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<tr><td colspan="2">Comments Template on EIOPA-CP-11/006
Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</td><td>Deadline
02.01.2012
18:00 CET</td></tr>
<tr><td>Company name:</td><td colspan="2">BASF SE</td></tr>
<tr><td>Disclosure of comments:</td><td>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.
Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the left and by inserting the word Confidential.</td><td>Public</td></tr>
<tr><td></td><td colspan="2">The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:
⇨ <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.
○ 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.
Please send the completed template to CP-006@eiopa.europa.eu, <u>in MSWord Format</u>, (our IT tool does not allow processing of any other formats).</td></tr>
<tr><td>Question</td><td colspan="2">Comment</td></tr>
<tr><td>General comment</td><td>• The primary objective of the IORP Review should be to improve the coverage of employees with occupational pensions and the current benefit level.</td><td></td></tr>
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- All actions to change the IORP Directive should be measured against the primary objective.
- Quantitative impact studies & qualitative impact assessments are needed at every stage of the legislative process of revising the IORP Directive in order to avoid unintended adverse consequences
- We would like to emphasize that the Solvency II Directive should not be the starting point of any modification of the IORP Directive. Instead and in line with EC Call for Advice, we would like to advocate developing a supervisory regime sui generis, taking the IORP Directive as the starting point.
- This approach seems appropriate since essential differences exist between IORPs and insurance companies:
  - IORPs have a social dimension providing occupational pension schemes that match the 1st pillar pensions which on their own prove not to be sufficient to secure old age income.
  - IORPs are a means to provide remuneration to the employees for their service with the sponsoring companies and, in addition, a means of the company’s social policy towards its employees. Therefore, IORPs do not provide products that are sold on the private third pillar insurance market.
  - IORPs – mostly – are not-for-profit institutions – they do not have to remunerate shareholders,
  - Occupational schemes provide a wider coverage, especially through collective agreements, as opposed to individual voluntary solutions. Such industry-wide pension schemes tend to be

administered by IORPs.

- Other IORPs have no or very few staff members and the sponsor(s) rely on corporate personnel to manage the scheme. There is evidence that IORPs are characterized by great efficiency and by low internal costs, in particular due to the fact that almost all the employees in a given company or sector are covered. In view of the sustainability and affordability of occupational schemes, these characteristics should not be put at risk.
- IORPs are funding vehicles where the interests of the scheme's board/management are broadly aligned with the scheme members and beneficiaries. There is generally no conflict over the pursuit of a profit by the scheme at the expense of its members and beneficiaries.
- The governance structure of IORPs is characterized by the involvement of social partners, the role of trustees (and/or persons carrying out similar fiduciary responsibilities) and the backing of the employer.
- Solidarity is often a further core element of occupational pension schemes. Members' contributions are mostly calculated regardless of the age, gender and specific occupational risks. A further element of solidarity is the compulsory participation that prevents participants from leaving the scheme as is the case with individual and voluntary solutions.
- IORPs have specific built-in security mechanisms that ensure the benefit security of pension schemes. Some pension schemes allow contributions from the sponsor and main benefit parameters to be modified by the employers and the employees' representatives.

- For DB- and hybrid DB/DC schemes, in at least some Member States, employers have the ultimate responsibility for fulfilling the pension promise. A very important aspect is the long-term investment perspective of IORPs since they administer solely pensions. Therefore, long-term developments are more important than the short-term distortions that have to be considered under the Solvency II regime.

- Because of the significant differences between IORPs and life insurance companies, the application of Solvency II to IORPs would be inappropriate and inexpedient, as this would lead to unbearable financial burdens for IORPs as well as for employers and employees. Instead, IORPs need a separate supervisory regime in which the framework currently in effect with respect to solvency capital requirements, a framework which has proven adequate in the course of the three recent crises in 2002, 2008 and 2011 should essentially be preserved.

Conclusion:

- Occupational pensions are necessary in order to provide an adequate total replacement rate and avoid old-age poverty.
- All future policy initiatives must be judged according to whether they contribute to expanding the coverage of occupational pensions or make employers shy away from voluntarily providing occupational pensions.
- Pension funds in particular should have their own solvency regime with qualitatively-oriented risk-

	based solvency rules as defined in pillars 2 and 3 under Solvency II. • Internal impact studies clearly show that an application of Solvency II to IORPs (an average German Pensionskasse) will lead to a multiple increase (factor 8-10) of solvency capital requirements compared to the current regime. • Requiring IORPs and therefore their sponsoring undertakings to make occupational pensions more secure by additional solvency capital will make occupational provisions less valuable because the benefit level will be reduced. • In order to keep European employers competitive in the world market, they should not be required to lock away extensive capital in pension funds just for safety reasons rather than using these financial resources for investments, research and the creation of jobs. • We see no need to amend the current solvency requirements (Solvency I) as these have proven to be successful for IORPs as of yet – as seen during the last financial crisis; especially closed pension schemes and already existing promises must be excluded from new regulatory initiatives.	
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12.	We believe that the holistic balance sheet proposal is not an appropriate approach for supervisoring of IORPs. First, that such an intention is neither reasonable nor realisable, since significant politically and technically agreed adjustments to the IORP Directive will be required in order to ensure compatibility across all IORPs. Furthermore, significant flexibility would be needed in the approach to take the heterogeneity of the landscape of IORP into account. Workplace pensions are based on social and cultural traditions and strongly linked to first pillar pension provisions in the different Member States. Pension security is about much more than just scheme funding levels alone, and a single approach to pension security, which only focuses on short term solvency will jeopardize many existing European pension systems. We are of the opinion that the technical requirements for such an approach would overburden national legislator, supervisory authorities, IORPs and sponsors, both from the political and the technical perspective. Furthermore, we believe that because it is currently totally unclear how and which of the essential characteristics of IORPs will be considered in the quantitative calculation model, it is not possible to assess the implications of the approach considered in the CfA.	

	The holistic balance sheet approach assumes a priori an unadapted application of the Solvency II model i.e. market consistent valuation of assets and liabilities, a one year time horizon, 99.5% confidence level etc. Applying Solvency II rules to pension funds would mean a drastic increase in required assets. For an average German Pensionkasse requirements on own funds will rise by approximately 40 to 50% of the balance sheet sum or of the sum of the technical provisions. This means an increase in solcency capital requirements by the factor of 8 to 10 or with respect to all Pensionskassen in Germany an additional funding requirement of approximately **€ 35-45 billion**. The main assumption of the holistic balance sheet approach is that the specialties of IORPs are considered as assets and may be used to cover the required additional solvency capital requirements mentioned above. However, in light of the additional funding requirements and against the background that it is currently totally unclear how and which of the specialties of IORPs will be considered, we believe that the HBA will not result in a sustainable outcome for IORPs and sponsoring undertakings.	
13.	We basically agree that assets of IORPs should be valued on a market-consistent basis. However, we believe that the long-term investment strategy which is typical for IORP have to be adequately considered when discussing the evaluation basis for assets. For instance, a key asset class for many IORPs within the context of their long-term-oriented investment strategy is very highly-rated, fixed-interest securities. These securities are held to maturity following the "buy and hold" strategy, purely as a means of generating interest revenue. Based on all accounting rules currently in effect, these assets are not subject to fair value	

	accounting and therefore are not vulnerable to fluctuations in value based on short-term interest rate changes.	
14.	The valuation for technical provisions on a market-consistent basis does not fit the business model of IORPs, whose pension promises are untradable, neither by the insured, who are generally unable to surrender or cancel their promises, nor by other market participants, since IORPs are not selling promises to other insurers, in whole or in part. Transfers of individual contracts or small portfolios are the exception not the rule, and are subject to review in each individual case by the national supervisory authority, a review which extends to the IORP's ability to meet its obligations and the impact on existing contracts. Considering that there is no "market" for pension contracts held by IORPs, any valuation of those contracts based on the fair value method would be, at least initially, a purely theoretical exercise with no practical relevance. Because of the limited fungibility described above, pension promises are held by insured employees almost to the end of the duration ("held to maturity"). Considering any accounting standard, assets with similar characteristics (loans) are not measured based on (volatile) fair value. Hence, IORPs should also be measured in accordance with the technical business plan. Furthermore, we are of the opinion that the responsibility for setting the detailed rules for calculating the technical provisions should remain at Member State level. Since IORPs provide pensions subject to Social and Labour Law, harmonisation of rules should be left to Member States, also since Member States decide	

	upon the security level of the benefits. These security levels vary widely across Europe, since pensions offered by IORPs are based on a wide dispersion of state pensions (first pillar) and fiscal treatments. Harmonisation cannot be achieved without simultaneously harmonising Social and Labour Law and first pillar pensions, a step that is so far considered undesirable by most or all European parties.	
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