	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:	**FNV Netherlands Confederation of Trade Unions** **Naritaweg 10** **1054 BX Amsterdam** **PO BOX 8456** **1005 AL Amsterdam** **NETHERLANDS** **Phone +31 20 5816535** **Chris.driessen@vc.fnv.nl**	
Disclosure of comments:	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**.*	Public
	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. ○ 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*, in MSWord Format, (our IT tool does not allow processing of any other formats).

Question	Comment	
General comment	**Comments by the Labour Foundation [full supported by FNV] on the EIOPA Consultation Paper responding to the European Commission's Call for Advice on the proposed revision of Directive 2003/41/EC (the 'IORP Directive')** *Preamble* *FNV full suppots the comments of the Dutch Labour Foundation. FNV is the largest confederation of Trade unions in the Netherlands.* These comments by the Dutch Labour Foundation [*Stichting van de Arbeid*] (the consultation body of the Dutch social partners at national level) [which is full supported by FNV] on EIOPA's Consultation Paper will not deal with the specifically technical aspects that are the subject of the many questions put by EIOPA to the stakeholders from the Member States. For answers to those questions, the Labour Foundation refers to the answers given by the Dutch government and by the Federation of the Dutch Pension Funds [*Pensioenfederatie*]. In the present response, the Labour Foundation will provide more general comments on EIOPA's Consultation Paper. The main conclusions are: 1. The primary common objective of EU policy as regards pension provisions is to ensure accessible, adequate, and sustainable pensions within the Member States. When European rules regarding pensions are introduced – including regarding the development of European supervisory requirements – specific account will need to be taken, however, of the specific features of the	

national pension systems. This is in accordance with the European Commission's principle, as set out in the Green Paper, that the Member States are themselves responsible for the implementation of their own system, and therefore also for their own supervisory framework.

2. There is no need for a thorough revision of the IORP Directive, certainly given that EIOPA itself advises that the scope of that directive should not be extended.

3. Before making proposals for amendments to parts of the IORP Directive, it is first relevant to investigate thoroughly how the pension provisions are organised within the first and second pillars in the Member States, including the relationship between the two pillars. If changes are proposed, it needs to be clear beforehand what effects they will have on the pension systems in the Member States.

4. In the Netherlands, the social partners and the government have concluded a Pension Accord [*Pensioenakkoord*] on the basis of which a major revision of the pension contracts is foreseen. One major feature of the new type of pension contract is an explicit, transparent 'benefit adjustment mechanism' for dealing with changes in life expectancy and with developments on financial markets. The technical aspects of the new type of pension contract are currently being worked out, as is the supervisory framework, which must be appropriate to this new type of contract. The Dutch supervisory system **follows** the major change in the type of contract, and not the other way round! That should also be the case as regards European supervision. It would be a fundamental error for the process that led to the Pension Accord in the Netherlands to need to be repeated due to the implementation of the European supervisory system.

5. Pension contracts in the Netherlands which are implemented by pension funds feature conditional entitlements. In particular, this applies to the new type of pension contract due to the above-mentioned 'benefit adjustment mechanism'. However, the present type of pension contract is also liable to cuts in pension rights in difficult times if funding ratios drop below 105%. So financial risks can ultimately be passed on to the participants. For these pension schemes, the high Solvency

II buffer requirements are inappropriate and counterproductive because this will lead to a substantial general reduction in the pension benefits in the Netherlands.

6. The concept of the 'holistic' balance sheet introduced by EIOPA is an elegant but also highly complex one that would not seem to be very practical for the purpose of European supervision. It is in any case necessary for a thorough 'impact assessment' to be carried out before the decision-making takes place at 'Level 1'.

More general comments
There has been intense discussion within the Labour Foundation since 2009 – partly in the light of the turbulent developments on the financial markets in the past few years – regarding revision of the most frequent types of pension contract in the Netherlands (pension plans based on Defined Benefit (DB)) with a view to bringing about a systematic improvement in the future sustainability of the Dutch pension system.

Firstly, agreement has been reached that the positive trends in life expectancy should no longer automatically be converted into more years of pensionable service but that those trends should basically be compensated for by having people's pensions commence at a later date.

Secondly, the social partners have reached agreement centrally on measures to make pension schemes able to cope with financial shocks. Partly due to the ageing of the population, current pension contracts within the second pillar based on capital coverage have become increasingly dependent on the yield from pension investments. Viewed overall, there is a total of EUR 800 billion in pension investments as against an annual contribution income of EUR 25 billion. Contributions are no longer an effective control tool for coping with financial market shocks. The new pension contracts will therefore need to involve a new and more explicit equilibrium between pension quality and risk profile, at a stable contribution. The new contracts based on the Pension Accord will need to specify risks and communicate them to participants far more clearly than is the case with the present contracts.

	After the outline Pension Accord in 2010, agreement was reached in early 2011 between the social partners at central level and also with the government on an Elaboration Memorandum. Currently, the Ministry of Social Affairs and Employment and the Ministry of Finance – in consultation with the social partners and with the Dutch Central Bank (DNB) – are working on a new financial assessment framework that focuses on the features of new pension contracts that are in line with the agreements and recommendations set out in the Pension Accord. Important elements here are consistency between the level of pension ambition and the financing for that level, as well as the necessary prudence regarding the assumptions made. In connection with the revision of the employment-based pensions within the second pillar, the statutory basic pension within the first pillar (the 'AOW') will be altered. In the light of the trend in life expectancy, the commencement age will be raised from 65 to 66 in 2020 and to 67 in 2025. In combination with this, the AOW will be increased over a number of years more than on the basis of the salary-related adjustment mechanism. Where supplementary pensions within the second pillar are concerned, the standard retirement age will already be increased starting on 1 January 2013. A mechanism will also be introduced to adjust the AOW and the supplementary employment-based pensions to the trend in life expectancy once every five years, with an announcement period of 10 years. Accompanying statutory measures have also been put in place to encourage labour market participation, particularly among older people. The government and the social partners have also agreed that there will be a serious investigation of how tax policy regarding pensions can be co-ordinated with the new pension contracts in line with the Pension Accord. In March 2011, the outcome is expected of a study of the legal options and conditions for converting entitlements accrued under the current pension contracts and active pensions, whether or not collective, into entitlements under the new contracts.	

	The Labour Foundation notes this major process of adaptation in which the Dutch pension system finds itself so as to emphasise that, in accordance with the principle set out in the Green Paper, European policy must not impede that process. The proposals made in the Consultation Paper regarding the solvency requirements that must be met by pension funds must be implemented in such a way as not to disrupt the new equilibrium currently being developed in the Netherlands between pension quality and risk profile. The development of the supervision system, including at European level, should follow the contract and not the other way round. The Labour Foundation is convinced that placing too much emphasis on 'security' regarding the supplementary occupational pension plans within the second pillar will seriously compromise the quality of the pensions to be achieved. The Foundation therefore considers it more balanced to adopt a more integrated approach in which the improved robustness of the AOW in the first pillar (which is financed on the basis of pay-as-you-go) is assessed in combination with the supplementary employment-based pensions. Achieving a high level of security for the nominal pension rights within the second pillar by strongly increasing the capital requirements, for example by having the Solvency II requirements apply to the entire Dutch pension system, will be inappropriate for those entitlements accrued in the framework of the Pension Accord (entitlements that are in fact fully conditional, i.e. without any nominal guarantee, as opposed to pension entitlements based on pension plans insured by insurance companies). This would lead either to greatly increased costs that will threaten economic development or to substantially lower supplementary pension results. Other elements of Solvency II can be applied to pension schemes of this kind, however, for example supervision based on risks, market valuation, and transparency. Although the Dutch social partners and government see the necessity for a thorough overhaul of our pension system, and are in fact preparing the necessary measures, one must not forget that the income situation of elderly people in the Netherlands is very favourable when compared to that of their	

counterparts in most other Member States. The proportion of pensioners who have built up a substantial supplementary employment-based pension continues to increase. That trend is also encouraged by the mandatory requirement for all companies in a particular industry to be covered by the relevant industry pension fund. This is in fact a significant element of the Dutch collective and solidarity-based pension system.

The Labour Foundation also wonders whether the revision of the IORP Directive favoured by the EC should be as comprehensive as is currently proposed by EIOPA. One important reason for the revision in the view of the EC was the presumed necessity to increase the scope of the directive. EIOPA itself now advises that that should not be done, meaning that that reason for a comprehensive review has ceased to apply.

Finally, the Labour Foundation wishes to refer in this connection to the fact that the IORP Directive concerns only the system of supplementary pensions of a very small number of Member States. In fact, it concerns only those Member States with a substantial number of supplementary employment-based pension schemes that are based on capital coverage. It is precisely those Member States that already have a mature system of risk-based supervision.

A more harmonised European supervisory framework for the Member States' pension systems is only worthwhile if the scope of the IORP is extended to the other types of pension systems in the other Member States. Given the threat to the sustainability of these other systems – many of which are financed not on the basis of capital coverage but on the basis of pay-as-you-go – due to the ageing of the population, it would seem obvious for gradual harmonisation to focus on encouraging those Member States to ensure that more of their pension entitlements are financed on the basis of capital coverage. But even in that situation, it is important to respect significant differences between the national pension systems, and for European pension policy and umbrella supervision not to have any contrary effects.

Comments regarding the 'holistic balance sheet' proposed by EIOPA

The Consultation Paper introduces the concept of a 'holistic balance sheet', in which the distinction between unconditional, conditional, and discretionary commitments plays an important role in determining the amount of the technical provisions. Unconditional commitments create a need for higher buffers. The holistic balance sheet is an elegant but also highly complex concept that would not seem to be very practical as a tool for setting up a European supervision framework.

Determining these aspects at European level will become a complicated process and may restrict the flexibility of national systems, thus making it impossible to key in effectively to future developments and specific features of a system.

One also needs to remember that even limited technical changes resulting from European supervision can have a major impact on the structure of the national pension system and may involve high costs for that system. Certainly in the case of a system such as the Dutch one, with a very large amount of pension capital, a small change can mean billions of euros in extra costs.

A thorough impact assessment is therefore necessary before decisions are made at Level 1 regarding the European supervision framework. That is necessary so as to be able to produce a good estimate of the effects of the various options referred to in EIOPA's Consultation Paper.

Final remarks

The social partners in the Netherlands therefore urgently appeal to the European institutions that when taking further steps as regards European regulation they should respect both the specific role of the social partners in giving shape to Dutch employment-based pensions and that of the Dutch Government, which is responsible for the facilitatory framework of regulations. This is of great importance as regards future amendments to the IORP Directive and also as regards further consultations on the issue of how the solvency regime for employment-based pensions should be constructed at European level.

The following topics are important as regards an effective role for Europe in facilitating high-quality,

	sustainable pension provisions in the Member States, in line with the principle of subsidiarity: • promoting the sustainability of the public finances of the EU Member States; • promoting the sustainability of the pension systems of the EU Member States, regardless of how they are financed; • maintaining the tried-and-tested system of open coordination; • taking further steps to remove obstacles to the free movement of workers in the area of pension provisions; • consolidation of the currently valid minimum conditions for cross-border activities of pension institutions; • extension of the effect of the IORP Directive to other Member States than those that have pension provisions that are to a large extent capital-funded (75% of the assets of IORPs in only two Member States, one of them the Netherlands) and clarification of the terms utilised in the Directive in a number of respects. The Labour Foundation will forward a copy of these comments to the EC.	
1.		
2.		
3.		
4.		
5.		
6.		
7.		

8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		
32.		

	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
33.		
34.		
35.		
36.		
37.		
38.		
39.		
40.		
41.		
42.		
43.		
44.		
45.		
46.		
47.		
48.		
49.		
50.		
51.		
52.		
53.		
54.		
55.		
56.		
57.		

	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
58.		
59.		
60.		
61.		
62.		
63.		
64.		
65.		
66.		
67.		
68.		
69.		
70.		
71.		
72.		
73.		
74.		
75.		
76.		
77.		
78.		
79.		
80.		
81.		
82.		

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
83.		
84.		
85.		
86.		
87.		
88.		
89.		
90.		
91.		
92.		
93.		
94.		
95.		
96.		