

| <b>Comments Template on EIOPA-CP-11/006</b><br><b>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b>  |  | <b>Deadline</b><br><b>02.01.2012</b><br><b>18:00 CET</b> |
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| Company name:   | Assuralia, the association of insurance companies in Belgium   |  |
| Disclosure of comments:   | EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.<br><br><i>Please indicate if your comments on this CP should be treated as confidential, by deleting the word <b>Public</b> in the column to the left and by inserting the word <b>Confidential</b>.</i> | Public   |
| <p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in column "Question".</li> <li>⇒ 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>.</li> <li>⇒ 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.</li> <li>⇒ 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"> <li>○ 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.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-006@eiopa.europa.eu">CP-006@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p> |  |  |
| <b>Question</b>   | <b>Comment</b>   |  |
| General comment   | The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. Our responses to a  |  |

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**Response to Call for Advice on the review of Directive 2003/41/EC: second consultation**

**Deadline**  
**02.01.2012**  
**18:00 CET**

number of specific questions of the second Call for Advice need to be understood together with the following remarks:

1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.

2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios.<sup>1</sup> The European Commission and the European Parliament are presently considering these issues in the context of the Omnibus II directive and the Solvency II implementing measures.

3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries:

- a) With regard to the *pension institutions*, there seems to be no reason not to apply a prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk (e.g. operational risk). This goes both for quantitative and qualitative requirements.
- b) With regard to the *pension obligation*, Solvency II rules seem to be adequate to quantify at least the liabilities of the total pension obligation. On the asset side, we would suggest a very cautious approach with regard to the idea of recognizing sponsor covenants and pension protection plans as assets to cover the liabilities of an IORP in the newly proposed Holistic Balance Sheet (HBS). Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative to cope

<sup>1</sup> Note that academic research has shown that appropriately taking into account the long-term perspective can result in less demanding capital requirements and more stable solvency ratios than what is prescribed by Solvency II at present. See DEVOLDER, "Solvency requirement for long term guarantee: risk measure versus probability of ruin", *European Actuarial Journal*, to be published.

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|--|--|--|
|  | <p>with a situation where the tangible assets held by IORPs do not cover pension liabilities sufficiently.</p> <p>4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level).<sup>2</sup> These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field.</p>   |  |
| 1.   | <p><b>CfA 1 SCOPE OF THE IORP DIRECTIVE</b></p> <p><b>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?</b></p> <p>The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following general remarks:</p> <p>1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.</p> <p>2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios.<sup>3</sup> The European Commission and the European Parliament are presently considering these issues in the</p> |  |

<sup>2</sup> From the beneficiary's protection point of view, this objective is valid for employers in the situation of book reserves. Book reserves do not seem to be discussed in the present call for advice, however. The focus should be on achieving a consistent level of security for all pension beneficiaries in a way that employers can afford over time.

<sup>3</sup> Note that academic research has shown that appropriately taking into account the long-term perspective can result in less demanding capital requirements and more stable solvency ratios than what is prescribed by Solvency II at present. See DEVOLDER, "Solvency requirement for long term guarantee: risk measure versus probability of ruin", *European Actuarial Journal*, to be published.

**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**

context of the Omnibus II directive and the Solvency II implementing measures.

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- b) With regard to the *pension obligation as such*, Solvency II rules seem to be adequate to quantify at least the liabilities of the total pension obligation. On the asset side, we would suggest a very cautious approach with regard to the idea of recognizing sponsor covenants and pension protection plans as assets to cover the liabilities of an IORP in the newly proposed Holistic Balance Sheet (HBS). Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative to cope with a situation where the tangible assets held by IORPs do not cover pension liabilities sufficiently.

4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level).<sup>4</sup> These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field.

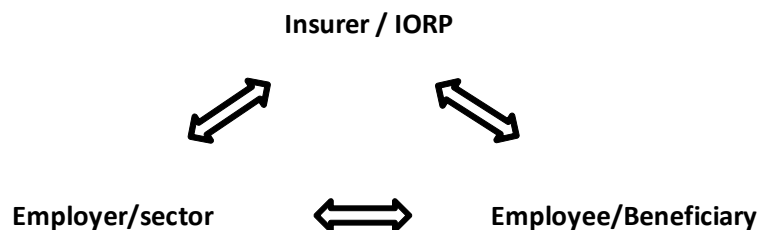
<sup>4</sup> From the beneficiary's protection point of view, this objective is valid for employers in the situation of book reserves. Book reserves do not seem to be discussed in the present call for advice, however. The focus should be on achieving a consistent level of security for all pension beneficiaries in a way that employers can afford over time.

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02.01.2012  
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**Scope**

Occupational pensions are characterized by (1) a focus on long-term investment strategies that match their long term liabilities; and (2) a triangular relationship between the sponsoring employer, the employees/beneficiaries and the pension institution (IORP or insurance company).



These characteristics may influence the way supervisory authorities need to deal with quantitative requirements (pillar I), qualitative supervision (pillar II) and disclosure rules (pillar III). It is therefore technically sensible to focus the scope of IORP II on **occupational pension providers**.

Occupational pension providers are **defined** in the draft response as providers of long term pensions "where the employer plays an important role in the funding of the pension plan". They should in our view include pension plans funded by the employer, but also pension plans for the self-employed (draft response nr. 4.3.5.) and pension plans organised on the level of an economic sector. Contrary to what the draft response seems to suggest (draft response nr. 4.5.), the role of the employer in the establishment of the provider is not relevant: Multi-employer commercial pension funds and insurance undertakings are for example occupational pension providers that are not established by the sponsoring employer.

This definition would imply that a number of funded **1<sup>st</sup> pillar bis** schemes are out of the scope of IORP II. EIOPA is right to point out that beneficiaries of all types of complementary pensions should be protected by high levels of prudential standards. We suggest to take a legal initiative in this field

**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**

and to use the recitals of IORP II to explain that funded 1<sup>st</sup> pillar bis schemes need a consistent risk based prudential framework. The framework for insurance companies is the best benchmark available at present.

Prudential rules and capital requirements serve to protect the occupational pension savings of people. A consistent degree of protection therefore needs to be set up for all occupational pensions.<sup>5</sup> It cannot be stressed enough that **both insurers and IORPs** are providers of such occupational pensions. As Solvency II will probably be put in practice when IORP II is still under discussion,<sup>6</sup> there is a clear need to avoid varying protection levels between beneficiaries serviced by insurance undertakings and IORPs. The prudential regimes of these two directives can be aligned for occupational pensions by adopting the following technical measures:

(1) The European legislator should first ensure that Solvency II and IORP II would become operational simultaneously for occupational pensions. Such alignment can be achieved by introducing a workable transitional regime in Solvency II for occupational pensions offered by insurers via the presently discussed Omnibus II Directive.

(2) The European legislator should also open up the quantitative requirements of IORP II to insurance companies if they would turn out to be more adapted to long-term pensions than Solvency II. The IORP II Directive could amend the level 1 Solvency II directive in order to achieve such consistency (explicitly by amending the Solvency II directive itself or implicitly by amending art. 4 of IORP I).<sup>7</sup>

2.

**Are there any other options that should be considered? Please provide details including where possible in respect of impact.**

Cfr. Q1: the scope does not have to be changed (Option 1) if accompanied by specific measures to

<sup>5</sup> This regards all providers, i.e. insurance companies, art. 17 (1) IORPs and sponsor backed IORPs. From the beneficiary's protection point of view, the principle is also valid for employers in the situation of book reserves.

<sup>6</sup> Draft response nrs. 4.3.19 – 4.3.21.

<sup>7</sup> The present article 4 of the IORP Directive does not allow insurers to apply article 17 of the IORP directive with regard to own funds.

**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**

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|----|---|--|
|    | align the prudential regimes for insurance companies and IORPs involved in occupational pension provision.  |  |
| 3. | <p><b>Which option is preferable?</b></p> <p>Cfr. Q1: the scope does not have to be changed (Option 1) if accompanied by specific measures to align the prudential regimes for insurance companies and IORPs involved in occupational pension provision.</p>  |  |
| 4. | <p><b>Are there occupational pension schemes currently falling outside the scope of the Directive, without being explicitly excluded? Are there border line cases that may need further attention?</b></p> <p>We are not aware of occupational pension schemes that are currently falling outside of the scope while not being explicitly excluded by IORP I.</p> |  |
| 5. | <p><b>CfA 2: DEFINITION OF CROSS-BORDER ACTIVITY</b></p> <p>The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.</p>                             |  |
| 6. | <p><b>CfA 3: RING FENCING</b></p> <p>The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.</p>  |  |

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| 10.  | <p><b>CfA 4: PRUDENTIAL REGULATION AND SOCIAL AND LABOUR LAW</b></p> <p><b>Do stakeholders agree with the analysis of the options as laid out in this advice, including preference for option 2?</b></p> <p>The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following remarks:</p> <p>1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.</p> |  |



**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**

2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios.<sup>8</sup> The European Commission and the European Parliament are presently considering these issues in the context of the Omnibus II directive and the Solvency II implementing measures.

3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries:

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**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**

**Prudential regulation and social and labour law**

The draft response mainly deals with the cross-border issues linked to the demarcation between prudential regulation and social/labour law. i.e. to determine more clearly which prudential issues will be administered by the home member states' supervisory authority in contrast with other (social and labour law) issues controlled by the host member state.

A fundamental issue closely linked to this question regards **the influence that social and labour law can or cannot have on prudential regulation and supervision**. We believe it is important for the protection of employees and beneficiaries to harmonise the level of security (prudential) in all member states of the EU, especially in a context of increased employee mobility and cross-border activity. The European Commission's objective of creating an internal market for occupational retirement provision on a European scale<sup>9</sup> seems technically impossible to achieve if prudential standards would not be harmonised.

While national social and labour law has an important role with regard to the design of the pension obligation (cfr. draft response nr. 8.3.15), it seems technically inevitable to accept that European prudential requirements must safeguard the actual materialisation of that obligation (harmonised security level). The desire of the Commission to harmonise the security level for all pension providers - regardless of the pension obligations' design itself - therefore seems to be consistent and appropriate (cfr. draft response nr. 8.3.1.).

The draft response mentions that member states may have a different appreciation with regard to the **trade-off between the security (confidence level) and the affordability of pension benefits** (cfr. draft response nr. 8.3.15-8.3.16). This needs to be approached with extreme caution. Lowering the confidence level because of affordability means that the pension sponsor and supervisor accept an increased risk of failure to provide the promised benefits to employees. Decisions with

<sup>9</sup> European Commission, Call for Advice from EIOPA for the review of directive 2003/41/EC (IORP II), 30.03.2011, p. 1

| <b>Comments Template on EIOPA-CP-11/006<br/>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b> |   | <b>Deadline<br/>02.01.2012<br/>18:00 CET</b> |
|--|---|--|
|  | regard to the potential reduction of pension benefits should in our view be made in the design of the pension obligation itself (e.g. the level of guarantees and benefit mix). Contrary to what is suggested in draft response nr. 8.2.25, it should not have an impact on the prudential confidence level (i.e. the minimum level of probability that the promise will be kept).  |  |
| 11.  | <p><b>How would you assess the impact of option 2?</b></p> <p>The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.</p>   |  |
| 12.  | <p><b>Chapter 8: Quantitative requirements</b></p> <p><b>What is the view of the stakeholders on the holistic balance sheet proposal? Do stakeholders think that the distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs should be retained or removed?</b></p> <p>The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following remarks:</p> <p>1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.</p> <p>2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios.<sup>10</sup> The</p> |  |

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**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**

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4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level).<sup>11</sup> These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field.

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<sup>11</sup> From the beneficiary's protection point of view, this objective is valid for employers in the situation of book reserves. Book reserves do not seem to be discussed in the present call for advice, however. The focus should be on achieving a consistent level of security for all pension beneficiaries in a way that employers can afford over time.

**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**

**I. The HBS as a response to the specificities of IORPs**

In our understanding, the HBS is a method to acknowledge the specificities of IORPs as compared to insurance companies. The draft response mentions a number of specificities that would potentially explain why IORPs are to be treated differently from insurance companies when it comes to prudential supervision (draft response nrs. 2.6.5.-2.6.8). Examined from the Belgian perspective, **most of those specificities seem to be assumptions rather than facts**, however:

- a. The first specificity suggested by the draft response regards **the context of social and labour law** in which IORPs operate. The experience in Belgium shows that the context of social and labour law is specific for occupational pensions rather than for the entities that manage them. Social and labour law requirements imposed on occupational pensions in Belgium are identical for IORPs and insurance companies.<sup>12</sup> They both manage pension plans that are agreed upon by means of collective labour agreements between social partners, on the level of an individual company or on the level of an economic sector (f.e. the food industry and the construction industry).
- b. The draft response also suggests that employers and beneficiaries may be more **committed to provide capital** to their IORP than the shareholders of an insurance company (draft response nr. 2.6.6.). This argument does not seem to be rock-solid:
  - The value of the commitment of any party to provide capital in adverse events is a fact that needs to be assessed in practice and cannot be assumed. Shareholders of insurance companies may just as well be a stronger and more diversified source of funding than a single sponsoring employer, especially in adverse economic circumstances. The commitment of employers to provide

<sup>12</sup> These social requirements are predominantly governed by the Act of 2003 on Complementary Pensions (Wet Aanvullende Pensioenen).

**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**

capital is not only depending on the accessibility of the commitment itself (draft response nr. 9.3.212), but also on the capacity to provide that capital (draft response nrs. 9.3.193 to 9.3.215).

- Solvency II provides a risk-based framework and terminology that can be used for such an assessment. A defined benefit pension obligation organized by means of a unit linked life pension plan of an insurance company is for example very similar to a defined benefit obligation managed via a sponsor backed IORP. Moreover, the mechanism of members being asked to provide additional capital in the event of a shortfall is recognized in Solvency II for mutual insurance companies that are confronted with financial difficulties. This approach can be used for IORPs.
- c. The draft response finally highlights that **proportionality** is particularly important for IORPs because supervisory authorities do not have the practical capacity to supervise the **140.000 IORPs** in the same depth as the 4.753 insurance companies presently existing in the EU. We limit our comments here by stating that
- the application of proportionality in the context of Solvency II does not lead to less intense prudential supervision for insurers of smaller size. Solvency II does not distinguish between small and large insurers, but focuses on the nature and the complexity of the risks that are involved.
  - the HBS approach could be limited to cases where the costs linked to the HBS are justified by the nature and complexity of the pension plan's risks. Take the example of multi-employer funds: The modalities of features that may be considered for pension plans (e.g. sponsor covenants or benefit haircuts) will often be tailor-made per employer and influenced by national legislation. It is technically complex and costly to properly account for the different

**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**

characteristics of all plans managed by such a multi-employer IORP.

- solutions to practical capacity problems may be found in setting up firm internal control and governance structures (pillar II). Outsourcing a number of controls to independent third parties such as auditors may contribute to achieving a workable supervisory regime also.

Under the umbrella of proportionality, it is sometimes also argued that sponsor backed **pensions are ancillary to the main business focus** of employers and should therefore be under less demanding prudential requirements than insurers. The opposite seems to be true. A fortiori when employers are not focused on the occupational pensions they have promised, prudential standards are essential to protect beneficiaries.

## **II. The holistic balance sheet (HBS)**

From what we understand from the draft response, the objective of the holistic balance sheet (HBS) is to provide a framework that enables the European Institutions to harmonize the level of security of all pension plans that involve an IORP to some extent (draft response nrs. 8.1.2-8.1.4).<sup>13</sup> It offers a new conceptual framework to identify and regulate explicitly how and by whom a number of risks linked to the provision of the occupational pension plan are borne. Risks linked to pension obligations can be explicitly measured and accounted for in the HBS (draft response nr. 8.1.4), regardless of whether the employer or the IORP is bearing the risk.<sup>14</sup> In the context of such an **HBS, there seems to be little reason to distinguish between article 17 (1) IORPs, SB IORPs and mixed article 17(3) IORPs.**

There is a need to clarify **the role of the HBS** and what it is actually meant to depict, however. The draft response leaves room for at least two interpretations: a 'holistic' interpretation (A.) as well as a 'narrow' interpretation (B.).

<sup>13</sup> Draft response nrs. 8.1.2 – 8.1.4

<sup>14</sup> Draft response nr. 8.2.17.

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

**Deadline**  
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A. The 'holistic' interpretation of the HBS

One possibility is to picture the initial employer's **total pension obligation** from the perspective of the employee/beneficiary, including "elements that go beyond the IORP itself" (draft response nr. 8.3.8).

This holistic HBS would include those risks that are not managed via an IORP (incl. the part demarcated by dotted lines in the figure hereunder), i.e. the risks that the employer would have to acknowledge as risks not covered by a third party in the context of IFRS/IAS 19.<sup>15</sup>

This approach provides an overview on the financial soundness of occupational pensions in which IORPs are involved and offers supervisory authorities the opportunity to supervise and protect the actual total pension rights of beneficiaries. This seems fair.

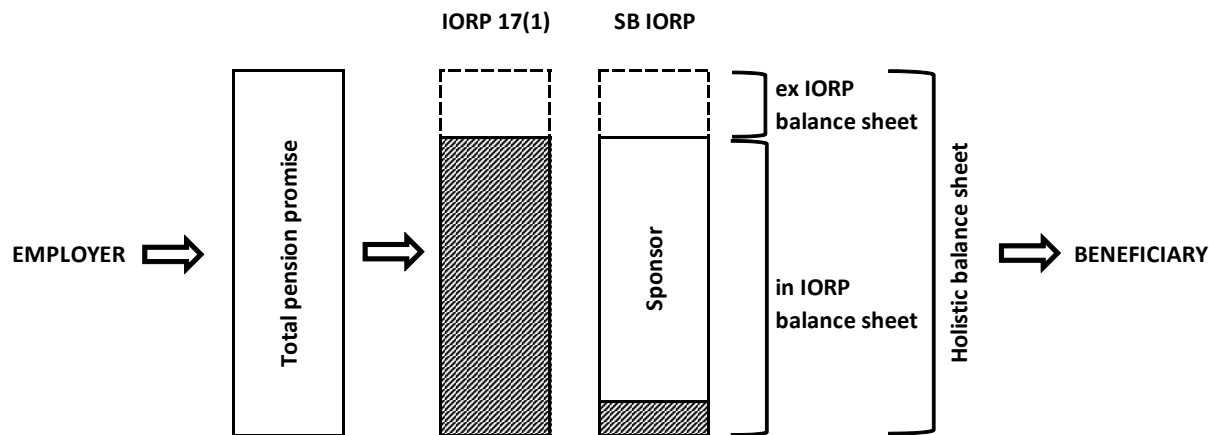
In practical terms, the 'holistic' interpretation of the HBS would have as a consequence that the balance sheet of the IORP itself would differ (significantly) from the holistic balance sheet of the pension obligation as a whole:

- a) Article 17(1) IORPs provide guarantees or biometric cover themselves, with the employer not being obliged to provide any support. The **balance sheet of such an IORP** pictures its own assets and liabilities, including the solvency buffer (consistent with Solvency II). The **HBS** on the contrary includes the IORPs' assets and liabilities as well as the remaining part of the pension obligation that is managed by the employer outside of the IORP (if any).
- b) Sponsor backed IORPs (SB) do not cover risks with regard to the pension obligation itself but rely on the sponsoring employer to provide additional support to make up losses incurred. The employer bears the risk and uses the IORP as a vehicle to execute (part of) the pension obligation in practice. The **HBS** would for those IORPs correspond with the pension part that is

<sup>15</sup> The risk borne by the employer outside the IORP or in the IORP via a sponsor covenant would logically be mirrored in the review of Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer.



**managed outside of the IORP** plus **the balance sheet of the IORP** (including to some extent security mechanisms such as sponsor support).



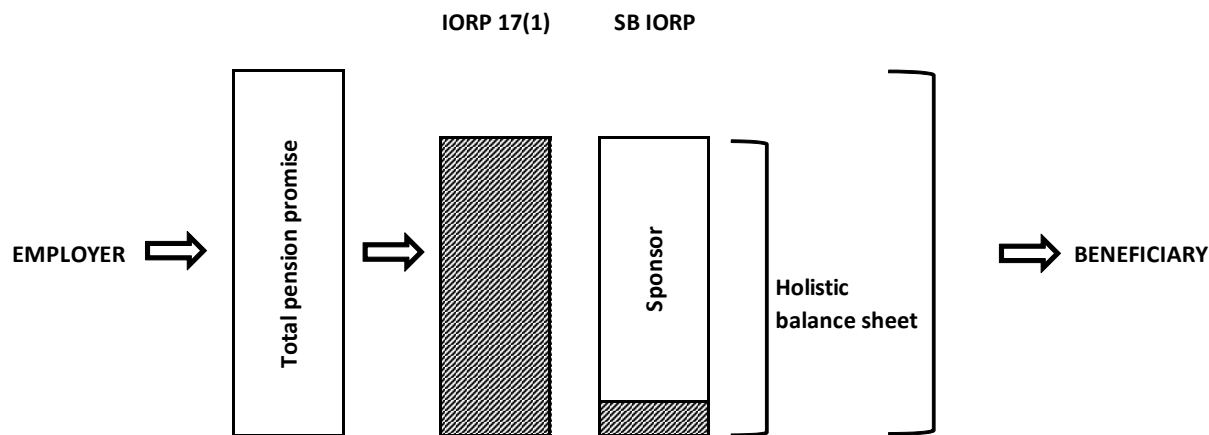
The 'holistic' interpretation of the HBS regards the total pension obligation of the employer. It therefore resembles to some extent the IFRS/IAS 19 reporting requirements for employers. It would be useful to **examine the similarities and differences between IFRS/IAS 19 and the holistic HBS.**

**B. The 'narrow' interpretation of the HBS**

Another possibility would be to develop an HBS that would only picture the **risks that are managed via the IORP**. This HBS may help supervisors to control IORPs of different kinds with a consistent conceptual framework, as shown in the figure hereunder. It may also result in one balance sheet being applied to an IORP, instead of the two balance sheets that co-exist in the 'holistic'

interpretation of the HBS (cfr. supra : point A.).

The narrow interpretation of the HBS entails a number of concerns. The figure hereunder shows that the HBS does not allow supervisors to take the beneficiaries' point of view vis-à-vis the security of the total pension obligation. The decision of the employer to manage a pension risk via the IORP or not would in this scenario determine whether the risk appears on the supervisor's monitor. **Giving the employer such a discretionary power seems to contradict the objective of effectively protecting the pension rights of beneficiaries.**



**III. Key features linked to the HBS**

The use of Solvency II principles to quantify the liabilities linked to a pension obligation may potentially reveal that the liabilities managed via the IORP are more important than assumed at present (among others because of including a 'risk margin'). The HBS described in the draft response allows employers to cover these revealed liabilities with 'intangible' features such as the possibility of

**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**

benefit reduction, sponsor covenants and pension protection plans rather than with tangible assets (e.g. bonds and equity). Benefit reduction, sponsor covenants and pension protection plans are in that sense key features of the HBS.

The described HBS essentially allows supervisors to avoid that IORP II would require sponsors of an IORP to cover a number of actual pension liabilities with tangible assets. It seems reasonable to look for ways to avoid a sudden upheaval of occupational pensions that would be detrimental for pension beneficiaries. At the same time however, **ignoring that real pension liabilities will at predetermined points in time need to be covered with real assets is damaging for pension beneficiaries** just as well.

**Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative.** They would avoid sudden upheaval while progressively evolving to a situation where liabilities are sufficiently covered by real assets in all member states of the EU. This alternative underlines the need for caution with regard to sponsor covenants and pension protection plans.

**1. The sponsor covenant**

A sponsor covenant is a financial resource for any pension vehicle. To the extent that a sponsor covenant is solid and situated within the time horizon used to determine the security level of the pension plan, one could fairly regard it as an asset.

A number of comments in this regard:

1/ Sponsor covenants that do not legally or contractually oblige the employer to finance the IORP cannot be taken into account as an asset to cover the liabilities of the IORP.

2/ The value of the sponsor covenant as an asset depends on the financial strength of the employer

**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**

and it is a fact that adverse events that hit the IORP could hit the employer at the same time (default risk correlation).

3/ The financial strength of the employer becomes weaker when the deficit of the IORP grows. The bigger the problem on the liabilities' side of the IORP grows, the lower the covering capacity of the sponsor covenant becomes because of the increased risk of default of the employer. The value of the employer covenant is therefore dynamic and should not be overestimated.

4/ It seems technically logical not to use sponsor covenants as an asset if they are situated out of the time horizon used to determine the confidence level. The fact that such a sponsor covenant is available can be mentioned in pillar II governance measures, however.

5/ A sponsor covenant that is regarded as an asset in the balance sheet of the IORP would logically need to be mirrored somehow in the balance sheet of the sponsoring employer. This raises the question of overlap/differences with other disclosure tools such as IFRS/IAS19.

**2. Pension protection schemes**

Pension protection schemes (PPS) are last resort protection mechanisms that intervene in case of bankruptcy of the pension vehicle or the plan sponsor. They are to a large extent comparable with insurance guarantee schemes. The draft paper considers whether the existence of such PPS should be accounted for in the HBS, thereby allowing a PPS to cover technical provisions and risk buffers.

We propose caution when reflecting on PPS to cover the technical provisions and risk buffers of IORPs. The dangers of covering solvency capital and/or technical provisions by a PPS are considerable:

**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**

- a. PPS are last resort protection mechanisms that redistribute the consequences of bankruptcy of the pension vehicle or the plan sponsor over the market or tax payers. Allowing PPS to cover technical provisions and risk buffers will provide an incentive for pension vehicles and plan sponsors to take undesirable levels of risk ('moral hazard').
  
- b. A call on the full capacity of PPS would entail considerable risks for society. By introducing a PPS public authorities assume the final responsibility for the occupational pensions that have been promised by employers. Although PPS are important to restore and maintain confidence, it is fair to say that the more technical provisions and solvency buffers are being covered by a pension protection plan in the HBS, the more the liability of the state grows. Counting on such large state interventions economically comes down to transferring (part of) the cost of occupational pensions to future generations of tax-payers. It does not help to achieve the European Commission's objective of creating adequate, safe and sustainable pensions (cfr. Green Paper on Pensions of 7 July 2010, p. 1).

The fact that PPS participation is not suitable to cover technical provisions or solvency capital does not mean that it is irrelevant. It could for example be useful for supervisors to regularly monitor the risk that the PPS implies for the market and (ultimately) for tax-payers.

13.

**CfA 5: Valuation of assets, liabilities and technical provisions**

Cfr. Q. 12

The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.

**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**

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**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**

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**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**

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**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**

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| <b>Comments Template on EIOPA-CP-11/006<br/>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b> |  | <b>Deadline<br/>02.01.2012<br/>18:00 CET</b> |
|--|--|--|
|  | members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.   |  |
| 33.  | <p><b>What is the stakeholders' view on the analysis regarding sponsor support? Do stakeholders agree with EIOPA that IORPs should value all forms of sponsor support as an asset and take account of their risk-mitigating effect in the calculation of the solvency capital requirement?</b></p> <p>The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following remarks:</p> <p>1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.</p> <p>2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios.<sup>16</sup> The European Commission and the European Parliament are presently considering these issues in the context of the Omnibus II directive and the Solvency II implementing measures.</p> <p>3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries:</p> <p style="padding-left: 40px;">a) With regard to the <i>pension institutions</i>, there seems to be no reason not to apply a</p> |  |

<sup>16</sup> Note that academic research has shown that appropriately taking into account the long-term perspective can result in less demanding capital requirements and more stable solvency ratios than what is prescribed by Solvency II at present. See DEVOLDER, "Solvency requirement for long term guarantee: risk measure versus probability of ruin", *European Actuarial Journal*, to be published.

**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**

prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk (e.g. operational risk). This goes both for quantitative and qualitative requirements.

- b) With regard to the *pension obligation as such*, Solvency II rules seem to be adequate to quantify at least the liabilities of the total pension obligation. On the asset side, we would suggest a very cautious approach with regard to the idea of recognizing sponsor covenants and pension protection plans as assets to cover the liabilities of an IORP in the newly proposed Holistic Balance Sheet (HBS). Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative to cope with a situation where the tangible assets held by IORPs do not cover pension liabilities sufficiently.

4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level).<sup>17</sup> These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field.

**Sponsor support**

A sponsor covenant is a financial resource for any pension vehicle. To the extent that a sponsor covenant is solid and situated within the time horizon used to determine the security level of the pension plan, one could fairly regard it as an asset.

<sup>17</sup> From the beneficiary's protection point of view, this objective is valid for employers in the situation of book reserves. Book reserves do not seem to be discussed in the present call for advice, however. The focus should be on achieving a consistent level of security for all pension beneficiaries in a way that employers can afford over time.

**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**

|     |  |  |
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|     | <p>A number of comments in this regard:</p> <p>1/ Sponsor covenants that do not legally or contractually oblige the employer to finance the IORP cannot be taken into account as an asset to cover the liabilities of the IORP.</p> <p>2/ The value of the sponsor covenant as an asset depends on the financial strength of the employer and it is a fact that adverse events that hit the IORP could hit the employer at the same time (default risk correlation).</p> <p>3/ The financial strength of the employer becomes weaker when the deficit of the IORP grows. The bigger the problem on the liabilities' side of the IORP grows, the lower the covering capacity of the sponsor covenant becomes because of the increased risk of default of the employer. The value of the employer covenant is therefore dynamic and should not be overestimated.</p> <p>4/ It seems technically logical not to use sponsor covenants as an asset if they are situated out of the time horizon used to determine the confidence level. The fact that such a sponsor covenant is available can be mentioned in pillar II governance measures, however.</p> <p>5/ A sponsor covenant that is regarded as an asset in the balance sheet of the IORP would logically need to be mirrored somehow in the balance sheet of the sponsoring employer. This raises the question of overlap/differences with other disclosure tools such as IFRS/IAS19.</p> |  |
| 34. | <p><b>CfA 6: SECURITY MECHANISMS</b></p> <p>The extremely short delay for responding to the technical consultation document has forced the</p>   |  |

| <b>Comments Template on EIOPA-CP-11/006<br/>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b> |   | <b>Deadline<br/>02.01.2012<br/>18:00 CET</b> |
|--|---|--|
|  | members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.  |  |
| 35.  | The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.   |  |
| 36.  | <p><b>What is the stakeholders' view on the analysis whether to introduce or not a uniform security level for IORPs across Europe? Do the stakeholders agree with EIOPA's decision not to recommend a specific probability? If not, what specific probability should be imposed upon IORPs?</b></p> <p>The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following remarks:</p> <p>1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.</p> <p>2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios.<sup>18</sup> The European Commission and the European Parliament are presently considering these issues in the</p> |  |

<sup>18</sup> Note that academic research has shown that appropriately taking into account the long-term perspective can result in less demanding capital requirements and more stable solvency ratios than what is prescribed by Solvency II at present. See DEVOLDER, "Solvency requirement for long term guarantee: risk measure versus probability of ruin", *European Actuarial Journal*, to be published.

**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**

context of the Omnibus II directive and the Solvency II implementing measures.

3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries:

- a) With regard to the *pension institutions*, there seems to be no reason not to apply a prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk (e.g. operational risk). This goes both for quantitative and qualitative requirements.
- b) With regard to the *pension obligation as such*, Solvency II rules seem to be adequate to quantify at least the liabilities of the total pension obligation. On the asset side, we would suggest a very cautious approach with regard to the idea of recognizing sponsor covenants and pension protection plans as assets to cover the liabilities of an IORP in the newly proposed Holistic Balance Sheet (HBS). Appropriate transitional regimes and sufficiently long recovery periods may be a better alternative to cope with a situation where the tangible assets held by IORPs do not cover pension liabilities sufficiently.

4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level).<sup>19</sup> These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field.

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**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**

**A uniform security level**

We believe it is important for the protection of employees and beneficiaries to harmonise the level of security (prudential) in all member states of the EU, especially in a context of increased employee mobility and cross-border activity. The European Commission's objective of creating an internal market for occupational retirement provision on a European scale<sup>20</sup> seems technically impossible to achieve if the security level would not be harmonised.

While national social and labour law has an important role with regard to the design of the pension obligation (cfr. draft response nr. 8.3.15), it seems technically inevitable to accept that European prudential requirements must safeguard the actual materialisation of that obligation (harmonised security level). The desire of the Commission to harmonise the security level for all pension providers - regardless of the pension obligations' design itself - therefore seems to be consistent and appropriate (cfr. draft response nr. 8.3.1.).

The draft response mentions that member states may have a different appreciation with regard to the trade-off between the security (confidence level) and the affordability of pension benefits (cfr. draft response nr. 8.3.15-8.3.16). This needs to be approached with extreme caution. Lowering the confidence level because of affordability means that the pension sponsor and supervisor accept an increased risk of failure to provide the promised benefits to employees. Decisions with regard to the potential reduction of pension benefits should in our view be made in the design of the pension obligation itself (e.g. the level of guarantees and benefit mix). Contrary to what is suggested in draft response nr. 8.2.25, it should not have an impact on the prudential confidence level (i.e. the minimum level of probability that the promise will be kept).

37.

The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.

<sup>20</sup> European Commission, Call for Advice from EIOPA for the review of directive 2003/41/EC (IORP II), 30.03.2011, p. 1

| <b>Comments Template on EIOPA-CP-11/006<br/>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b> |  | <b>Deadline<br/>02.01.2012<br/>18:00 CET</b> |
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| 41.  | <p><b>What is the stakeholders' view on the analysis regarding pension protection schemes? If included in the holistic balance sheet, should pension protection schemes be taken into account by reducing the sponsor's insolvency risk or by valuing it as a separate asset?</b></p> <p>Cfr. Q 12</p> <p>The members of Assuralia are managing more than 80% of occupational pensions in Belgium. They include mutual, co-operative, joint-stock and limited insurance companies. The response hereunder needs to be understood together with the following remarks:</p> <p>1/ With state pensions under pressure it is necessary to ensure that occupational pensions are safe and affordable. Prudential rules and capital requirements for long-term pension business must</p> |  |



**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**

consistently protect all pension beneficiaries, regardless of whether they are affiliated with an insurance company or an IORP.

2/ Prudential rules and capital requirements must respect the long-term perspective of occupational pension provision without resulting in excessive volatility of own funds and solvency ratios.<sup>21</sup> The European Commission and the European Parliament are presently considering these issues in the context of the Omnibus II directive and the Solvency II implementing measures.

3/ To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries:

- a) With regard to the *pension institutions*, there seems to be no reason not to apply a prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk (e.g. operational risk). This goes both for quantitative and qualitative requirements.
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**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**

4/ The objective of European prudential requirements is to ensure that beneficiaries all over the EU can reasonably trust that they will effectively receive the occupational pension benefits that have been promised to them (harmonized security level).<sup>22</sup> These requirements set the practical and financial boundaries of what can realistically be promised and therefore need to be respected by national rules and agreements in the social field.

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We propose caution when reflecting on PPS to cover the technical provisions and risk buffers of IORPs. The dangers of covering solvency capital and/or technical provisions by a PPS are considerable:

- a. PPS are last resort protection mechanisms that redistribute the consequences of bankruptcy of the pension vehicle or the plan sponsor over the market or tax payers. Allowing PPS to cover technical provisions and risk buffers will provide an incentive for pension vehicles and plan sponsors to take undesirable levels of risk ('moral hazard').
- b. A call on the full capacity of PPS would entail considerable risks for society. By

<sup>22</sup> From the beneficiary's protection point of view, this objective is valid for employers in the situation of book reserves. Book reserves do not seem to be discussed in the present call for advice, however. The focus should be on achieving a consistent level of security for all pension beneficiaries in a way that employers can afford over time.

**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**

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|     | <p>introducing a PPS public authorities assume the final responsibility for the occupational pensions that have been promised by employers. Although PPS are important to restore and maintain confidence, it is fair to say that the more technical provisions and solvency buffers are being covered by a pension protection plan in the HBS, the more the liability of the state grows. Counting on such large state interventions economically comes down to transferring (part of) the cost of occupational pensions to future generations of tax-payers. It does not help to achieve the European Commission's objective of creating adequate, safe and sustainable pensions (cfr. Green Paper on Pensions of 7 July 2010, p. 1).</p> <p>The fact that PPS participation is not suitable to cover technical provisions or solvency capital does not mean that it is irrelevant. It could for example be useful for supervisors to regularly monitor the risk that the PPS implies for the market and (ultimately) for tax-payers.</p> |  |
| 42. | <p><b>Do stakeholders agree that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members? Should these capital requirements be uniform or tailored to the actual risk profile? Do stakeholders find it sensible to distinguish between DC and other schemes in the area of operational risk?</b></p> <p>To the extent that differences between regimes are not justified (as stated by draft response nr. 2.6.2), Solvency II and IORP II need to be aligned in order to achieve a consistent level of protection of beneficiaries. There is no reason not to apply a prudential regime equivalent to Solvency II to IORPs to the extent that they bear a certain risk. Any IORP bears at least an operational risk.</p>   |  |
| 43. | <p>The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.</p>  |  |

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

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

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

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

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

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**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**

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**Comments Template on EIOPA-CP-11/006  
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|            |   |  |
|------------|---|--|
| <p>91.</p> | <p><b>Do stakeholders believe that additional information requirements – besides the current ones – are not only necessary for DC schemes, but also for DB schemes?</b></p> <p>A pension promise is, firstly, a promise of an employer to his employees. Employers are responsible for keeping that pension promise and for the way it is organised, even if they rely on the services of a pension institution. Information for the employee/beneficiary differs from the information that is relevant for the employer.</p> <p>It is essential for employees/beneficiaries to be adequately informed about those aspects of the pension promise that directly affect their pension claims. This can be done via a document that describes the various aspects of an employer's pension promise to its employees.</p> <p>On the contrary, information about the underlying aspects linked to the management of the pension promise by the pension institution (such as costs, the pension institution's investment strategy, etc.) must be aimed primarily at employers and not at members.</p> <p>Only in the case of a DC plan, where members bear the investment risk and where members can choose from between various investment options, is it necessary for members to be informed via a kind of pre-contractual information document that enables them to correctly estimate the consequences of the choices they are about to make. Assuralia therefore agrees with the suggestion set out in the consultation paper to only provide for a Key Information Document for such DC schemes, as well as the view that the pre-contractual KID will, in that case, differ from what is provided for under the UCITS directive.</p> |  |
| <p>92.</p> | <p><b>Are stakeholders happy with the potential introduction of a KIID-like document for DC schemes and with its contents as envisaged in the draft EIOPA advice? In particular are stakeholders happy with the introduction of a document (KID) that would contain information beyond investment?</b></p> <p>A pension promise is, firstly, a promise of an employer to his employees. Employers are responsible for keeping that pension promise and for the way it is organised, even if they rely on the services of a pension institution. Information for the employee/beneficiary differs from the information that is relevant for the employer.</p> <p>It is essential for employees/beneficiaries to be adequately informed about those aspects of the pension promise that directly affect their pension claims. This can be done via a document that</p>  |  |

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

**Deadline  
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18:00 CET**

|     |  |  |
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|     | <p>describes the various aspects of an employer's pension promise to its employees.</p> <p>On the contrary, information about the underlying aspects linked to the management of the pension promise by the pension institution (such as costs, the pension institution's investment strategy, etc.) must be aimed primarily at employers and not at members.</p> <p>Only in the case of a DC plan, where members bear the investment risk and where members can choose from between various investment options, is it necessary for members to be informed via a kind of pre-contractual information document that enables them to correctly estimate the consequences of the choices they are about to make. Assuralia therefore agrees with the suggestion set out in the consultation paper to only provide for a Key Information Document for such DC schemes, as well as the view that the pre-contractual KID will, in that case, differ from what is provided for under the UCITS directive.</p>   |  |
| 93. | Cfr. Q 92  |  |
| 94. | <p><b>Are stakeholders happy with the introduction of a personalised annual statement to be delivered to each member? Whether and how should it contain information on costs actually levied, and how should it be coordinated with the ex-ante information on costs to be included in the KID?</b></p> <p>Employees and pension beneficiaries must be correctly and clearly informed about their supplementary pensions. Assuralia is therefore in favour of the suggestion that members would be informed annually about various factors relating to their pension claims, such as:</p> <ul style="list-style-type: none"> <li>- What are the acquired rights for the past years of service?</li> <li>- What is the current funding level for these acquired rights?</li> <li>- What is the specific "degree of guarantee" regarding the proposed pension benefits, in other words to what extent is the pension promise guaranteed and who is providing that guarantee?</li> <li>- What is the pension amount that can be expected when one works for the employer until retirement age?</li> </ul> |  |

**Comments Template on EIOPA-CP-11/006  
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**Deadline  
02.01.2012  
18:00 CET**

|     |  |  |
|-----|--|--|
|     | <p>The provision of information should focus on the key components of the pension promise that are actually relevant to members. Information about the underlying aspects linked to the management of the pension promise by the pension institution (such as costs, the pension institution's investment strategy, etc.) is aimed primarily at employers, not members. It is preferable not to include this kind of information in the annual communication unless it has a direct impact on members' pension claims.</p> |  |
| 95. | <p>The extremely short delay for responding to the technical consultation document has forced the members of Assuralia to prioritize and to focus on a number of questions. Our lack of response to this question must not be regarded as a lack of interest or opinion.</p>   |  |
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