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:	Verband der Firmenpensionskassen (VFPK) e.V.	
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	The Association of Corporate Pension Funds (Verband der Firmenpensionskassen VFPK e.V.) is the advocacy group of the regulated corporate pension funds in Germany. The association members	

	represent more than 4,200 affiliated sponsoring enterprises in which more than 1.2 million employees and about 270,000 pensioners are insured in the member funds. The following comments represent the opinion of the VFPK members on the questions EIOPA invited us to comment on. Contact: geschaeftsstelle@vfpk.de	
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12.	The present market situation where interest rates are kept artificially low by monetary policy and artificially created liquidity (quantitative easing) clearly shows that all methods using mark to market methods must be critically scrutinized. Life insurers have noticed the same fact and are presently no more operating with market data but have adapted their models of valuating liabilities by using synthecial interest rate curves (illiquidity premium, countercyclical premium, ultimate forward rate…). But surely those adjustments cannot be transferred to the special circumstances of IORPs.	

	The basic aspects of the holistic balance sheet approach are conform with the Solvency II model: mainly mark-to-market resp. mark-to-model valuation of assets and liabilities, 1 year forecast period, 99.5% security level. These basics will have the following direct impacts on existing IORPs: • Extremly high capital requirements due to the duration gap between capital investments and liabilities • Extremly high capital requirements at times of low interest rates • Extremly high dependence of capital requirements upon market parameters at the measurement date • Extremly high volatility of capital requirements at present market conditions due to ongoing changes in market interest rates The holistic balance sheet approach still draws on Solvency II as "suitable starting point" and only varies the Solvency II approach in such a way that employer covenants and coverage by protection schemes are valued as additional "assets" The huge gap in equity resulting from the Solvency II model – as described above – moves thereof from the IORPs into the books of the employers or protection schemes. Therefore the holistic balance sheet approach has to be rejected.	
13.	A valuation of assets on a mark-to-market basis is one of various options for determining an alleged "fair value". Especially the highly volatile valuation of shares and bonds as observed during the past years prevents the only use of mark to market valuation for any risk-based management of IORPs. To ensure consistency the mark to market valuation of assets has to be followed by a mark to market valuation of liabilities which has to be rejectetd.	
14.	Under Solvency II technical provisions are valued by applying the risk free yield curve valid at the date of balance	

	sheet. However in the current capital market environment it is not possible to asses the relevant yield curve. This is why substantial adjustments to the yield curve under Solvency II models are currently being discussed by life insurers (i.e. ultimate forward rate, counter cyclical premium, illiquidity premium, dampener for equities …), which all clearly indicate that the existing market data are not suitable as parameters for the valuation of assets and liabilities of pension commitments. Life insurers actually reject a mark-to-market valuation without making the last consequent step to cancel the whole Solvency II model at least for the time being. The consequences of valuation according to Solvency II will be more drastic for IORPs than for life insurers. Capital requirements resulting from changes in interest rates are extreme volatile and cannot be used for IORP fund management. IORPs are able to overcome short-term shocks relatively quickly due to their long-term commitments. The existence of a „risk free" yield curve is fundamentally questionable in the present situation of extreme volatile capital markets. In particular the application of such an "artificial" (low) yield curve to long-term pension commitments oftenly results in markedly higher commitments. The distribution of IORP risks collectively and by policy term is not being adequately considered.	
15.	The fact that this option is being discussed at all shows the fundamentally high level of insecurity about the valuation of assets and liabilities. There is obviously no putative "fair value" approach for the measurement of "risk based" capital. Basically the IORPs own solvency cannot be taken into consideration in the valuation of commitments since this would present IORPs with bad solvency as having a better position.	

16.	The compatibility of the accounting standards with the accounting principles of the solvency requirements is necessary. Local accounting rules which are central to companies management should continue to be the basis for assessing capital requirements. A solvency balance sheet which specifies a valuation different from the local accounting rules i.e. in form of a mtm valuation or self defined stress parameters leads to contrary steering impulses and contradicts the existing risk management of the IORP. Every change in existing procedures has to allow an adquate transition period which accomodates the remaining terms of maturity of already existing commitments. When extreme changes to the valuation of existing commitments occur (i.e. Solvency II capital requirements, mtm balancing) IORPs have no adjustment options. This will ultimately lead to the destruction of the exiting IORP.	
17.	The application of Article 76 (5) in combination with Art. 77 – 82 for the calculation of the actuarial provision based on a market consistent balance sheet valuation as decribed above should be rejected.	
18.	A risk margin for a potential buyer of the IORP is not appropriate in the calculation of the technical provision. Company pensions schemes cannot be disposed of. There is no market and no value for the assumption of the commitments.	
19.	When calculating the technical provision, both the accrued benefits on the basis of past contributions and the resulting expected future contributions have to be taken into consideration. Deviations from this method are acceptable if the expectation of future contributions can be ruled out on the basis of a contractual agreement or employment law requirement.	
20.	According to Art. 77 section 2 the best estimate value will be calculated on a gross basis, i.e. without deduction of contracts which can be recovered under reinsurance contracts. Recoverable amounts under reinsurance contracts can be deducted from the calculation of best estimate value or can be valued as additional assets	
21.	According to Art. 86 the relevant risk free yield curve will be determined by implementing measures. The relevant risk free yield curve has presently not been determined. Due to high volatilities the level of accrual is subject to the high and incomprehensible fluctuations within the model. This reporting date dependency is not acceptable	

	due to considerable intensity of fluctuation on the company`s balance sheet. The same also applies to Option 2 where in addition to the "risk free" yield curve a further yield curve can be used. This again results in insecurities relating to long-dated commitments and cannot be relied upon as a method for determining capital requirements. In the holistic balance sheet, the method with two yield curves is preferable. If the IORP benefits are additionally secured by the employer's guarantee commitment, it would be practical to apply the interest rates which apply in the international valuation of pension commitments on the basis of AA-rated corporate bonds for establishing minimum capital requirements.	
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23.	As far as pensions are only paid conditionally i.e. in form of profit sharing and only paid when surpluses actually exist these adaption opions have to be consideredConditional payments should therefore not be included in best estimate of technical provisions.	
24.	The valuation of (guaranteed) benefits should be exclusively based on a discounted cash flow approach which is already covered by the best estimate liability reserve.	
25.	The segmentation of pension commitments into risk groups may be applied where necassary.	
26.	This represents current actuarial practice and is valid irrespective of Solvency II`s applicability.	
27.	This fact corresponds with current actuarial methods and is valid irrespective of Solvency II`s applicability.	
28.	We welcome the fact that the best estimate value and the applied assumptions are regularly checked against the empirical value. This represents current actuarial practice and is valid irrespective of Solvency II`s applicability.	
29.	This represents current practice and is valid irrespective of Solvency II`s applicability.	
30.	This fact is valid independently from the application of Solvency II.	

31.	The methodologies used to calculate the provisions should reflect the national characteristics of the Member States . These include in particular security systems, possibilities for adaption, classification of the commitments of IORPs plus labour law-related and socio-political aspects. The level of security that the social partners and IORPs have agreed also has to be taken into account. Additional security is always at the cost of possible benefits. The partners at national level have sole competence for the assessment of the scope of benefits.	
32.	For the above mentioned reasons should the national supervisory authorities should also be able to determine any further specifications and thus adequately take the national characteristics of the insurance business resp. the company pensions into accout.	
33.	The valuation of the employer commitments to pay further contributions or assume part of the payments is an integral component which cannot be separated from the overall commitment.	
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36.	When assessing provisions national characteristics of the Member States must be taken into account. These particularly include security systems, options for adaption, classification of IORP benefits from labour law and socio-political aspects. Among other things consideration has to be given to the necessary security level agreed by social partners and IORPs. Additional security is always at the cost of possible benefits. The fixing the amount of benefits is solely at the responsibility of the national partners.	
37.	The assessment of the risk bearing capability of IORPs over a 12 months period is not at all appropriate and a 12 months period does not reflect to the long terms of commitments entered into, so it does not provide an adequate risk assessment. The control impulses which arise especially because of the short term sight of this model are completely inappropriate for risk adjusted control of long term pension commitments.	
38.	The application of Solvency II models to determine risk based capital is rejected on principal.. The “fair value” assessment of the assets and the liabilities which is used in those models is fundamentally impossible due to the	

	highly volatile capital markets. Therefore the risk based calculation of capital requirements based on mark-to-market assessment should be vetoed particularly since any form of long-term guarantee would lead differences in terms of assets and liabilities which cannot be hedged. The term of pension insurance liabilities at IORPs is approx. 25 years so that any mark-to-market approach for the determination of the "necessary" capital would lead to mistakes in controls and to capital requirements which would not be acceptable. Instead of establishing risk based capital the strengthening of the risk -based management regime should be strengthend. However this cannot be based on the discovery of allegedly necessary capital but must be completely considered at the development of contracts in the future and cover all ALM studies and stresstests as a whole.	
39.	No. As described above, we believe that risk-based capital requirements are not appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level. In any event, we believe that a one-year time horizon to assess the financial position of an IORP is totally inappropriate. The core purpose of an IORP, as opposed to individual forms of provision, is to provide benefits that are equitable across generations by diversifying risks over membership and time and taking advantage of the long-term liquidity premium. Measuring the performance of an IORP over a one-year horizon, would rob the IORP of the ability to carry out this function.	
40.	As described above, we do not believe that risk-based capital requirements are appropriate for IORPs and, therefore, see no need for harmonization of solvency requirements at the EU level. In any event, in a system where there is sponsor support, the possibility of funding deficits with recovery periods, the ability to reduce benefits and the existence of an insolvency protection scheme, the concept of an MCR makes no sense.	
41.	The multi-level controls for the defiined benefits will almost completely eliminate the employer`s default risk so this and other security aspects hould always be taken into account when considering the risk bearing capacity of individual IORPs.	
42.	For the measurement of operational risks in DC and DB plans a consistent approach would be practical. Any	

	additional allocation risks due to conflicts of interests between members should be taken into account when assessing oerational risks in form of a risk premium.	
43.	Internal processes exist to meet the IORPs` duties to report any deterioration of the financial position to the supervisory authority. The supervisory authority has the right to take all measures necessary to ensure that these bligations are met. This must be in relation to the company`s solvency situation. It is necessary to clarify whether the statutory regulations for stabilization have been overruled by the supervisory authority.	
44.	Recovery periods should be oriented to the duration lifecycle of the commitments and should be individually clarified with the local supervisory authority. Possible special features make it impractical to establish a fixed recovery period.	
45.	IORPs should be able to dispose of its assets also in case of non-conformity to the solvency requirements. The statutory stated remediation clause should first come into force before the supervisory authority would have access to the assets.	
46.	In case of emergency for not being able to fulfil the solvency requirements of the supervisory authority the plan for remediation and financing can be coordinated with the national supervisory authority as remediation plan in addition to the statutory stated remediation and possibly being approved in advance (anlogue to public law pension providers to build up insured –based guarantees to cover a lack of capital injection from the employer).	
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