

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:	Pensionskasse der Mitarbeiter der Hoechst-Gruppe VVaG; Frankfurt am Main	
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<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <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. <ul style="list-style-type: none"> ○ 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. <p>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).</p>		
Question	Comment	

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Response to Call for Advice on the review of Directive 2003/41/EC: second
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18:00 CET**

General comment		
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10.	<p align="center"><u>Comment on CfA 4: Prudential Regulation and Social and Labour Law</u></p> <p>With chapter 4 of the Call for Advice, the European Commission intends to clarify the scope of prudential regulation at EU-Level trying to set up a proper distinction between prudential regulation and social and labour law (SLL), whose contents are being determined by the Member States.</p> <p>However, one has to question, if such an uniform single set of regulation can be set up across Europe with not impairing the national SLL-Systems and therefore being out of the competence of EU-Legislation. In fact, this will very likely be the case because the pension systems as well as the SLL-Systems in the different states have historically developed in country specific ways.</p> <p>The design of the pension promise, the delivery and protection of pension benefits, the methods of financing the pension benefits as well as the methods of surveillance of the</p>	public

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IORPs are therefore inextricably linked with each other.

Changing or redesigning the rules for only one of these beforesaid structural elements comprising the pension benefit will therefore have wide and strong repercussions like it is the case by communicating vessels.

Therefore, on the area of occupational retirement provision, any changes in prudential regulation, for example on the area of calculating and certification of technical provisions, funding of technical provisions, regulatory own funds etc. will have a severe impact on the cost of financing defined benefit plans, like it is the case in Germany. This is because the methods of financing the pension promise - for example the discount rate to be applied or the biometrical tables to be used - are an integral part of the delivered pension promise. The sponsoring employer as well as the beneficiaries will and must have trust in a sustainable regulatory framework covering all the beforesaid areas.

If one, as raised by the CfA (introducing risk based Supervision for IORPs), would apply the quantitative methods of Solvency II to IORPs, this would cause a tremendous increase of the necessary own regulatory funds. This will have an intense and severe impact in financing the pension promise, which might result in a reduction of benefits and / or increasing contributions as well as the closing of the pension schemes; their regulatory framework being contained in the national SLL.

From this follows, that changing prudential regulation will likewise also have a severe impact to SLL. As SLL covers the pension promises and its protection against insolvency, the co-determination, etc. in its entirety, prudential regulation can not prevail over SLL, because this would mean that in fact prudential regulation will play the decisive role whether or not there will be a vital environment for pension schemes on a state level.

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02.01.2012
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As pointed out and also mentioned by EIOPA on the draft response (8.3.7), a precise definition of the scope of prudential law at EU-level would in effect result in an indirect limitation to the competences of the member states on the area of SLL. A positive scope-definition of prudential law would at the same time mean to limit the scope of SLL by reducing its scope to those parts, which are not to be determined as prudential law. However, such an indirect negative impact on SLL would not be covered by the competences conferred upon the European Union.

The Treaty on European Union determines that "the limits of Union competences are governed by the principle of conferral" (Art. 5 p. 1). This principle means that "the Union shall act only within the limits of the competences conferred upon it by the Member States" while competences not conferred upon the Union "remain with the Member States" (Art. 5 p. 3). On the area of SLL, there was no conferral upon the European Union by the Member States that would give room for an indirect negative scope definition.

Furthermore, Article 114 of the Treaty on the Functioning of the European Union (formerly Art. 95 TEC), which is the legislative competence for the current IORP-Directive and will that probably be again for a "revised" IORP-Directive, especially excludes measures on the area of SLL. Therefore, a "revised" IORP-Directive cannot be used to limit the scope of the national SLL.

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**Comment on CfA 5 and 6:
Quantitative requirements / Holistic Balance Sheet Approach**

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Response to Call for Advice on the review of Directive 2003/41/EC: second
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**Deadline
02.01.2012
18:00 CET**

In the Call for Advice, the EU-Commission made it clear that they wished EIOPA´s response to provide for a common, harmonized level of security for benefits provided by Institutions of Retirement Provision (IORPs) by establishing a single solvency framework that would be applicable for all types of IORPs. In order to achieve these objectives, EIOPA therefore developed the Holistic Balance Sheet Approach and holds the opinion that this balance sheet should be established to "record and measure the obligations and resources of an IORP on a consistent basis". The introduction of such a risk-based system of supervision would inevitably lead to the abandonment of the current distinction between Art. 17 I IORPs, sponsor-backed IORPs and Art. 17 III IORPs.

With respect to the suggested Holistic Balance Sheet Approach and to the view of EIOPA, there seems to be a too strong tendency to harmonize the framework of retirement provision throughout the European Union at all costs.

Nevertheless, the ratio of all regulative measures primarily has to keep in mind the need of protecting the pension entitlements of the members / beneficiaries / insured persons. A protection of members / beneficiaries / insured persons of occupational retirement provision assumes that there still is an existing system of occupational retirement provision across Europe and especially in Germany. The implementation of the Holistic Balance Sheet Approach, as recommended by EIOPA, would simultaneously signify the implementation of risk-based supervision and Solvency Capital Requirements (SCR) for IORPs according to the regulations of the Solvency-II-Directive, which obviously has been the starting point for the development of the Holistic Balance Sheet Approach. Therefore, as already recognized by EIOPA itself on the draft response, the risk-based supervision as well as the included Solvency Capital Requirements could / would lead to "additional costs for IORPs and sponsors which could undermine the cost-efficiency of occupational retirement provision in the EU" and signify a "risk of employers reducing occupational retirement provision (at least for future employees) in the European Union". Especially in Germany, the Holistic

**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**

Balance Sheet Approach as well as the included risk-based Solvency Capital Requirements would lead to a massive cost-increase of occupational retirement provision that would have to be beared either by the employers through higher financial support and / or by the members / beneficiaries through reduced entitlements / benefits. In the end, such economic conditions would lead to a situation, in which there would be no occupational retirement provision offered anymore to the employees by the employers.

Additionally, there is no reasonable way to reduce these upcoming costs by taking into consideration the existing different security mechanisms of IORPs while using the Holistic Balance Sheet Approach. A due consideration of the different security mechanisms existing for IORPs (e.g. sponsor support, benefit adjustment mechanisms or pension protection schemes) by valuating them as a separate asset or by taking them into account for example by reducing the sponsor's insolvency risk might be a testable / verifiable suggestion. However, by valuating security mechanisms for example as an asset while using the Holistic Balance Sheet Approach, the problem of financing the Solvency Capital Requirements would simply be moved to another level, e.g. to the sponsoring undertakings. Furthermore, the EIOPA draft response recommends no reasonable method / basis of calculating / valuating security mechanisms within the Holistic Balance Sheet Approach.

The Holistic Balance Sheet Approach would mean this massive increase of the Solvency Capital Requirements for several reasons and is thus not suitable:

Since IORPs are limited to the business concept of lifelong pension payments and have marginal cancellation rates, their obligations have a much higher duration than those of life insurance companies (IORPs: 20-30 years; insurance companies: 8-10 years). At the same time, a duration match on the asset is not practicable because of the limited availability of capital market instruments. In context with the interest rate stress scenario, the duration, on average three times longer compared to insurance companies, will lead to a leverage

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02.01.2012
18:00 CET**

effect that will influence the Solvency Capital Requirements and thus raise them to an unbearable peak.

In comparison to insurance companies, IORPs have also limited possibilities to create / increase their capital funds. As sources, they are only allowed to use the employers and the employees as well as the interests on capital assets. Therefore, increased Solvency Capital Requirements at the expense of the members / beneficiaries and / or the sponsors are neither reasonable nor desirable.

Furthermore, a one year-horizon and a confidence-level of 99,5 % on the risk-based system of the Holistic Balance Sheet Approach as currently being discussed is also not appropriate for IORPs. While taking into account accrual and payout phases, Pension obligations are distributed over an average term of 50-80 years. While applying the described time-horizon and confidence level, results would become highly sensitive to fluctuations in the interest rate curve which also refers to that specific date. Since there is no need for IORPs to be able to liquidate its obligations at any time, due to the non-redeemable nature of its commitments, there is an obvious conflict between the short-term balance model of the Holistic Balance Sheet Approach and the long-term nature of the operations of IORPs, that operate on the well known "buy and hold" strategy.

During the economic and financial crisis of the past years, IORPs were able to act as a stabilizing factor to the financial markets because of the long-term nature of their operations. Thus, the IORPs investment policy up to now had an anticyclical and therefore calming effect to the financial markets. If IORPs would be subjected to the regulations following the Holistic Balance Sheet Approach, they would also have to act on a short-term operating strategy, contrary to the current long-term approach, to mitigate and avoid unbearable Solvency Capital Requirements. IORPs would thus lose their stabilizing role and would also have to act market-consistent. The Application of the Holistic Balance Sheet Approach, that is comparable to the Solvency-II-regulations, would therefore not only lead

**Comments Template on EIOPA-CP-11/006
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**Deadline
02.01.2012
18:00 CET**

to harmonized balance regulations for IORPs across Europe, but also increase pro-cyclical market-effects and the volatility of the financial markets. EIOPA has already recognized the problem of pro-cyclicality by suggesting the implementation of so-called "equity and pillar II dampeners", that should at least mitigate these effects.

Furthermore, there is no need for a harmonized security-level in between IORPs themselves or between IORPs and insurance companies. There is no "level playing field", that could justify an approach according to the statement "same rules, same capital":

IORPs, especially German IORPs, act as social institutions because of a legal mandate and thus in public interest. Therefore, they are non-profit oriented in opposite to the insurance companies, that have to earn profit to satisfy their shareholders and offer their products on a competitive market and in an international periphery. A "level playing field" on occupational pensions would also mean, that insurance companies should not be allowed to draw any profits from these operations nor to charge any provisions for "selling" such products.

Moreover, IORPs as "monoliners" only offer occupational retirement provision, pensions promises that are offered from the employers to the employees in addition to their regular revenues. Therefore, the institutions and their products are subject to the national social and labour law of the member states, that has not been harmonized on the EU-level yet and for that reason as already mentioned fully remains under control of the member states. Insurance companies on the other side offer insurance-products on the European Single Market as part of the free movement of services and are therefore already subject to the European regulation. Considering these differences, there is no need for a harmonization because of the disparity of the offered products and the different legal requirements that have to be noticed.

In Europe, according to a speech of the EIOPA chairman Mr. Bernardino, held at November,

**Comments Template on EIOPA-CP-11/006
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**Deadline
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15 2011 in Frankfurt, there were 140.000 existing IORPs at the end of 2009. These institutions simultaneously represent thousands of employers and also millions of members / beneficiaries / insured persons. If there is the political desire of a harmonized security-level in awareness of the condition "same rules, same capital", it is still not comprehensible that 140.000 IORPs should in future be subject(ed) to the legal framework of just 4.753 insurers. By considering the number of IORPs and the number of insurance companies, a harmonization can / should therefore only take place by the application of the current IORP-Directive and the Solvency regulations of Solvency I also to insurance companies.

With respect to EIOPA and its objectives, in reference to quantitative requirements for IORPs, the written draft response does not contain an impartial assessment of all options. As already mentioned on p. 216 of the draft response, "following the clarification of the Commission", EIOPA agreed to "consider only those options in the advice that are compatible with the Holistic Balance Sheet Approach". As a consequence, there was no adequate analysis of option 1, the proposal to continue with the distinction referring to Art. 17 of the current IORP-Directive.

For these reasons, option 1 must also be taken into account on the announced quantitative impact study for the Holistic Balance Sheet Approach. The assessment of both options has to be evaluated in order to obtain some clear impact results. Therefore, the quantitative impact study should at least include the following contents:

- National organization of occupational retirement provision (fencing off to first and third pillar)
- Existing security mechanisms for IORP's (e.g. pension protection schemes, supervisory authorities)
- Impact on the future asset-allocation of IORPs
- Financial and fiscal impacts on IORPs, employers, employees and the national budgets of the member states

**Comments Template on EIOPA-CP-11/006
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consultation**

**Deadline
02.01.2012
18:00 CET**

	<ul style="list-style-type: none"> - Impact on the coverage-level of occupational retirement provision - Impact on the pension promises as well as on the national social and labour law <p>To sum up, IORPs are not comparable to insurance companies. There is also no “level playing field” for these institutions, and therefore no need for a harmonization. The members / beneficiaries and their entitlements / benefits are already safeguarded by national security mechanisms and the guarantees of the sponsoring undertakings. An application of option 2, the Holistic Balance Sheet Approach, will just increase the costs of occupational retirement provision and therefore mitigate the amount of the benefits and also the coverage level. The Balance Sheet is also not suitable for technical reasons because of the mentioned specialties of IORPs.</p> <p>As a result, the suggested option 1, the regulations of the current IORP-Directive within the current distinction of Art. 17 IORP-Directive should be pursued in the future discussions.</p>	
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**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**

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**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**

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**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**

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