	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:	Federal Ministry of Finance, Germany	
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. 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).**	
Question	**Comment**	
General comment	Comments of the Federal Republic of Germany on the draft response of EIOPA to the Call for Advice on the review of Directive 2003/41/EC	

The German Government welcomes the opportunity to comment on the draft response of EIOPA to the Call for Advice on the review of Directive 2003/41/EC. EIOPA has presented a comprehensive analysis of the possibilities for revising Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP Directive). Given that the document is 517 pages long, it is, however, fair to ask whether this is the way to enable all stakeholders to participate in the consultation process. Less is sometimes more.

The revision of the IORP Directive is a component of the measures set out in the European Commission's "Green Paper towards adequate, sustainable and safe European pension systems". According to the Green Paper, "an adequate and sustainable retirement income for EU citizens now and in the future is a priority for the European Union". We need to surmount the current challenges in pension policymaking to accommodate future trends – especially demographic ageing. The European Commission has produced an accurate analysis of the issues in its Green Paper.

The objective of the initiative, namely to strengthen and secure retirement income for all EU citizens, can only be achieved if retirement schemes in all EU Member States are placed on a broad footing. The functioning of occupational retirement provisions, the second pillar, needs to be secured and advanced throughout the EU.

The Federal Republic of Germany is one of the Member States that already has an efficient system of occupational retirement provision in place today. Over the past years, substantial efforts have been made to push ahead with the formation and expansion of occupational pensions. Given the established demographic trend and resultant financing issues facing pay-as-you-go statutory pension systems, occupational pensions have to play a major part in ensuring employees have sufficient retirement provisions.

In Germany around 10 million people are currently in receipt of benefits from occupational pensions, with the monthly payment averaging around €400. More than half of the approximately 28 million employees paying social security contributions are accruing occupational pension entitlements with their current

	employer. In 2009, the assets allocated to occupational pensions stood at around €468 billion. The particular characteristics of the respective areas must be taken into account when developing the different pension pillars. Occupational retirement provision's specific attribute is that it is based on labour law, i.e. on personal employment contracts or collective agreements between social partners (the employers on one side and employees on the other). This means occupational retirement provision is primarily an occupational social benefit and not merely a "financial product". As a social benefit, occupational retirement provision does not compete with other financial market products either. Furthermore, employers frequently provide occupational retirement provisions as voluntary social benefits. The primacy of rules under labour law must generally be recognised under supervisory law as well. Where consideration is being given to applying the requirements of the EU's Solvency II regime for insurance companies (Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance) to occupation retirement provision, a distinction must be drawn between the three pillars in that regime. As far as the qualitative requirements, e.g. adequate risk or asset liability management, are concerned, adopting these rules for IORPs with strict adherence to the principle of proportionality generally appears to be an appropriate measure. On the subject of reporting requirements, it may in particular be useful to create special requirements for IORPs in relation to current and prospective beneficiaries. In terms of planning their own retirement provisions in future especially, it is very important for employees in the EU to be informed at an early stage about their accrued pension rights. There is no need for public disclosure requirements to the extent that IORPs provide their services exclusively to staff members. Where the adoption of quantitative requirements (both the capital requirement and the valuation of technical provisions) is concerned, it must be borne in mind that specific mechanisms have often been in	

	place for occupational retirement provision (as is the case, e.g., in Germany) which are designed to guarantee the security of the occupational pensions in full and which have their basis in labour and social law. Particular mention should be made here firstly of the employer's unlimited guarantee obligations and liability towards the employee that arise from the occupational pension the employer has promised. This means employers must themselves pay the occupational pensions if an intermediary (such as a "Pensionskasse" or a "Pensionsfonds") is no longer in a position to do so. The second factor of note is the specific protection provided by Germany's pension insurance association, the Pensions-Sicherungs-Verein (PSV). The PSV assumes the payment of occupational pensions in the event that an employer becomes insolvent. All employers that have made specific occupational pension commitments have to belong to the PSV by law. The membership currently encompasses around 83.300 employers – with almost all large German companies with occupational retirement commitments represented. The PSV has convincingly demonstrated its capabilities in the past. In 2009 it handled a claims volume of €4 billion that was borne by employers. The contribution rates have since been returned to the level prior to the financial market crisis. The unlimited guarantee obligations on the part of employers and the safeguard provided by the PSV – backed by broad swathes of the entire German economy – offer comprehensive protection for people in receipt of occupational pensions and prospective beneficiaries. A change in the capital and technical provisions requirements under the IORP Directive is therefore not necessary. It is most uncertain whether these specific, far-reaching safeguards deriving from labour and social law can be adequately reflected in the existing Solvency II regulatory system. Given the level of protection described and the figures stated, there is no evident reason for considering the idea of classing the guarantee obligations of employers or the PSV merely as ancillary own funds. We also do not see any grounds for the option of entirely excluding collective guarantee schemes which is contained in the draft response from EIOPA. Moreover, the employers' unlimited extended liability and collective guarantee schemes would not only have to be authorised to cover solvency capital requirements, but authorised to cover technical provisions as well.	

	The existence of mechanisms such as unlimited employer liability and collective guarantee schemes is where IORPs differ from life-assurance companies. It is only in the case of IORPs without such instruments that it is possibly worth considering the adoption of quantitative Solvency II requirements. Where such mechanisms exist, however, including Solvency II requirements quantitatively in IORPs' proof of solvency is an unnecessary step which will merely increase the administrative costs of occupational retirement provision and reduce employers' willingness to offer such occupational social benefits. Negotiations concerning the Solvency II project have shown that the new system currently faces great difficulties in handling the present high levels of volatility on the financial markets which produces extreme valuations fluctuations on insurers' balance sheets. This is further reason why it does not seem advisable adopt, via the holistic balance sheet approach, the quantitative requirements of Solvency II for occupational retirement provision. Finally, the German Government would like to reiterate that any measure which is detrimental to occupational retirement provision in Europe must be avoided in all circumstances. The German Government cannot accept any process as part of revising the IORP Directive that weakens occupational retirement provision or makes it unfeasible. All of the measures considered – especially the transfer of quantitative requirements from the Solvency II regime – must be examined carefully on the basis of open and unbiased quantitative impact studies. We reject any prior, unilateral decision made on the basis of the Solvency II model and which is founded solely on academic experts' faith in the system.	
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