

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:	Standard Life Plc	
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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	
General comment	About Standard Life Standard Life is pleased to respond to EIOPA's second consultation on their response to the European Commission call for advice on the review of the IORP Directive, 2003/41/EC. Providing sustainable, adequate and secure pensions for citizens	

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across the European Union is essential.

Standard Life is a trusted provider of innovative pension products in several member states in the EU, and the leading provider of workplace pension schemes in the UK, where we administer group schemes with over one million members. The content of our response reflects the role we play and our experience and success in enabling and encouraging employers and employees to save voluntarily for retirement. As an employer, we operate both defined benefit and defined contribution pension schemes for our employees in the UK, Ireland and Germany. Finally, through Standard Life Investments we manage assets on behalf of pension funds (At the end of September 2011, Standard Life Group had total assets under administration of over £191bn). As such, we are well placed to share our experiences and our vision for the future of the EU pensions system.

As members of the Association of British Insurers, we have also contributed to, and we endorse, their response to this consultation. Given the potential scale and significance of the changes being consulted on however, we have also chosen to respond directly on some key questions within the paper.

Executive summary - General comments on overarching objectives

1. The European Commission has stated that its three overarching objectives for pensions across Europe are adequacy, sustainability and security. We believe that some of the capital requirements proposed here are focused on one of the three objectives – security – at the unnecessary expense of the other two objectives, rather than on achieving the optimum balance of the three. Many of the quantitative requirements proposed would make existing pension scheme arrangements unsustainable for employers and sponsors, resulting in a diminution of pension provision, and potentially reducing the adequacy of retirement income for large numbers of scheme members.
2. From a market stability perspective we also have concerns over the potential shift in investment strategies which such a regime would likely result in as schemes moved to de-risk in line with new requirements. The scale of pension scheme assets under management are so significant that market distortions from supply and demand could result, which would obviously have much wider implications than just for pension schemes.
3. We have significant concerns over the quantitative requirements expressed in the paper. We believe the desire to apply Solvency II, which was designed as an insurance company regime, to pension schemes will result in some onerous and inappropriate requirements for employers and pension providers.
4. The UK DB scheme has a long history and over the years has incorporated various methods to ensure the protection of member assets and accrued liabilities. It is important to continuously evolve the structure of UK DB scheme pension provision but it is also important that this happens at a rate which is consistent with the ability to financially support

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	<p>the changes.</p> <ol style="list-style-type: none"> 5. The needs of all stakeholders need to be balanced to achieve the best outcome. Ignoring the impact on sponsors and focusing only on the members is likely to result in the risk that significant step changes will be counterproductive and reduce the retirement provision (or other benefits) provided to employees. We are sure this is not the intention of the proposals and we stress the importance of understanding the chain of events which excessively onerous and rapidly introduced changes could bring for employees and employers. 6. We are supportive of consistency, and minimum standards, for companies across Europe with respect to the security provided to the benefits of pension schemes, but this does not necessitate the introduction of an onerous regime which could threaten the remuneration of the very people it is trying to protect. 7. For any changes deemed to be necessary, we recommend a measured and incremental approach to implementation, which explicitly recognises, and consults on, the impact that each stage would have on all stakeholders of pension schemes to ensure that transitions through regulatory change do not result in negative short term actions and volatility in the market place. 8. We support the view expressed that there is no 'one size fits all' approach to the operation of occupational and retail pensions in Europe - due to demographic, national and societal structures which differ across the EU 27 Member States, as well as the significant influence of differing approaches to taxation. 9. We welcome the intention to encourage a single market for pensions in Europe and to remove any inappropriate barriers to cross-border activity. 10. The value of the employer covenant and pension protection fund in the UK need to be suitably recognised. 11. We have some concerns over the potential impact on members' involvement as trustees of pension schemes. 12. The starting point for the design of any information or communication provided to customers should be what they say they value and find meaningful. We have shared our thoughts below on best practice for communications with members, based on our extensive customer research and our experience of helping our business customers to raise levels of engagement and understanding of pensions with their employees. 	
1.	<ul style="list-style-type: none"> • We agree with the analysis of the options. The IORP Directive should remain focussed on IORPs established by the employer and/or where the employer plays an essential part role in funding the IORP. 	

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	<ul style="list-style-type: none"> We are concerned that the introduction of automatic enrolment in the UK may change the classification of personal pension plans, with these falling under mandatory occupational plans. Currently the Directive only applies to trust based pension schemes; personal pension schemes are out of scope because they are covered by other EU regulations. We believe that where an employee may not have taken any direct action themselves to set up the pension plan, these should still be considered personal pension plans under the Directive so as to comply with exceptions that have been made to allow for the introduction of auto-enrolment. 	
2.		
3.	Option 1 is preferable. The scope of the IORP Directive should remain unchanged and the focus should be on enabling more cross-border provision in the existing IORP market.	
4.		
5.	We agree with the analysis of the options. If member states use different definitions of what cross-border activity is, this will create difficulties with the notification and approval processes for IORPs. We agree with the observation that it is possible that some of the lack of take-up may be attributed to lack of demand due to the differences in member states' overall legal and taxation systems, rather than due to failings of the current IORP Directive.	
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10.	Yes, we agree with the analysis of the options. However, we do not believe there is sufficient evidence to show that the changes under Option 2 will deliver significant benefits.	
11.	We believe the impact assessment is correct; but the implementation of Option 2 will only result in overall benefits slightly exceeding associated costs and therefore question the overall merit in making the changes.	
12.	The use of a holistic balance sheet approach, which brings in aspects which trustees may place significant value on (i.e. covenant and contingent assets) is welcome as an overall approach. However, we have concerns over both the complexity within the valuation of non-traded assets and the consistency which could be achieved across IORPs due to the subjective nature of a covenant, for example.	
13.	The use of market value is appropriate when considering market traded assets. However, for non-traded assets such as the covenant this adds a further level of complexity to the valuation. It is difficult to envisage what the market consistent value of the employer covenant means and hence how it helps ensure the provision of benefits for members.	
14.	We do not support a risk-free rate discounting methodology; such a change would be so significant for UK pension schemes	

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	given the current practise that the burden on the sponsors could jeopardise pension provision for future service benefits, discretionary practises or other aspects of staff remuneration. This would mean that the member of the scheme could potentially suffer from the introduction of something which is designed to protect benefits, i.e. it would be completely counter-productive.	
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21.	As stated above in our answer to question 14, we do not support a risk-free rate discounting methodology and we believe that such a change would be so significant for UK pension schemes that it could jeopardise pension provision for future service benefits, discretionary practises or other aspects of staff remuneration. We do not believe this is consistent with the objectives of the review of the IORP directive.	
22.		
23.	It may be reasonable to include aspects such as discretionary increases in the technical provisions, but it is vital that the value of management's flexibility can be fully reflected in the determination of the capital requirements, ie. a net of management action capital requirement. To not take full credit for management actions could lead to sponsors feeling they need to exercise all possible management actions to reduce the liabilities, to ensure full value can be extracted from them. This would not be in the best interests of the members.	
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25.	We support Option 2. Article 15 of the IORP Directive is sufficient and adding the amended Article 80 of the Solvency II Directive is not necessary.	
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33.	Standard Life supports the EIOPA view that sponsor covenants should be valued as an asset and that their risk-mitigating effect should be taken into account in the calculation of the SCR. It is vital that an appropriate valuation of the sponsor covenant can be agreed.	
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38.	We support the idea of calculating a SCR for IORPs but we have reservations over how it would work in practice. As stated in an earlier answer, there would need to be sufficient allowance for the risk mitigating effect of the sponsor covenant and pension protection schemes as well as a confidence level that reflects the risks faced by the IORP and how these differ across different Member States and IORPs.	
39.		
40.	We support EIOPA's Option 1 of the exclusion of an MCR on the basis of it being overly burdensome and of low incremental value to the idea of introducing an SCR / capital requirements. Very clear rules as to what requirements would result from breaching these first and last intervention points would need to be provided for consideration.	
41.	We welcome the proposed recognition for pension protection schemes in EIOPA's response to the call for advice. As with the sponsor covenant we would want to be sure that the rules over how this is valued are appropriate.	
42.	<ul style="list-style-type: none"> • We do not agree that operational risks should be applied to DC pension schemes although we recognise that there are various routes to DC pension provision which may involve regulated life offices. Whilst it may be more straightforward to identify operational risks it is usually much more difficult to quantify the risks of these events. Rather than holding capital against such a spectrum of frequently binary risks it would be preferable for DC schemes to focus on the prevention of operational risk through robust processes, outsourcing decisions etc. Focusing proactively on prevention rather than a subjective quantification, and a resulting cash strain on the sponsor, would be more appropriate. • It should also be noted that a life office selling DC pensions would already hold risk capital against perceived operational risks associated with such products. 	
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47.	Yes, we believe the prudent person principle provides an effective basis for ensuring appropriate investment decisions for IORPs and no additional provisions are necessary.	
48.	<ul style="list-style-type: none"> We do not agree that Members States should have the option to impose limitations that go beyond any restrictions that may be laid down in the Directive. We believe strongly that, provided appropriate disclosure and safeguards are in place, customers should be free to take informed investment decisions and should not be denied access to pension products and investment funds that they believe are appropriate for their individual requirements. The IORP Directive should facilitate a cross-border market in pension products and this would be materially impaired if additional restrictions were to be imposed. 	
49.	<ul style="list-style-type: none"> Defined benefit and defined contribution schemes have some fundamentally different characteristics, which determine the specific objectives that need to be met for each arrangement. For defined benefit schemes, a promise is made to the member and appropriate investment and funding need to be in place to meet that promise. For defined contribution schemes the investment decision is made by the member, or the employer on behalf of the member, with a view to achieving a desired level of performance or risk, rather than to achieve a defined promise. Many of the provisions of the IORP Directive, especially those relating to solvency and associated implications for investment activity within the IORP, are not appropriate or relevant for defined contribution schemes and should not be applied to them. 	
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58.	No. Host member states should not be able to impose sanctions without going through the home member state. We believe this would undermine the concept of regulation by the home state, which is necessary for the effective operation of this Directive and the reduction in some potential impediments to cross-border activity.	

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63.	<ul style="list-style-type: none"> We believe the advice on general governance is appropriate, and that a proportionality clause applicable to all elements of the governance framework is necessary. Like other members of the European pensions industry, and as explained elsewhere in our response (please see answer to Q.49 above), we do not agree with the analysis in 18.3.23 that there are no major differences between defined benefits and defined contribution schemes. We believe there are fundamental differences. 	
64.		
65.	<ul style="list-style-type: none"> We are concerned by the potential implications of this suggestion. In particular, we would not want to see trustees being deterred from being involved, so that only highly paid professional trustees will be willing to operate in the market – with negative consequences for both choice and cost. We believe strongly that member involvement is crucial for the engagement of employees in their pension scheme arrangements and do not want to see any barriers to their involvement as trustees. The current IORP text states that the IORP must be run by people who have appropriate professional qualifications and experience or employ advisers with appropriate professional qualifications and experience. We think this is a good approach, especially where there are member-nominated trustees, as in the UK, who can directly represent the needs, interests and opinions of members in trustee discussions, and who can be advised by professional advisers where they need to refer to relevant expertise. The advice in this consultation paper which requires that those who run or who have ‘other key functions’ have “professional qualifications” “adequate to enable sound and prudent management of the IORP or to properly perform their key function” may prevent some member-nominated trustees from continuing their role. We therefore disagree with this change and believe the IORP Directive should remain unchanged in this regard. Alternatively, if the “fit” requirements are applied, there should be an ability to outsource the running of the IORP or the ‘other key functions’. Further the “fit” requirements could be applied to those running an IORP as a group, which would not require all individuals to meet this test. 	
66.		
67.	As stated in our previous answer, we do not believe the advice in this consultation paper is appropriate. However, in the event	

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	that the requirements are not amended in response to feedback derived from the consultation, those deemed not fit and proper should be given the opportunity to rectify the situation, for example by appropriate training.	
68.		
69.	The UK has very specific requirements for an employer in relation to DB pension schemes which result in a much lesser case for the need for an ORSA. The use of appropriately knowledgeable and skilled trustees and their regulatory requirements to act on behalf of the members of the schemes is a sensible and practical approach to the operation of a pension scheme.	
70.	We do not believe an ORSA is appropriate for IORPs where the member bears all the risk. It is not clear how an ORSA would be constructed for such IORPs as some of the solvency issues that might be relevant for an insurance company should not arise.	
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83.	The appointment of a depository is not the only way to safeguard the assets. This may be carried out by the pension provider or fund manager for example. We believe that the asset management industry is already well regulated, the role of a depository in that industry is clearly defined, and that duplication of regulation is unnecessary and expensive. We therefore oppose option 2 and support Option 1.	
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91.	<p>The information required by members of DB and DC schemes varies in line with the different nature of the two types of scheme, although the fundamental requirement for both is to provide meaningful, but simpler and shorter, communications to members. Many customers do not have a high level of understanding in relation to their pensions and helping them to understand the pension they have and what it provides is key. Customers of DC schemes require information regarding the nature of the service they are receiving, and the nature of the funds they are investing in. Feedback from customers suggests that they currently feel they receive too much information and that much of it is meaningless to them. There is even less benefit to members of DB schemes in receiving additional information. We believe that information requirements should be determined by working with customers to understand what information they value and is meaningful for them, and that any information that does not meet this primary requirement should be excluded.</p>	
92.	<ul style="list-style-type: none"> • Effective communication is a crucial element not only of improving consumer understanding of pensions but also in engaging them in saving for their future. Information should be clear, meaningful and engaging. We also agree that it should enable customers to make effective comparisons between different products, features and funds. However, there are a number of important factors for consideration. • Firstly, the variety of DC schemes, the need to satisfy national requirements, and the range of funds and investment approaches (and sometimes multiple funds within one product) will make it very difficult to effectively standardise the approach without building an unnecessarily complex document. • There is a very real need to ensure that customers are engaged in the benefits of saving for the long-term and that any disclosure of risks does not encourage customers to focus overly on potential dangers or negatives. • The starting point for any document of this kind should be the customer, and their circumstances. This means that considerations such as whether the funds are chosen for them by an employer, the level of understanding they have, and the sophistication of their financial needs will all impact on what they are looking for from a disclosure document. • The basic principle should be to make information as simple and accessible as possible in the first instance, with guidelines for any additional information that may be required. We should respect the fact that customers have asked for less information, and focus on making what we provide as simple as possible, rather than on making it as comprehensive as possible. The use of technology – such as internet based video and other such on-line tools – can also be encouraged to provide engaging communication and education for customers that will help them to understand what they are investing in and the benefits of saving for their long-term goals. 	

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93.	<ul style="list-style-type: none"> We agree with the principle that some investment classes can potentially achieve higher performance over the longer term than others. However, the nature of long-term saving means that risk/reward profiles will vary over time and features such as life-styling and time-based risk management have a significant impact on performance scenarios. This reinforces the need both for effective ongoing communication, and also for professional advice where it is needed to make informed investment decisions that are tailored for individual needs. We would be concerned if efforts to provide appropriate risk comparison information documents to customers resulted in the production of complex, detailed documents when simple, meaningful documents - together with a recommendation to seek professional advice - would be preferable. 	
94.	<ul style="list-style-type: none"> We currently provide DC scheme members with personalised annual statements, and we know that customers place significant value on these annual statements and the opportunity it gives them each year to review their retirement saving and the performance of their investments. However, as we have covered elsewhere, customers tell us that they value simple, concise and accessible information that is relevant to their needs and provides a high-level view of their retirement saving. Feedback suggests there is still too much – rather than too little – information included, some of which has been introduced through successive regulation and could be rationalised and simplified for the benefit of the customer. 	
95.		
96.	<p>We agree with the majority of the qualitative impacts, but we would reiterate that customers tell us that they do not want to receive overly long or complex information. The primary aim should be to produce information that customers value, that enables them to make informed decisions, or encourages them to seek professional advice if they need it, and – crucially – that engages them in the need to save in order to achieve their aspirations for the future. Information which does not meet these objectives should be discounted.</p>	