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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">Dutch Ministry of Social Affairs and Employment
PO BOX 90801
2509 LV The Hague
The Netherlands</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:
⇨ Do not change the numbering in column “Question”.
⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
⇨ 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.
o 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.
o 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, in MSWord Format, (our IT tool does not allow processing of any other formats).</td></tr>
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Question	Comment	
General comment	**Reaction of the Dutch Ministry of Social Affairs and Employment to the second consultation of EIOPA (Draft advice on IORP revision)** **Introduction** We welcome the opportunity to react to the draft advice by EIOPA on the review of the IORP Directive. EIOPA has done a lot of work in the short period it was given to prepare a response to the Commission's Call for Advice. However, we have fundamental concerns about this draft advice. Though these concerns should and will be discussed at Member States level, we think it will be useful to raise them already at this stage. The Netherlands endorses an integrated approach of economic, social and financial market policy to pensions in the EU. We share the points of interest on pensions made by the Commission in the Annual Growth Survey 2012 and especially the remark that Member States should give particular attention to pursue "the reform and modernisation of pension systems, respecting national traditions of social dialogue to ensure the financial sustainability and adequacy of pensions, by aligning the retirement age with increasing life expectancy, restricting access to early retirement schemes, supporting longer working lives, equalising the pensionable age between men and women and supporting the development of complementary private savings to enhance retirement incomes." In our view, there is no single ideal pension system and there are no single ideal solutions. Therefore, within the objectives agreed upon on EU level, the Member State should remain	

responsible for its pension provision and should keep the opportunity to realise the reforms in its pension system which suits that Member State best. We are afraid that a harmonized supervisory framework, as proposed by EIOPA, is not consistent with this principle. Our concerns are threefold:

- First, we believe that the case for a harmonized framework is weak. It is not clear which problems are solved by a harmonized supervisory framework with a limited scope.
- Second, a harmonized confidence level may have large unintended consequences.
- Third, EIOPA leaves many relevant aspects open. As a result, it is impossible to envisage all consequences of such a framework for our pension system.

Below we will elaborate on these concerns.

Barriers to cross border activities

The present limited number of cross border activities of IORPs is an important incentive to create this harmonized supervisory framework. In our view the limited number of cross border activities of IORPs mainly derives from differences in fiscal policy, differences in Social and Labour Law and differences in social security (i.e. first pillar pensions) in the Member States. And last but not least, the present limited number of cross border activities may be the result of a lack of demand. Therefore, we believe that EIOPA should investigate to what extent differences in supervisory rules *seriously* hinder cross border activities by IORPs.

Limited scope

EIOPA advices to leave the limited scope of the IORP Directive unchanged. This raises questions on proportionality, as at the moment the Directive mainly covers The Netherlands and the UK (85% of

	the IORP capital is located in these two countries). The IORPs in these countries already have risk-mitigating security mechanisms at their disposal. Therefore introducing additional EU measures will have no added value for these IORPs. And because of the limited scope other countries will also not benefit from it. In our view, EIOPA should clarify why it refrains from a "holistic scope". *Same risks same rules* We agree that the "same risks, same rules, same capital" principle should be leading. However, pension products offered by Dutch IORPs differ from the pension products offered by insurance companies. The pension contracts of Dutch IORPs contain ex-post adjustment mechanisms, which are not conceivable in insurance contracts. Hence, it is appropriate to apply different rules. *A single EU confidence level* Against this perspective, the holistic balance sheet introduced in EIOPA's draft advice offers interesting theoretical possibilities for a harmonized prudential framework. We appreciate that it recognizes differences between the pension systems in the EU Member States. We also welcome the attempt to deal with these different pension schemes and we agree with the distinction made between pension contracts offered by IORPs and offered by insurers, for example by noticing the existence of adjustment mechanisms of IORPs. But the complexities of this holistic balance sheet do not give confidence to what extent it could serve as a primary EU supervision tool. For example the draft advice by EIOPA seems to be based on	

	the assumption that safe pensions logically lead to adequate and sustainable pensions. However, a high level of safety also requires a less risky investment policy and/or high buffers. As a result, a high level of safety will also lead to higher pension costs changing the balance between adequacy and affordability. Trying to realise an EU wide confidence level would result for some Member States in very expensive or in lower pensions. EIOPA has put much effort in the design of the holistic balance sheet, while it simultaneously has indicated not being able to make a decision on both the level as well as the need for a single confidence level. We feel EIOPA should make clear how the holistic balance sheet could or should be used in these circumstances. Furthermore, EIOPA should explain what the option to introduce one prudential confidence level would mean for supervision if, besides the prudential level, also a Social and Labour Law level of confidence is introduced (as sketched in for example 10.3.37 and 10.3.73). Especially clarification is needed on the relation between supervision on the official entitlements (defined by Social and Labour Law) and the artificial entitlements created for the purpose of prudential supervision. In this context, EIOPA should also clarify why and how the mathematical approach as suggested in paragraph 9.3.116 could work from a prudential supervision point of view. This paragraph suggests that a 99,5% confidence level can always be assumed as long as one calculates over a lower amount of pension entitlements. However, as the entitlements will only consist on paper and not in a legal sense, its relevance is difficult to imagine from a supervision point of view.	

	Unconditional, conditional and discretionary Another aspect of the holistic balance sheet that EIOPA should clarify is the differentiation between unconditional, conditional and discretionary pension benefits. This is an interesting distinction, but it is not clear to us how the allocation of the benefits will be made (what definitions will be used). The impact of the holistic balance sheet will largely depend on this allocation. As will be made clear in the next paragraphs, this differentiation might have tremendous consequences. *Other issues of the holistic balance* We would like EIOPA to better illustrate how the possibility to reduce pension entitlements through the so-called ex-post benefit adjustment mechanisms, will impact the holistic balance sheet through balance sheet adjustments. And EIOPA should clarify why a pension fund without external shareholders and in which all risks are shared by its participants, nevertheless requires operational capital. *Level 2 decisions* In the draft advice EIOPA sometimes refers to decisions on level 2. At this stage The Netherlands does not support any reference to decisions about the technical aspects on level 2 in the EIOPA advice. Small changes in technical aspects can have a huge impact on national pension systems. The Call for Advice does not ask at which level decisions have to be taken. Suggestions of EIOPA that something has to be decided at level 2 imply that it cannot be decided at level 1. However, as level 1 discussions have not taken place yet it appears strange that EIOPA already advices that decisions should be made at level 2.	

Impact assessment

We look forward to a good impact assessment of the different options in the advice and of the other aspects mentioned above, not only on security but also on the adequacy and sustainability of pensions. This is necessary to be able to make a good assessment of the impact of the different options given in the EIOPA advice and also of the intentions put down by the Commission. We assume that our Dutch pensions will be involved in the impact assessment.

Dutch Pension system and the IORP review

The second pillar of the Dutch pension system (supplementary pensions) consists of collective, solidarity and intergenerational risk sharing elements agreed upon by social partners. Pension benefits in the second pillar are not guaranteed, as the "financial assessment framework" in the Dutch Pension Act is not aimed to "guarantee" pension benefits but is aimed to prevent that burdens will be laid on future generations without constraints. So the prudential regulations in The Netherlands are instrumental to realise social and labour objectives. The outcome of the first and the second pillar of the Dutch pension system together is that pensioners generally receive an adequate pension income.

To maintain this pension system, social partners and government recently reached agreement on pension reforms (after lengthy negotiations). These reforms are in line with the recommendations in de Country Specific Recommendations (measures to increase the statutory retirement age by linking it to life expectancy, and underpin these measures with others to raise the effective retirement age

	and to improve the long-term sustainability of public finances) and correspond with the suggestions to pension reforms given by the Commission in the Annual Growth Survey 2012 mentioned above. We feel that the proposed revision of the IORP Directive will be a huge threat to this Dutch pension reform especially if it results in raising the price of pensions or in limiting the variety of pension products that can be offered to participants. *Trade-off of risk and reward on existing contracts* The Call for Advice suggests that the starting point of the revision on Defined Benefit systems is to set up a harmonised solvency regime based on Solvency II. This means stricter solvency rules for Dutch IORPs, which will result in a fundamental shift in the trade-off between risk and reward. We want to stress that in The Netherlands we accept a higher risk than a 99,5% confidence level suggests. As the trade-off between risk and reward is different and is not the same as generally assumed with insurance companies, both our current and new (after pension reform) contracts do not give hard guaranteed pension benefits. The members ultimately bear the risks, although the contracts do have solidarity and collective elements. This means in our view that in the examples of the holistic balance, both the current and new Dutch pension contracts could best fit in the example of the holistic balance sheet in paragraph 8.3.58. Consequently, EIOPA should make sure that pension contracts which give no hard economic guarantees and in which members bear the risks as an ex-post benefit adjustment mechanism legally allows for a benefit reduction, should fit in the balance sheet illustrated in paragraph 8.3.58, without taking away the hesitations expressed earlier.	

	Impact of higher confidence level for existing contracts in The Netherlands Otherwise it means a harmonized higher confidence level will be put in place. If existing Dutch pension contracts will have to comply with a value at risk measure with a 99,5% confidence level, these funds will have to increase their buffers with about 11% of their liabilities in exchange for an additional degree of safety that has not been called for. If this degree of safety is forced upon us, this will mean that to reach the required buffers in say five years, pension funds will have to cut the nominal pension rights of their participants by about 9%. This cut will be on top of a five year transition period with no indexation. After the transition period the pensions and pension rights will also be structurally reduced by 11% (or the cost covering premiums have to increase by 11%, which is unlikely with the current high level of pension premiums). This high increase in costs will make the current pensions prohibitive for participants, and will thus have a negative impact on the adequacy of the Dutch pension income. **Concluding** With this letter we have raised our general and more specific concerns regarding the revision of the IORP Directive. When there is a need for further explanations, we are always willing to give them.	
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