

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC Scope, cross-border activity, prudential regulation and governance		Deadline 15.08.2011 18:00 CET
Company name:	Pensioenfederatie Prinses Margrietplantsoen 90 2595 BR Den Haag Postbus 93158 2509 AD Den Haag T +31 (0)70 76 20 220 reichert@pensioenfederatie.eu	
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
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in column "Reference". ⇒ 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>. ⇒ 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 firstconsultationiorpcf@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The question numbers below correspond to Consultation Paper No. 01 (EIOPA-CP-11/01).</p>		

Comments Template on EIOPA-CP-11/001
Draft response to Call for Advice on the review of Directive 2003/41/EC
Scope, cross-border activity, prudential regulation and governance

Deadline
15.08.2011
18:00 CET

Reference	Comment	
General Comment	<p>In our answers to questions 1 through 18, we will provide our reaction to the proposed draft answers of the EIOPA. We reserve however our right to come back to some of the questions after further analysis. First, we would like to present EIOPA as well as the European Commission with a couple of key remarks regarding:</p> <ul style="list-style-type: none"> • The process of the call for advice. • The objectives of a revision of the current IORP Directive as put forward by the European Commission. • The general principles that we think should be an integral part of any revised IORP Directive. <p>These key remarks are:</p> <ol style="list-style-type: none"> 1. Our following answer cannot be considered complete as the time for a proper analysis of the concept answer of the EIOPA has been very short and it has been published during the summer vacation period. Therefore we will certainly come back to several of the issues at a later stage. 2. The review of the IORP Directive should be imbedded in a holistic approach. Next to security, adequacy and sustainability need to be addressed with regard to the review of the IORP Directive as it has been done in the Green Paper. 3. In general, we think convergence rather than harmonization should be pursued for pension policy. 4. Proportionality should be defined and be an important part of Level 1 regulations (Lamfalussy process). All decisions with regard to pensions have therefore to be taken at level 1. Further harmonization at level 2 seems to be difficult and we would rather like to see the integration of all relevant actors in the legislative process. Therefore, quantitative impact studies and proper assessments should be an integral part of the whole process of revising the Directive at all stages in 	Public

<p align="center">Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i></p>		<p align="center">Deadline 15.08.2011 18:00 CET</p>
	<p>order to oversee all the (indirect) consequences. Proportionality is already an issue with respect to the scope: since a great deal of second pillar pensions in Europe are not run by specific institutions, the possibility exists that the IORP Directive will cover only a small proportion of all pension provision. For proportionality reasons, a broad coverage should be pursued for the IORP Directive in order for it to be proportionate.</p> <p>5. Sharing the opinion of the Dutch Ministry of Social Affairs, we think that more clarification is necessary on the relationship between the following objectives in point 1.2 of the Commission’s Call for advice:</p> <ul style="list-style-type: none"> • “measures that simplify the legal, regulatory and administrative requirements for setting-up cross-border pension schemes”; • “measures that would allow IORPs to benefit from the risk-mitigating security mechanisms at their disposal”; • (measures) “to modernise prudential regulation for IORPs that operate DC schemes”; • and the following conditions: <ul style="list-style-type: none"> - “The new supervisory system for IORPs should not undermine the supply or the cost-efficiency of occupational retirement provision in the EU.” (see point 1.3 of the CFA); • “The aim is to attain a level of harmonisation where EU legislation does not need additional requirements at the national level.” (see point 7.1. of the CFA). 	

<p style="text-align: center;">Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i></p>		<p style="text-align: center;">Deadline 15.08.2011 18:00 CET</p>
	<p>6. As it is also mentioned by the Dutch Ministry of Social Affairs, it is not clear at this stage which kind of measures are the responsibility of the home member state and which (additional) kind of measures are the responsibility of the host member state, if cross border operations take place under the revised IORP Directive.</p> <p>7. As the EIOPA rightly stated, there might be a very limited demand for cross-border activity (p. 27, point 7.3.13. of the draft answer of the EIOPA).</p> <p>8. The basis for the review of the IORP Directive should be the IORP Directive itself and the different reports published by the CEIOPS. It is not appropriate to use the framework of the Solvency II Directive as a starting point.</p> <p>9. A revised IORP Directive should be able to handle different pension systems and the variety of pension agreements, including hybrid systems and leave enough flexibility for national decisions in this respect. A revised IORP directive should also leave enough flexibility for future adjustments of pension arrangements and for new kind of pension agreements. Pensions should continue to be considered as part of labour agreements. In the Netherlands a proposal for a new pension agreement has just been launched. This proposal can be characterised as a ‘hybrid’ system for the purpose of supervision: the pension agreement is explicitly stating that the pension benefit is conditional and depending on demographics and investment returns. A new IORP Directive should ideally strengthen such a pension deal, and take into account the specificities of such a hybrid system. The main points of this agreement are mentioned hereunder:</p> <ul style="list-style-type: none"> • collectivity, solidarity and compulsory participation are important features of the Dutch 	

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>occupational pension system;</p> <ul style="list-style-type: none"> • a new balance must be found between ambition, security, solidarity and costs; • contributions should be kept at a reasonable level; • the level of security no longer can depend on uniform ex-ante guarantees, but must be secured through the interrelation between risk profile, investment port folio and the technical provisions; • pension agreements must clearly state how risks are shared, for instance in case of shocks on the financial markets; • social partners can decide on the level of security; • increased transparency and good communication about the ambition and the risks and the real pension payments has to be ensured. <p>10. A revised IORP directive should stimulate the accrual of sustainable occupational pension benefits and promote the supply of cost efficient workplace pension provision.</p>	
1.	<p>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?</p> <p>We agree with the analysis of the EIOPA, because we think that currently the scope of the IORP Directive is vaguely defined. This analysis shows that it is difficult to find a common denominator for occupational or workplace pensions. The IORP Directive regulates pension funds, but investment and insurance type</p>	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>vehicles can fall under the IORP Directive too. A clear distinction between the different directives for different institutions seems to be desirable, in order to avoid any possibilities of regulatory arbitrage. For example, Article 4 of the IORP Directive currently allows Member States to apply some provisions of the IORP Directive to the occupational retirement business of insurance companies.</p> <p>The possibility to extend the scope of the IORP Directive should not interfere with the freedom of the Member States to choose whether or not to set up funded pension systems and under which regulation they might then fall. There is a different history of occupational pensions in all Member States. Some are more based on insurance type vehicles, others on collective agreements managed by Social Partners, others are managed by a Board of Trustees etc. There is certainly a need to facilitate the setting up of pension funds in all Member States in view of an ageing society. Up to now there is no clear cut distinction at European level of 1st, 2nd and 3rd pillar pension arrangements. It is advisable that before reviewing the IORP Directive, an overview for the different pension pillars be made across Europe.</p> <p>Another impact that has to be considered is related to the proportionality principle as mentioned in our key remarks. One could question whether the IORP Directive has a European justification and fulfills the principle of proportionality, if it is only applicable for 6 Member States. This, in our view, would be the outcome of option 2. Therefore, option 4 seems for us more logical. A broader scope would guarantee equal protection of beneficiaries of all workplace related pension schemes. One of the leading principles for establishing what equal protection actually means should be that the basis for all reflections is the pension agreement. The pension agreement determines the level of security that must be offered to participants. Just like the accrual rate for example, the level of the income security is a part of the pension agreement. Supervision should be in line with this.</p>	
2.	<p>Are there any other options that should be considered? Please provide details including where possible in respect of impact.</p> <p>Another option to be considered is that the optional application of Art. 4 of the IORP Directive should be</p>	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>avoided. The impact then would be that this allows for more legal clarity with regard to the differences of insurers and pension funds and the pension agreements they provide. Furthermore, a broad scope should also include small pension funds as described in Art. 5. of the IORP Directive.</p>	
3.	<p>Which option is preferable?</p> <ul style="list-style-type: none"> • We would plead for broadening the scope of the Directive to all not for profit pension funds operating collective schemes and in which all risks are shared between employers and members and beneficiaries. We suggest considering option 4, though we recognize the consequences can be far reaching. Instead of using the term “which operate at their own risk”, we would propose the following wording: <p>“IORPs include all not for profit occupational pension institutions that are operating collective schemes and in which all risks are borne by employers and/or members and beneficiaries.”</p> <p>This means that a review of the scope of the directive should also take into account the current exemptions of the scope of the IORP Directive (art 2 par 2, + art 5).</p> <p>Given the ultimate objective to create an internal market for occupational retirement provisions, we believe the scope of the Directive should be as wide as possible. The motivations and volumes involved of desired exemptions to the scope should be clearly documented (and periodically reviewed).</p> <ul style="list-style-type: none"> • If option 4 is not feasible, there is a necessity to clarify at European level, what should be considered an occupational pension scheme as stated in option 2 of the EIOPA reaction. • More analysis is needed on how this would affect the national sovereignty in setting up pension systems and whether there is a political will of Member States to do so. 	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
4.	<p>How should it be determined whether a compulsory employment-related pension scheme is to be considered as a social-security scheme covered by Regulations (EEC) N° 883/2004 and (EEC) N° 987/2009 (see Art. 3)?</p> <p>It is up to the Member States to decide which schemes should fall under the above mentioned regulations. We think that all pension schemes that are related to collective agreements in sectors and/or companies should be considered occupational and not fall under the above mentioned social security regulations.</p>	Public
5.	<p>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?</p> <p>See our answer to question 6</p>	Public
6.	<p>Are there any other options that should be considered?</p> <p>We agree with the definition proposed, but see the necessity to leave enough flexibility for special cases as follows:</p> <p>Some (multinational) sponsoring companies in the Netherlands (NL) keep expatriates with the NL as base country in their base country scheme whilst on assignment abroad. This concerns staff who will eventually return to the Netherlands for retirement and the continuity and security of their pension rights are best served by continuing the accrual in the base country pension scheme and hence 'protection' in the Netherlands. In a specific company pension fund for example this would mean that contributions for accrual during assignments abroad are paid by the sponsor company outside the Netherlands. The final responsibility for paying contributions, however, rests with a Dutch based corporation centre. By deeming pension provision cross-border if the sponsoring company is not based in</p>	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC Scope, cross-border activity, prudential regulation and governance		Deadline 15.08.2011 18:00 CET
	<p>the country of the IORP and making contributions to an IORP outside its country of establishment, the IORP would be forced to adhere to much stricter solvency rules (i.e. minimum funding rate to be maintained at all times within a year and notification with the Supervisor prior to starting operations). This would seem disproportionate for a fund where only a small proportion of the beneficiaries is in that situation (and spread over a number of countries) and the big majority fall under the Social and Labour Law (SLL) of the country where the IORP is based (in this example).</p>	
7.	<p>Do you agree with EIOPA that option 2 is preferable?</p> <p>In principle yes, but we do feel the issue described in our answer to question 6 needs to be solved.</p>	Public
8.	<p>Even with defining the sponsoring undertaking, problems of overlapping or contradicting regulation between member states could emerge. Should the revised Directive include procedures to settle such problems between the Home and the Host member states and/or also between the Home member state and the member state of the applicable social and labour law?</p> <p>We think that such procedures might be helpful.</p>	Public
9.	<p>Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?</p> <p>It would be important to define prudential regulation as opposed to social and labour regulation. The definition as used in the Dutch Pension Act, Article 151, could be considered as a good practice in this respect. This definition says: “supervision directed at the rules with regard to financial solidity of pension funds and the contribution to the financial stability of the pension fund sector”. In this definition, prudential law is defined as the set of requirements and standards (as partly put down in written rules of law) concerned with the financial solidity and financial stability of pension funds and the overall financial</p>	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>stability of all pension funds together. The Pension Act and the underlying provisions contain prudential law as well as social and labour law. It is clear that prudential regulation is needed to maintain a sound, solid and healthy system of organisations that administer occupational pensions.</p>	
10.	<p>Are there any other options that should be considered?</p> <p>It would be advisable to formulate the issues on which there is prudential regulation in the member states at this moment on the one hand and on the other hand to distill the issues that are regulated from the now existing clauses in the directive. Therefore further research has to be undertaken prior to considering a review of the IORP-Directive in this respect. In that way it is possible to establish a (possible) discrepancy between what is and what should (maybe) be regulated. After that an overall article could be formulated with the prudential themes (scope) and the prudential articles together in one section.</p>	Public
11.	<p>Do you agree with EIOPA that option 2 is preferable?</p> <p>The starting point for prudential regulation should be the pension arrangement. Supervision and prudential regulation have to be adjusted to the given pension arrangement and not vice versa.</p> <p>Furthermore the agreed level of pension security is a part of the pension arrangement and this should not be overruled by the prudential supervision. We would propose to have a single article that refers to the scope of prudential regulation.</p>	Public
12.	<p>Even with defining the scope of prudential regulation, problems of overlapping or contradicting regulation between member states could emerge. Should the revised Directive include procedures to settle such problems between the Home and the Host member states and/or also between the Home member state and the member state of the applicable social and labour law?</p>	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>Yes, we are of the opinion that the revised directive should include procedures to settle such problems. At the same time, it has to be made sure that there is a clear distinction between prudential regulation and social and labour law and that prudential regulation does not overrule social and labour law.</p>	
13.	<p>What is the view of the stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of proposed general governance requirements?</p> <p>We agree with the analysis of the EIOPA concerning the general governance principles. As EIOPA rightly states: “A new supervisory system for IORPs should not undermine the supply or the cost efficiency of occupational retirement provision in the EU”. (See p. 41 of the EIOPA Draft Response) Governance rules at European level that are principle based, fit for purpose and proportionate are positive for IORP’s. At the same time it is important that the governance models that pension funds follow should be adapted to their specificities.</p> <p>Furthermore, the knowledge within the pension fund has to be dependent on the complexity of the scheme and of the investments.</p> <p>A good practice of governance requirements can be found in the Netherlands. These requirements contain for example the following components:</p> <ul style="list-style-type: none"> • risk management and internal audit are regulated in the Dutch Pension Act; • the internal supervision is mandatory within a pension fund. It is part of the tasks of internal supervision to evaluate the effectiveness and efficiency of the internal control system. There are also other elements of the governance system according to which internal supervision has to review processes and procedures; 	Public

<p style="text-align: center;">Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i></p>		<p style="text-align: center;">Deadline 15.08.2011 18:00 CET</p>
	<ul style="list-style-type: none"> • findings of the internal supervision have to be reported to the management board and indirectly to the so called responsibility body (“Verantwoordingsorgaan”). <p>Remuneration policy: In principle, the remuneration of members of the management board should be line with their tasks, responsibilities and powers. Furthermore remuneration policy should not contain perverse incentives.</p> <p>Conclusion:</p> <ul style="list-style-type: none"> • A governance system of pension funds should be fit for purpose and principle based. Because IORP’s differ principally from insurers, different governance requirements should be formulated. • A principle based approach should allow the pension funds enough flexibility and take into account the complexity and all other aspects of the pension agreement. • Elements such as effective, sound and prudent governance, a transparent structure with clear allocation and appropriate segregation of responsibilities and an effective system for ensuring transmission of information could be applied to IORPs, taking into account the nature and complexity of IORPs. In this respect it is important to notice that an insurer will, generally speaking, rather provide the pension arrangement in house whereas an IORP may outsource its activities. • In principle the remuneration of members of the management board should be line with their tasks, responsibilities and powers. Furthermore remuneration policy should not contain perverse incentives. 	

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<ul style="list-style-type: none"> • Good practices of governance regulations and remuneration policies can be found in the Netherlands. 	
14.	<p>What is the view of the stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of proposed fit and proper requirements?</p> <p>Article 9 of the IORP Directive states that the institution has to be managed by persons of good reputation, who have enough professional qualifications and experience or dispose over advisors with adequate professional qualifications and experience. These requirements should be linked to the nature of the pension agreement and complexity of the activities of the pension fund. It should also take into account whether an institution is self administered or not. The knowledge within the pension fund has to be dependent on the complexity of the scheme and of the investments.</p> <p>Managers and other decision making persons are being checked amongst others for their trustworthiness at the beginning of their new job and in case it is deemed necessary. The pension fund has its own responsibility at the moment when something changes with regard to the antecedents of a person which has an influence on his/her trustworthiness. The supervisor has to be informed without any delay about this.</p> <p>We agree that supervisory authorities shall have the powers to take measures when fit and/or proper requirements are not fulfilled. Within the current IORP directive, the supervisor has already the competence of imposing penalties or fines. Penalties or fines are powerful instruments which can be imposed by supervisors. One has to keep in mind that in a pension fund, add-ons have to be paid by participants, beneficiaries or employers. Therefore we think such measures should only be used as a</p>	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>measure of last resort.</p> <p>Conclusion:</p> <ul style="list-style-type: none"> • The requirements for a Board of an IORP should be in line with the characteristics of the institution. • In general, requirements for a self-administrating institution will differ from a not self-administrating institution that has outsourced its activities, most notably the level of detailed knowledge and experience on financial matters versus the extent of being able to execute countervailing power. • It is important to notice that an insurer would, generally speaking, rather provide the pension agreement “in house” whereas an IORP may outsource its activities; • Therefore, we are of the opinion that article 9 of the current IORP Directive is sufficient and this article does not have to be changed in the revised IORP Directive. • Penalties or fines are powerful instruments which can be imposed by supervisors. One has to keep in mind that in a pension fund, add-ons have to be paid by participants, beneficiaries or employers. Therefore we think it should only be used as a measure of last resort. 	
15.	<p>What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of a compliance function?</p>	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>Our evaluation of the impacts is the following:</p> <p>With respect to internal control, a one one-size-fits-all solution must be prevented. As long as the independence and quality of these functions is guaranteed, the exact specificities should be left to the discretion of the institution.</p> <p>In the current IORP directive nothing is laid down about a compliance function. Article 46 of the Solvency II Directive provides for a general formula and the line of thoughts can also be seen as a good add-on to the IORP Directive, but we underline the relevance of the principle of proportionality, as EIOPA itself also does.</p> <p>Conclusion:</p> <ul style="list-style-type: none"> • A one one-size-fits-all solution must be prevented. As long as the independence and quality of these functions is guaranteed, the exact specificities should be left to the discretion of the institution. Here we refer again to our general remarks, whereas proportionality should be defined and be an important part of Level 1 regulations (Lamfalussy process). All decisions with regard to pensions have therefore to be taken at level 1. Further harmonization at level 2 seems to be difficult and we would rather like to see the integration of all relevant actors in the legislative process. Therefore, quantitative impact studies and proper assessments should be an integral part of the whole process of revising the Directive at all stages in order to oversee all the (indirect) consequences. 	
16.	What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of an internal audit function?	Public

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
	<p>Our view is the following:</p> <p>The IORP Directive does not provide for an internal audit function. In principle we agree with the introduction of an internal audit function, that is effective, objective and independent from operational functions. But we would underline that there should not be too strict requirements in order to make sure that this can as well be fulfilled by means of or as part of outsourcing. As long as the independence and quality of the control, compliance and audit function are guaranteed, the exact specificities of such an internal audit function should be left to the discretion of the institution.</p> <p>Conclusion</p> <ul style="list-style-type: none"> • It is a good proposal if the IORP Directive provides for an internal audit function. • Article 47 of Directive 2009/138/EC provides for a general formulation and this line of thought can be seen as a good starting point. • In a revised IORP Directive, a one-size-fits-all solution must be prevented. An institution might opt for a more prominent role for the external auditor. A principle-based approach should therefore be applied. As mentioned in our conclusion to question 15, proportionality should be defined and be an important part of Level 1 regulations (Lamfalussy process). All decisions with regard to pensions have therefore to be taken at level 1. Further harmonization at level 2 should be avoided and we would rather like to see the integration of all relevant actors in the legislative process. Therefore, quantitative impact studies and proper assessments should be an integral part of the whole process of revising the Directive at all stages in order to oversee all the (indirect) consequences. 	
17.	<p>What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of revised supervision of outsourced functions and activities?</p>	Public

<p align="center">Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i></p>		<p align="center">Deadline 15.08.2011 18:00 CET</p>
	<p>We think the general idea in the current IORP Directive is right, but agree that the wording used can lead to different interpretations. This can be clarified and improved. We especially concur with the second point of the EIOPA advice in which it is clearly stated that a revised IORP Directive should not put outsourced functions under direct supervision, but rather that the responsibility of procuring all necessary information lies with the IORP. We also concur with the statement that the service provider is obliged to cooperate in any way possible to provide the necessary information. Site visits by the supervisor should, in principle, be possible (subject to our remarks about this in the next paragraph).</p> <p>With this in mind, we can confirm that the material elements of Article 38 (1) of the Solvency Directive could in fact be used as a basis for the IORP Directive. However, we are of the opinion that this is not the case for Article 38 (2). It would be preferable, that service providers only have to deal with the supervisor of their country of establishment, rather than having to deal with multiple foreign supervisors in case of an international client base. The supervisor of the country of establishment of the pension service provider can operate as an acting agent for the supervisor of the country of establishment of the foreign IORP. Thus a balance is struck between the interests of the service provider on the one hand, and the interest of enforcing the rules of the country where the IORP is located on the other.</p> <p>Conclusion:</p> <ul style="list-style-type: none"> We think the general principles as laid down in the current IORP Directive are good, but that more clarification can be added in order to prevent multiple interpretations of the text. The modifications could be based on the material elements of Article 38 (1) of the Solvency II Directive. However, we think that the material elements of Article 38 (2) will lead to burdensome efforts on the part of the service provider and would prefer that in case of cross-border outsourcing, service providers only have to deal with one domestic supervisor. This domestic supervisor can operate as an acting agent for other „foreign“ supervisors that have an interest. 	

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC <i>Scope, cross-border activity, prudential regulation and governance</i>		Deadline 15.08.2011 18:00 CET
18.	<p>What is the view of stakeholders on the proposed principles of the revised IORP Directive? How do stakeholders evaluate the positive and negative impacts of the introduction of revised outsourcing principles?</p> <p>Conclusion:</p> <ul style="list-style-type: none"> • We refer to our comments under CfA 12 (i.e. question 17 of this document), supervision of outsourced functions; • additional guidance could relate to an international standard as for example the ISAE 3402; • article 9 of the IORP Directive should be the starting point with regard to outsourcing principles; • we could agree with option 1, but would like to have the second sentence about the notification obligation to be deleted. 	Public