupational pension schemes". This will create a European standard for IORPs and leave an option for member states to implement the IORP Directive when the time is right.	
4.		
5.	We agree EIOPA proposal that Option 2 is preferable.	
6.	There are many ways of <b>ring fencing</b> assets, depending on the design of the scheme. For instance, in a DC scheme, each employee account is a ring fenced system if there is only retirement savings on this account. In this case, there is no need for extra ring fencing. More constraints would create extra cost and would be unnecessary. What should be avoided are attempts to create additional hurdles to cross-border IORPs.	
7.		
8.		
9.	The introduction of privileges rules is not necessary if retirement savings are registered on individual accounts. Assets are employees property. There are no other creditors on these assets so there is no need to protect the assets in case of IORP liquidation.	

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10.	<p>The interpretation of what qualifies as <b>social and labour law</b> differs from one Member State to another.</p> <p>We support the idea of more transparency from each Member State on what is considered as social and labour law.</p> <p>As a general observation, we feel that without resolving broader tax issues and social and labour law differences, any harmonisation of the IORP Directive is likely to be of limited positive effect on cross border operation of pensions.</p>	
11.		
12.	<p>The "<b>holistic balance sheet</b>" does not appear to be an appropriate solution. We believe that the requirement to provide additional capital and risk buffers will increase the costs of providing pensions which will operate to reduce the attractiveness of providing workplace savings schemes and potentially reduce benefits for pension savers. It is not clear that employees or DC plan participants would be able to understand the need for these additional buffers.</p>	
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34.	No. AFG don't support the idea that Article 87-99 of Solvency II should apply to IORPs/Pension schemes.	
35.		
36.	The goal of achieving a <b><u>uniform security level</u></b> for IORPs across Europe appears very ambitious for reasons that are highlighted by EIOPA. Indeed, existing national Social and Labour Law allows for different levels of security, given the existence of ex-post benefit adjustment mechanisms and on-going legal obligations of sponsors and providers. To the extent that these mechanisms reflect the "social contract" between the main stakeholders (i.e. members, beneficiaries, employers), Member States should retain full responsibility for the decision on the role of these mechanisms, in accordance with the principle of subsidiarity.	
37.		
38.		
39.		
40.	AFG believes that a uniformed <b><u>minimum capital requirement</u></b> (MCR) does not appear possible and is not desirable given the diversity of IORPs and the profound differences in the security mechanisms used across Europe to ensure the security of the pension promise made to pension schemes members.	



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41.		
42.	<p>We don't understand why losses due to <b>operational risk</b> events would be relevant only in situations where members or beneficiaries bear the investment risk. In fact, it could be argued that operational risk is higher in other kind of schemes (such as schemes offering guarantees/other benefits).</p> <p>When the IORP has outsourced functions, we strongly believe that the need for capital requirements against operational risk would have to take into account the capital requirements already imposed, for instance, on external asset managers through UCITS IV, MiFID or AIMFD. Overall, if operational risk is already covered, there is no need for additional capital requirement.</p>	
43.		
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47.	<p>The review of the Directive should be taken as an opportunity to strengthen the application of the <b>prudent person principle</b> across Europe.</p> <p>If EIOPA decides to propose to retain the option of restrictions "to protect members who bear the investment risk" (option 3 from page 271), we strongly believe that the Directive should not allow Member States to prevent IORPs/pension schemes from investing in UCITS or UCITS like products. For instance, in France, Perco invest in FCPE (Fonds Communs de Placement d'Entreprise). These investment funds have the same rules as UCITS with two differences :</p> <ul style="list-style-type: none"> <li>○ They have a Supervisory committee composed of employers and employees representatives,</li> <li>○ They can invest in AIF in the frame of the 10% ratio (for instance in capital investment funds or in "fonds solidaires").</li> </ul>	
48.		
49.	The participants must be aware of the risk of the investment they are exposed to. This can be	

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	<p>achieved by providing adequate information to participants and beneficiaries. Provision of targeted communications, financial advice and automated pension decision tools can further improve individuals' ability to make the appropriate decisions. We support option 4 and we strengthen the fact that these European rules should be compatible with UCITS rules.</p>	
<p>50.</p>	<p>Regarding more particularly minimum return guarantees, while these guarantees limit the shortfall risk for individuals that may result from financial market volatility, they also limit individuals's participation in the upside benefits. The cost in terms of forgone returns, and hence lower retirement wealth, can be particularly significant if the guarantee is used throughout most or all of the pension accumulation phase.</p> <p>As explained above, if Article 18(5) is kept to cases when members bear the investment risk, Member States should not prevent IORPs/Pension schemes from investing in UCITS or UCITS like investment funds (see Question 49).</p> <p><b>Regarding CfA 7.4 (foreign currencies)</b>, we consider that Members States should not be allowed to put limitations on foreign currency exposure. There is no need to distinguish between DB and DC IORPs. This approach would create a level playing field for the investment rules in all Member States based on the prudent person principle only.</p> <p><b>Regarding CfA 7.8.2 (multi-funds, default options, life-styling)</b>: we don't believe it would be possible to determine standards for default/lifestyle funds that accommodate expectations and standards that differ between Member States and that take account of differing first pillar provision.</p>	
<p>51.</p>		
<p>52.</p>		
<p>53.</p>	<p>As a general comment on 53-60, we consider that there are aspects of the insurance supervision that EIOPA is proposing to transpose into the Directive are inappropriate We encourage EIOPA to start by looking at the nature of the different pension regimes across Europe and asking what regulatory oversight they might benefit from. In this respect, the OECD Principles of Occupational Pension</p>	

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	regulation are a much better stating point.	
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60.	It is difficult to see what extraordinary circumstance would arise in DC schemes that would require capital add ons.	
61.	It is important to clearly define exceptions regarding proportionality in this area. Where the entity performing the outsourcing function is itself a regulated financial entity, any requests for information etc should come from its primary supervisor, not the supervisor of the IORP (especially where IORP/Pension scheme is not a legal entity) otherwise there is a danger of duplicate requirements, and the associated costs of this.	
62.		
63.	<p>We support the general need of transparency and <b>general governance requirements</b>. However, the number of schemes and difference in form make the task of creating a uniform approach potentially costly for the industry, and potentially harmful in terms of benefits for members and beneficiaries. For many schemes, the imposition of the proposed regime would not reflect the differences in business models and backgrounds, and create significant burdens and cost, especially where the IORP has no legal personality and responsibilities are borne by providers, such as asset managers or administrators. Also, we strongly disagree with the analysis in 18.3.23 that there are no major differences between defined benefits and defined contribution schemes, primarily stemming from the different nature of the benefits being provided. This justifies applying different governance requirements for DB and DC schemes.</p> <p>As already stressed in page 2, IORPs/DC schemes are very different from life assurance undertakings</p>	

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	and similar rules for governance are not appropriate.  AFG stresses the need for an impact study to assess the real impact of the new requirements.	
64.	As specified in FG agrees that EIOPA has correctly identified the areas where there should be differences between insurers and IORPs/DC schemes on general government requirements.	
65.	AFG agrees that fit and proper requirements be introduced as proposed by EIOPA. However these need to be applied proportionally. The advice should require that those who run or have key functions to have professional qualification. We also believe the IORP Directive should remain as is in this respect so as not to impose a disproportionate burden. Furthermore the test should be applied across the whole group of persons who effectively run the IORP without requesting the same level of qualification and experience from each person.  These rules have to be coherent with existing rules for entities already covered by other Directives.	
66.	AFG agrees that fit and proper requirements be introduced as proposed by EIOPA.	
67.	Different Member States have already sanction systems in place for similar activities/breaches. General guidelines from EIOPA should be sufficient.	
68.	AFG considers that IORPs should have adequate <b>risk management</b> mechanisms in place with the understanding that their scope and complexity may vary according to the type and size of pension plan, fund and entity and the type and extent of risks faced.	
69.	We do not think an Own Risk and Solvency Assessment (ORSA) is suitable for second pillar pensions as there is an employer sponsor.	
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72.		
73.	Compliance responsibilities need to be proportional to the size/type of IORP/Pension Scheme. If the requirements are disproportionate there is a danger that the costs become prohibitive and impact the level of support that a sponsor provides for a scheme.	
74.	As per 73.	
75.		
76.		
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80.	<p>The Directive currently provides that Member States may permit to <b>outsource</b> to third party service providers the whole or part of IORP/Pension scheme management.</p> <p>As far as we know, the established practices are consistent with the objective of protecting members and beneficiaries. In general, these practices reflect the specific characteristics of the occupational pension market at the national level, and are therefore not necessarily conform to the material aspects of Solvency II requirements on outsourcing. To the extent that these practices have a strong track record in terms of scheme protection and cost-efficiency, we would not understand why the Directive should be amended. The obvious consequence would be additional administrative costs for members and beneficiaries without any clear benefit.</p> <p>We also wish to emphasize that when a IORP is a DC pension scheme without a legal personality, each provider is responsible for its own activity. Fo instance, the asset manager is responsible for the management of the investment funds offered by the plan.</p>	
81.		
82.	The contract elements must remain flexible so that they can be adapted to suit each particular outsourcing situation or Member State specifics.	

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83.	We support the idea of the appointment of an independent custodian. This is an effective way to safeguard the physical and legal integrity of the assets of a pension scheme.	
84.	We very strongly agree with EIOPA that there is a need for a study to assess the real impact of the proposed new requirements. This is particularly important as the impact could significantly increase the cost of IORPs/Pension scheme, and the expected retirement income of members/beneficiaries.	
85.		
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89.	AFG agrees with the analysis of the options. We are also concerned about the negative impacts of option 2 in terms of increased costs and potential member opt out and withdrawals from employers willing to sponsor.	
90.	AFG welcomes convergence of provision of information to supervisors, in certain fields, where appropriate and provided it would not lead to disproportionate reporting requirements. We think this is a sufficient first step towards convergence of information provision.	
91.	AFG strongly supports the introduction of a <b>KIID-like document for pension schemes</b> to ensure that members receive relevant pre-enrolment information at or before joining to provide future members with comparable information on pension schemes and enable them to make the choices they are asked to make and compare, including between IORP schemes and a life insurance products. The adoption of the KID for pension scheme would also represent a valuable and practical step to strengthen financial literary and investor education. We consider that the requirements are not only necessary for DC schemes. A KIID-like document could also be helpful where employers/IORPs carry the investment risks and members are not asked to make choices, to allow members compare the relative quality of their pension schemes with other schemes and long-term savings products. This is essential to create a level playing field in the lon-	

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	term savings market.	
92.	<p>We support the introduction of a KIID-like document for pension schemes.</p> <p>We consider that the elements of the UCITS KIID give ample possibility to provide essential product information. This said, it is clear that some adjustments will be required, in particular to provide information beyond investment to take into account the very long-term horizon of retirement savings and the specific information that are important to pension scheme members (e.g. employer contribution, tax relief available, etc). This means in particular that performance scenarios should be included in the KID and that the assessment of risk of different investment options and asset allocations in DC schemes should be conditioned to the time horizon of the member and may not be an objective characteristic of the option.</p> <p>Regarding the content, we agree with EIOPA that the presentation of costs and associated charges should be an essential part of the KID. The goal should be to make all costs and types of remuneration transparent.</p> <p>It is very important that the introduction of a KID for pension schemes facilitates comparisons between schemes and IORPs. Indeed, employees may have different schemes to choose from. Often, the underlying investments are similar. This is when it is very important to provide information on which members are able to make sound investment decisions. In these cases, other factors than the ones specified by EIOPA have a great impact on the investment outcome for the individual scheme member. Scheme solvency is mentioned, but there are also administrative fees associated to the scheme itself, costs for benefits and so on. Another important factor differing schemes are longevity assumptions. It is very important to make these factors visible and understandable for the scheme members. Where an IORP is employer sponsored the member may not have a choice of IORPs without loss of the employer contribution, the disclosure must include the value of this investment so that members are able to understand the value of this.</p>	
93.	AFG agrees with EIOPA that finding an appropriate way of presenting a <b>risk/reward profile</b> that is meaningful for all pension schemes will be challenging.	

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	<p>In general, we consider that short-term risk measures (such as the one-year VAR used in the solvency II framework) would not be appropriate to use for the long-term assessment of risk.</p> <p>We strongly believe that the risk ranking should vary with time horizons, and allow for a more favourable ranking of equity-oriented investment options for long horizons. It would be even better if the risk measure was adjusted according to each scheme members time to pension – thus illustrating increasing equity risk for shorter investment horizons. We also agree with EIOPA that it would be worth exploring the pros and cons of labeling the investment options according to their investment horizon and not to the level of risk.</p> <p>We agree that that performance information should always be included in a KID, as it is an important part of members’ decision-making process. And we strongly support EIOPA’s view that performance scenarios would be very useful in the presentation of performance information. Dealing with this via level 2 implementing measures is a good idea.</p>	
94.	<p>AFG believes that a <b>personal annual statement</b> is essential. We would like to stress the importance of providing consistent information on levied costs, including administrative costs and the costs of specific benefits/guarantees.</p> <p>While taking note that it might be “<i>impossible and undesirable</i>” to fully harmonize the information requirements regarding occupational pensions foreseen in Article 20(7), we strongly agree with EIOPA that the minimum harmonization level could be raised especially for DC schemes.</p>	
95.	<p>We agree that the <b>format of a potential KIID-document</b> couldn’t be <i>fully</i> standardized at EU level, as country-specific information is often essential.</p> <p>This said, standardization of the KIID is crucial to foster comparability among pension schemes, one of the key aspects of this initiative. Tailoring of the KIID will be necessary to a certain extent, but it should be limited in order to ensure comparability, and some key elements should be required for all KID. Concretely, in our view, the structure of the document needs to be standardized and the basic elements/building blocks should be the same for all schemes, extending to aspects beyond</p>	



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	<p>investment. Certain parts of the key information and its presentation should also be standardized and consistent as possible, irrespective of tailoring otherwise allowed.</p> <p>We agree with EIOPA's suggestion to define principles at Level 1, while detailed technical requirements would be tailored by means of implementing measures. With regard to the latter, the implementing measures to the UCITS Directive should be considered a starting point for regulatory action.</p>	
96.	<p>AFG considers it is very important to introduce information requirements not only for DC schemes but also for DB schemes. This is because of the arguments in response to Question 92. AFG agrees that the additional costs for IORPs are less significant than the benefits in terms of protection of members and in terms of information and help in taking informed decisions.</p> <p>We recognize the difficulties of the task, and therefore recommends that sufficient time be given to in-depth analysis and stakeholder testing.</p>	