

**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:	Direction Générale du Trésor, Ministère des finances, France	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p><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></p>	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	As long as it is relevant, we think logical to push forward a revision of the IORP directive with a Solvency 2 focus. The protection of beneficiaries is at stake. The issue of the level playing field with	

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	the insurance undertakings offering similar products should also be at the center of the reflection since one of the declared objectives of the revision of the directive is to enhance the cross-border activity. If this converging process does not occur, the question of the treatment of the retirement activity of the insurance undertakings will inevitably raise.	
1.	Yes, we agree with the analysis of the options.	
2.		
3.	We would favour a status quo in terms of scope considering the three proposed options. However, we have to pay great attention to the issue of the level playing field in terms of treatment with the non-professional retirement activity.	
4.		
5.		
6.	We agree on the analysis referring to ring-fencing.	
7.		
8.	Yes, we think it is of high importance ring-fencing being compulsory in case of cross-border activity. These ring-fencing arrangements should be strict and established at the very beginning of the cross-border activity.	
9.		
10.		
11.		
12.	<p>We understand that the holistic balance sheet is a core element of the methodology proposed by EIOPA. We have no specific concern regarding it. Nevertheless, in order to avoid any wrong impression of security, the principles underlying the holistic balance sheet should remain consistent with general accountancy principles. In particular, no mechanism should be materialised on the asset side of the balance sheet unless:</p> <ul style="list-style-type: none"> <li>- It is materialised in the IORP (for instance: property items)</li> <li>- It appears on the liability side of the IORPs counterparties (for instance: reinsurance, sponsor</li> </ul>	

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	support, cash at bank, and s.o.)	
13.	Yes, we agree that assets of IORPs should be valued on a market-consistent basis.	
14.	We think that the reference to transfer value is a good way of achieving consistency between IORPs on the one hand, and between IORPs and other stakeholders (such as insurance undertakings) on the other hand. Therefore, we are in favour of keeping the reference to transfer value.	
15.	Yes we agree.	
16.		
17.	For the sake of consistency between IORPs, we are in favour of option 2, keeping the explicit mention of "market consistency".	
18.	We think that only Option 2 (risk margin calculated according to Solvency II principles) allows for comparability amongst IORPs, and achieves the market consistency. Therefore we favour Option 2. We strongly disagree with Option 3, which would not achieve the conditions of a proper and secure run-off of liabilities when capital buffers are reduced to nil (protection of members and beneficiaries).	
19.		
20.	Yes we agree.	
21.	We would favour a risk free interest rate term structure for the calculation of the technical provisions.	
22.	Yes we agree.	
23.	In our opinion, all foreseeable expenses/benefits (even if they occur only in a limited number of future scenarios) should be taken into account in the best estimate of technical provisions. Therefore, we think that all kinds of benefits should be included, irrespective of their unconditional, conditional or discretionary nature.	
24.	Yes we agree.	
25.	Yes we agree.	
26.	We think that Art. 81 of the Solvency II directive should be applied as it is to IORPs. Moreover, the adjustment for default risk of the counterparty should be extended <i>mutatis mutandis</i> to all counterparties treated similarly to reinsurance (for instance: sponsor support, if and when considered on the asset side of the IORPs prudential balance sheet).	
27.	Yes we agree.	

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28.	Yes we agree.	
29.	Yes we agree.	
30.	Yes we agree.	
31.	Yes we agree.	
32.	Yes we agree that no additional rules should be set up by individual member States.	
33.	Regarding sponsor support, our preference clearly goes to a treatment as ancillary own funds (the criteria of the sponsor support perfectly match with those of the AOF as defined in article 89 of the S2 directive). We believe that the risk mitigation option would raise practical difficulties for the calculation by the entity and for the assessment by the supervisor. That is why we do not understand why the risk mitigation option is the only option to appear in the summary box and we ask for a reconsideration of the other option referring to AOF.	
34.	Yes we agree that articles 87-99 of Solvency 2 on own funds should be applied to IORPs.	
35.		
36.	We think essential to have a uniform security level for IORPs across EU (confidence level and time horizon). The protection of beneficiaries and the issue of the level playing field with the insurance undertakings offering similar products are at stake. For reasons of consistency, the Solvency 2 parameters should apply to IORPs. If not, the question of the retirement activity of the insurance undertakings should certainly be re-examined.	
37.	We think essential to have a uniform security level for IORPs across EU (confidence level and time horizon). The protection of beneficiaries and the issue of the level playing field with the insurance undertakings offering similar products are at stake. For reasons of consistency, the Solvency 2 parameters should apply to IORPs. If not, the question of the retirement activity of the insurance undertakings should certainly be re-examined.	
38.	We agree with the introduction of a SCR mechanism as defined in Solvency II. We think that the Solvency II framework allows for an appropriate consideration of the security and benefit adjustment mechanisms of the IORPs.	
39.	We think the SCR should be assessed at least on an annual basis notwithstanding the decisions on the time horizon.	
40.	Yes we agree on the usefulness of the introduction of a MCR.	

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41.	On the issue of PPS, we have to keep in mind the comparison with the insurance undertakings and Solvency2 where insurance guarantee schemes are not taken into account to lower the capital requirements. We have to maintain an option of non-inclusion in the box of options since it is not a mere technical debate but a sensitive issue in terms of level playing field and of prudential assessment.	
42.		
43.	We think that the conditions introduced in Solvency 2 for insurance undertakings regarding the deterioration of financial conditions could inspire the IORP directive revision.	
44.	In general, we believe that the calendar and length of recovery period for IORP should be as close as possible to those applicable to insurance undertakings. Nevertheless, this decision obviously depends on the time horizon issue raised in question 37. There should also be consistent choices in terms of recovery periods regarding the breach of the MCR and of the SCR.	
45.	Yes we agree on the introduction of these stipulations.	
46.	Yes it should be specified what constitutes a recovery plan.	
47.		
48.		
49.		
50.		
51.		
52.	On the issue of cyclicity, we are of the view that the general orientation of the revision of the IORP directive towards solvency 2 should be as comprehensive as appropriate. That is why we think that the same flexibilities should be considered if the requirements are close or similar. Therefore, it seems logical to have a pillar 2 dampener mechanism as suggested in the draft response. In the same way, we think logical to offer the same possibilities regarding the capital requirement on equities (pillar 1 and duration).	
53.	Yes we agree.	
54.		
55.	Yes we agree.	

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56.	Yes we agree.	
57.		
58.	Yes, host States should be allowed to impose sanctions on IORPs without going through the home States.	
59.	The requirements for the supervisory review process for insurance undertakings should also apply to IORPs.	
60.	The requirements for capital add ons for insurance undertakings should also apply to IORPs.	
61.	The material elements of the requirements on insurance undertakings in respect of supervision of outsourcing should also apply to IORPs.	
62.		
63.	Yes, we agree that the material elements of the Solvency 2 requirements for governance should apply to IORPS, subject to proportionality.	
64.		
65.	Yes, we agree on the introduction of the same fit and proper requirements for IORPs as defined in Solvency 2.	
66.	The "fit and proper" requirements should apply at all times and there should be effective procedures and controls to enable supervisory authorities to assess them.	
67.		
68.		
69.	We think that an ORSA is suitable for IORPS since its function is to give a comprehensive view on the risk borne by the entity which is not limited to the time horizon used for the capital requirement definition.	
70.		
71.		
72.		
73.		
74.	Yes, we agree that the material elements of internal audit in respect of insurance undertakings	

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	should also apply to IORPs subject to proportionality.	
75.		
76.		
77.	Yes, we agree that the requirements of Solvency 2 are the correct starting point for the actuarial function.	
78.		
79.		
80.	Yes, the material requirements on insurance undertakings in respect of outsourcing should also apply to IORPS.	
81.		
82.		
83.		
84.		
85.		
86.		
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88.		
89.		
90.	Yes, we would welcome a convergence as complete as possible on the information to supervisors.	
91.	Yes, we believe that additional information requirements are necessary for both DC and DB schemes. Besides, on the issue of information to beneficiaries, we think that EIOPA did not sufficiently focus on the pre-contractual information to beneficiaries regarding the contents of the products. This information should be as detailed and specific as possible, in particular concerning the contractual and/ or legal ability of the IORP to reduce benefits in stress situations. It should be public and accessible to all members and beneficiaries.	
92.		
93.		

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94.		
95.		
96.	Yes we obviously agree with the principle of an impact assessment of the EIOPA proposals but we also expect the directive proposal to be on time for the end of 2012 as recently announced by the Commission.	