

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:	AMICE	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>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.</i>	Public
<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in column "Question". ⇒ 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>. ⇒ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions. ⇒ 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 CP-006@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p>		
Question	Comment	
General comment	AMICE, the Association of Mutual Insurers and Insurance Cooperatives in Europe, welcomes the opportunity to provide some comments on EIOPA's response to the Call for Advice on the Review of the IORP Directive of 2003.	

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More than two thirds of all insurers in Europe belong to the mutual and cooperative insurance sector which accounts for close to 25% of all insurance premiums paid by European policyholders. In some EU jurisdictions, mutual/cooperative insurers are the providers of pensions schemes, thus protecting a fair portion of European citizens.

From the outset, AMICE would like to stress that members and beneficiaries of all type of pension schemes should benefit from the same level of protection. Therefore, all financial institutions that provide occupational pension products should be regulated according to the risks those products present. As a result, this protection should not depend on the legal form of the institution. Institutions for occupational retirement provision and insurers providing pension products should be subject to the same rules.

AMICE would however like to point out that some Member States still apply Article 4 of the IORP Directive. This means that as long as the IORP Directive has not been reviewed, the playing field will remain unlevel among the providers of pension services.

AMICE believes that the provisions of the Solvency II framework should serve as the basis for regulating all financial institutions providing occupational pension products although it is certainly necessary to adapt individual Solvency II provisions to pension activities. The level of protection under Solvency II is higher than that under Solvency I. It would in our view neither be sensible nor defensible to establish a less protective regime for institutions providing occupational retirement products.

AMICE would like to stress that it is pillar 1 of Solvency II which requires most adaptations because some of its parts of it are not directly suitable for pension schemes. We therefore suggest that the Commission take a legislative initiative and create a dedicated regime for all pension schemes, including non-occupational schemes. In contrast, we feel that pillars 2 and 3 of the Solvency II framework provide a good basis for a prudential framework for providers of occupational pensions. Certain adaptations are certainly necessary, but we support widely the application of the level 1 provisions of Solvency II. For this reason, we have limited our comments on EIOPA's response to CfAs 13 through 23 to relatively general expressions of support of EIOPA's proposals. We have to strongly emphasise, however, that the consistent application of the principle of proportionality remains paramount. Mistakes that in our view are being made and will be made (on levels beneath level 1) in the implementation of the Solvency II framework for insurers must not be repeated in the

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	<p>field of supervision of occupational pension providers.</p> <p>In addition to these introductory comments, we provide answers to a limited number of questions of this call for advice, which are considered as most important at this stage of the process by our members. We reserve the possibility – and look forward to the opportunity – to make additional comments in the course of the further legislative process.</p>	
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6.	<p>For the mandatory separation of assets and management, AMICE recommends that reference be made to Art. 74 of Directive 2009/138/EC. Beyond this, we feel that additional work is necessary to better define “ring-fencing” in this context.</p>	
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12.	<p>AMICE supports the total balance sheet approach where all the risks and their interactions are considered, provided that the specific security mechanisms of pensions’ institutions are reflected. Likewise, AMICE also requests that mutual/cooperative insurers who benefit from similar security provisions are given the same option.</p>	
13.	<p>The assets should be valued market-consistently. Otherwise it would not be consistent with all other developments in the area, which aim at market-consistency. The respective principle in Solv II should be copied into a revised IORP Directive.</p>	

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14.		
15.	AMICE agrees with this proposal by EIOPA.	
16.	AMICE agrees with EIOPA's proposal to insert a recital in the revised IORP Directive ensuring that supervisory valuation standards should be compatible with accounting standards.	
17.		
18.	As indicated in the introduction, AMICE thinks that <u>all types of pension schemes</u> should benefit from the same level of protection. The technical provisions should consist of a Best Estimate and a risk margin, as in Solvency II.	
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20.	AMICE agrees with EIOPA that the best estimate of IORPs is calculated gross, provided that they are calculated separately.	
21.	Pension schemes should be valued consistently with the same discount rate, otherwise there would not be a full harmonisation. The technical provisions should not depend on the sponsor covenants; there is a risk of double counting of the security provided by sponsor support if there is an allowance to use a different discount rate.	
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23.	Surplus funds should not be included in the technical provisions; the article on surplus funds in Solvency II should apply.	
24.	AMICE agrees with EIOPA's proposal of introducing Article 79 of the Solvency II Directive.	
25.	AMICE agrees with EIOPA's suggestion of introducing Article 80 of Solvency II with appropriate amendments into a revised IORP Directive.	
26.	AMICE is in favour of applying option, i.e. the application of article 81 of Solvency II with the necessary amendments to address IORPs' characteristics.	
27.	AMICE thinks that an insertion of Article 82 of Solvency II with appropriate amendments into the new IORP Directive would be useful- especially for small and medium-size players	

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28.	AMICE is favourable to the insertion of Articles 83 of the Solvency II Directive into the revised IORP Directive.	
29.	AMICE is favourable to the insertion of Article 84 of the Solvency II Directive into the revised IORP Directive.	
30.	AMICE agrees with the introduction of Article 85 of Solvency II, widely unchanged, into a revised IORP Directive granting supervisory authorities the power to increase the amount of technical provisions.	
31.		
32.	AMICE is of the view that Member States should refrain from adding their own rules to the calculation of technical provisions, provided that the functioning of IORPs is brought to an acceptable level of harmonisation across Member States.	
33.	AMICE members are in favour of valuing sponsor support as an asset; they argue that full transparency of the sponsor support should be required. Overall, we support a harmonized approach.	
34.	AMICE agrees with EIOPA's proposal to apply Articles 87-99 on own funds to IORPs and, subject to further analysis, with the amendments proposed by EIOPA.	
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36.	AMICE would like to see that the right conditions are in place to ensure a higher level of security for beneficiaries within financial service providers. In order to create a level playing field for all pension providers, a solvency regime based on the "same risks, same consumer protection rules" principles should be a first priority on the European agenda.	
37.	<p>For many AMICE members it is evident that the application of a one-year time horizon for the application of the confidence level is not appropriate for the pensions business. We have already argued in the Solvency II discussions that in some areas of insurance, even in long-term business on the non-life side, a one-year horizon is as such the wrong approach (see also EIOPA's considerations in par 10.3.29).</p> <p>We are aware of the difficulties of finding any appropriate alternative and of the complexity any alternative choice would entail. Nevertheless, we see ourselves unable to flatly agree that a one-year</p>	

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	horizon should be used.	
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39.	<p>We agree that an annual assessment of the SCR position leads to a higher level of policyholder protection. This consideration, however, points for us in a very clear way towards the application of the principle of proportionality: where a lower level of scale and complexity exists, policyholder protection can to the almost same extent be achieved by less-than-annual calculations.</p> <p>As a starting point, we propose a calculation every three years with a possibility for the supervisor to intensify its supervisory activity, e.g. by requesting more frequent calculations. In general, the provisions at level 1 should define the principles, and all more detailed measures should be addressed on level 2.</p>	
40.	AMICE agrees with the application of an MCR upon IORPs provided it includes the security mechanisms mentioned above. The principle of proportionality should determine the frequency of the MCR calculation.	
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44.	AMICE suggests the creation of a specific process (not identical to the one in Solv II) in case of a breach of the SCR. In such a case, the "early warning indicator" character of the SCR must be taken into account and therefore all remedies to return to full SCR coverage should follow a flexible approach, taking account of scale, nature and complexity of the IORP and the national context. We would expect that for IORPs the recovery periods are defined in years rather than trimesters.	
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47.	AMICE agrees that the application of the prudent person principle as such is a sufficient basis for IORPs' investments.	

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48.	The prudent person principle should govern investments. We do not support any additional limitations, particularly not a possibility for Member States for introducing such limitations.	
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51.	AMICE is in line with the current prohibition on borrowing but believes that subordinated loans should not be prohibited.	
52.	AMICE is in favour of the application of measures reducing pro-cyclical behaviour but wishes to stress the need for a calibration which is adapted to the characteristics of pension schemes: long horizon of assets and liabilities and the problem of liquidity.	
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65.	As outlined in our introduction, we generally support the application of the principles of pillar 2 of Solvency II, with an appropriate division between level 1 and level 2 texts. We underline the	

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	importance of the principle of proportionality in all provisions on governance.	
66.		
67.	See our response to Q 65.	
68.	As outlined in our introduction, we generally support the application of the principles of pillar 2 of Solvency II, with an appropriate division between level 1 and level 2 texts. We underline the importance of the principle of proportionality in all provisions on governance	
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