

**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:	Bundesarbeitgeberverband Chemie e.V. (BAVC) (German Federation of Chemical Employers' Association)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>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.</i>	Public
<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>		

**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**

Question	Comment	
General comment	<p>Occupational pension systems are social schemes used by the employers and are therefore not a financial product traded freely on the market. A clear distinction between second and third pillar pension systems has to be made to safeguard the interests of both the collectively organised pension savers and the individual pension savers to ensure the functionality of the (different) regulatory frameworks.</p> <p>We would like to point out, that in particular, capital adequacy requirements ("Solvency II") should not be transposed into the IORP directive. The objective of supervision and the underlying regulations of occupational pension schemes differ considerably from the objective of supervision of insurance companies. Thus for occupational pensions and IORPs, which are per definition sponsored by an employer, whose stakeholders interest are aligned and whose beneficiaries are protected by a several layers of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I.</p> <p>BAVC is convinced that cross border activities can be better achieved without a far-reaching change in the IORP Directive and without creating a market for cross-border products in this area. This is mainly due the fact that national fiscal policies are not necessarily compatible, yet at the same time Member States remain sovereign in this policy area. Moreover, the decision to operate cross-border is not a decision made by IORPs but by the companies.</p>	
1.	<p>From the perspective of BAVC we agree basically with the analysis of the options as laid out in this advice, especially to not extend the scope of the IORP directive to direct pension commitments (book reserves) and other unregulated forms of occupational pension schemes. The main difference to the other occupational pension schemes which are covered by the IORP-Directive is the fact, that the beneficiaries have no legal right to the benefits to the institution but only to the employer. Thus there is no need for regulation here, because the employer is directly liable for such promises and PSV would intervene in the case of insolvency.</p> <p>The IORP-Directive should only regulate prudential supervision of institutions that fund retirement benefits. These pension provisions are imperatively related to an employer – employee relationship.</p>	

**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**

	<p>Therefore the distinction between second and third pillar pension systems has to be made safeguard interests of pension savers and to ensure the functionality of the different national framework which includes many labour law provisions. As EIOPA suggests the dividing line between the different pillars of pension systems is not always clear - clarifying explanations might enhance a common understanding.</p>	
2.	<p>EIOPA has considered the most relevant options - There are no other options that should be considered.</p>	
3.	<p>We prefer Option 1 (= no change of the IORP directive).</p>	
4.	<p>BAVC is not aware of any borderline cases or occupational schemes that are outside the scope, while not being explicitly excluded from the IORP Directive.</p>	
5.	<p>We agree in principle with the analysis laid out in this advice. It should be noted by all stakeholders that the internal market plays a subordinate role for IORPs – by contrast with life insurance companies. For the overwhelming majority of German IORPs, which operate as social institutions for their sponsoring organisations, business activity is restricted to their own sponsoring organisation. Hence, IORPs do not have a vocation to compete on the retirement provision market with a profit motive. For that reason, the vast majority of IORPs have no current or future need for common rules to achieve a single market.</p> <p>Nevertheless the lack of consensus regarding the definition of cross-border activity has been an obstacle to the effective implementation of the IORP Directive and therefore has hampered the further development of cross-border provision of IORPs. BAVC would like to highlight that the current definition of cross-border activity is not the reason for the limited prevalence of IORPs' cross-border activity, but is due to lack of demand, as in practice it is limited to those companies which are able to bear the upfront costs. As stated, this includes management and consultancy time to get the necessary information on the scope and details of social and labour laws, and on taxation. The information is sometimes insufficient. It is also due to cultural reasons (e.g. language barriers), as well as sometimes limited cooperation between supervisors.</p>	

**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**

	<p>From an employers' point of view, the possible legal uncertainty regarding what is considered cross-border is a disincentive to providing pension funds cross-border. However, it is difficult to see how this issue can be tackled further, as the main cause of the different interpretations of cross-border activity is the natural diversity in the provision of IORPs across member states and the application of different national and social labour laws. Tax as well continues to be seen as a hurdle for cross-border provision of services.</p> <p>In line with the subsidiarity principle, a revision of the IORP Directive in the direction of harmonisation of national social and labour laws, would not be acceptable.</p>	
6.	BAVC prefers option 1 (=leaving it to Member States to decide to impose the application of ring-fencing measures).	
7.		
8.		
9.		
10.		
11.		
12.	<p>BAVC rejects the proposal for a holistic balance sheet.</p> <p>A 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 specialties of IORPs.</p> <p>We strongly recommend to maintain the clear distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs (policy option 1). A reasonable holistic balance sheet model implies that the value of the employer covenant (backed by the pension protection scheme) will have to be determined by the gap it is supposed to fill. This will be the gap between the financial assets on the one hand and technical provisions. IORPs should only be bound to hold additional assets above the</p>	

**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**

	<p>technical provisions to the extent they are not sponsor-backed.</p> <p>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 these 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</p> <p>Moreover, IORPs only offer occupational retirement provision, pensions promises that are offered from the employers to the employees. 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 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.</p>	
13.	<p>BAVC is of the opinion that valuation of assets and liabilities should be market consistent, which is different to market valuation. Short-term volatility is not of great importance especially for IORPs: IORPs typically have a long term investment horizon. The principles of valuation of assets of IORPs have to follow the purpose of IORPs. A valuation based on a snap-shot view is not appropriate for IORP because they work on a long-term base and their purpose is to provide continuous pension-payments. Basically, short-term market fluctuations are less relevant in the case of long-term liabilities as there is a chance that these can be compensated in the remaining period. Liquidity to pay the promised benefits is only needed in the long term. This might mean that short-term market developments are easier to deal with than in a situation where liquidity is required in the short term. In particular this applies to assets that they are held to maturity.</p>	
14.	<p>BAVC does not agree that a Solvency II type regime is appropriate or necessary for pension funds (reasons provided in answer to question 38). This means that we do not agree with the proposal to apply a 'transfer value' model for valuing liabilities, similar to that used for insurance companies, to</p>	

**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**

	<p>IORPs. The consultation document clearly outlines the negative implications of this. In particular, the long-term nature of IORPs means that they share risks across generations. Therefore, having sufficient financial assets at all times to transfer their liabilities, is not necessary. Due to their long-term nature, IORPs have the possibility to use future contributions as assets or to reduce future benefits to lower liabilities. In addition, even in the event of a transfer e.g. as a consequence of an acquisition, it is up the deal-partners to evaluate and decide whether they want to be compensate the pensions-liabilities.</p>	
15.		
16.	<p>BAVC prefers option 1 to not change the current IORP Directive. There is no need to make sure that supervisory standards are compatible with accounting standards.</p>	
17.		
18.		
19.		
20.		
21.	<p>We strongly oppose the use of a risk-free discount rate for the calculation of liabilities in IORPs. This means that the pension would have to assume a zero-risk approach regarding the rate of return on possible investments. The expected returns on investment would therefore be lower. This would lead to a substantial increase in technical provisions of the pension fund, i.e. the amount of funding needed for the pension fund to be able to pay the pension promise accrued by scheme members. This would increase costs for employers, thereby diverting money away from business investment and job creation. The result of such a regulation would lead to financial damages in rather short time. That means the risk which is intended to be avoided by this rule would be even be further encouraged.</p> <p>EIOPA's draft response to the Call for Advice does not specify what would be the correct risk-free rate to be used, however using a risk-free rate would lead to pension schemes moving away from equity and corporate bonds into government bonds. Although traditionally understood to be risk-free, the current turbulences in the Eurozone debt markets clearly question that assumption. Also, this would lower the yield and therefore reduce the actual return on the investment made by the pension fund,</p>	

**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**

	<p>thereby increasing the cost to the employer even further.</p> <p>For these reasons, we support retention of the existing requirement in the IORP Directive of using a prudent market rate, which allows for some risk to be included in the valuation of liabilities, including high quality corporate bonds overwhelmingly used by IORPs.</p>	
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		
32.		
33.	<p>BAVC does not agree with the holistic balance sheet approach. On the one side it would be very difficult and costly to measure the risk-mitigation effects. On the other side, for sponsor-backed IORPs with additional insolvency protection, component 7 should not be interpreted as a calculated (by evaluation) asset position, instead it has to be interpreted as a flexible compensation position. Regardless of the definition of capital requirements, component 7 has to be regarded as an asset to fulfil any solvency capital requirement the IORP might face. In any event component 7 has to be qualified as an equivalent to financial assets.</p>	
34.		
35.		
36.		

**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**

37.		
38.	<p>BAVC is opposed to the application to IORPs of the Solvency II Directive. This concept is not applicable for IORPs. An application would considerably raise the cost of providing occupational pensions for employers. Despite employers continual commitment to funding their schemes to the appropriate level, introducing Solvency II type capital requirements would ultimately lead companies to stop offering such schemes to their employees and closing them to new entrants. This would damage pension provision across the EU. The consultation document recognises these negative implications and rightly takes a cautious approach regarding a solvency regime for pension funds, acknowledging that this is a political decision to be taken by the European Commission.</p> <p>There should also be recognition of the wider economic impact of such a measure. Currently, European pension funds hold total assets worth €2,500bn. If they had to apply Solvency II funding rules, they would have to hold extra assets worth €1,000bn. This is likely to force pension schemes to move away from investment in equity, such as company shares, to less risky investments. This would lead to lower returns for the pension fund, encouraging them to make less beneficial investment choices. It would also starve companies of equity capital, an important source of financing, preventing them from growing their business and creating jobs. Diverting money away from business investment would be detrimental to growth and economic recovery in Europe.</p> <p>We do not agree that there is a need to create a level playing field with insurance provided pension funds, which is one of the main justifications for introduction of a solvency capital requirement for IORPs. Pension funds operate in a very different way to insurance provided pension products and the Solvency II framework is not in line with the needs and specificities of IORPs:</p> <ul style="list-style-type: none"> • An occupational pension is part of the benefit package provided by an employer to his employees. In most cases IORPs do not operate in retail markets or are non-profit making organizations. In other cases, they often have a collective character, e.g. being supported by a collective agreement, or being subject to a bipartite board, or a legal obligation for board members to protect members' benefits and interests. This is in stark contrast to insurance provided pension products. 	

**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**

- In addition, the characteristics highlighted above mean that IORPs are generally seen as socially desirable. Introduction of solvency II capital requirements would have a negative impact on those companies that have positively engaged in offering employees an occupational pension.
- Pension funds have long periods for recovering deficits. Their investment strategies are also based on this. The Solvency II directive is not suited to pension products which have a long-term investment perspective, as the directive bases its solvency calculations on a time horizon of one year. Therefore the financial stability of pension funds in comparison to other financial services products is not so much affected by short-term economic instability. This means that applying higher funding requirements is not necessary given the possibility pension funds have to spread their risks between different generations over long time spans.
- Also, additional capital requirements would in effect lead to sponsoring companies holding "dead capital", i.e. unused assets until the end of the life of the pension scheme. In some member states it is very difficult and in some cases impossible for companies to recover this so-called trapped surplus.
- Security is already provided by the current IORP Directive and through different means at national level. The IORP Directive already includes quantitative requirements and security is provided through the legal employer covenant (the backing of the sponsoring employer). These are held liable for any underfunding. Security is also provided by national guarantee funds in Germany which protect employee benefits in the case of insolvency of the employer (see answer 41).

Finally, the justification for reform of the IORP Directive is the need to increase cross-border activity in the EU. Higher solvency requirements for pensions do not in any way achieve this.

Before any final decision is taken by the commission on the need for additional solvency requirements for pension funds, a detailed, high quality quantitative impact assessment should be carried out.

39.

**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**

40.	The consultation document poses the question as to whether the special mechanisms which are only available to IORPs (as highlighted in answer to question 38), could be treated as equivalent to a solvency capital requirement (SCR) or a way of mitigating risk and therefore lowering the SCR. Any revision of the IORP Directive must take into account the specific security mechanisms available to IORPs, which vary across EU member states. However, it is difficult to see how these specificities can be quantified in the same way as capital requirements, as they are more of a qualitative nature, therefore measuring them is very difficult.	
41.	As highlighted in response to question 38, we are not in favour of a solvency capital requirement for IORPs. As a consequence, we do not believe that the solution put forward by EIOPA for a 'holistic balance sheet' is appropriate. As highlighted in response to question 40, valuing the employer covenant and any pension guarantee system (which exist in a number of member states) as assets, would be very difficult as the measurement of it would be incredibly complicated for employers. In any case, as highlighted in response to question 38, the existence of such security mechanisms for IORPs are precisely why we do not agree that solvency capital requirements are necessary.	
42.	Because we do not agree with the introduction of risk-based capital requirements we do also not see the need for harmonisation for DC schemes. In case that the commission deals with this matter it is important to avoid introducing rules at EU level which significantly increase the costs of operating such schemes. For example, EU rules detailing how schemes should be designed. If such schemes become too costly, it is likely to lead to employers lowering their contributions or being unable to offer such schemes. Equally, in many contract-based schemes, such as group personal pensions, it is actually the employee who bears the cost of scheme administration. Higher costs would lead to an increase in the overall scheme charge for the employee.	
43.	BAVC agrees with option 1 of EIOPA's recommendation.	
44.	The long-term nature of pension liabilities in IORPs calls for a different approach regarding recovery periods to that included in Solvency II. This means that deficits are not as relevant as they can be recuperated over time. Therefore, the proposal that the scheme must have any deficit repaid back by	

**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**

	<p>the employer within a year (as in Solvency II), is not appropriate. This would put companies' cash flow under significant pressure, in many cases pushing them over the edge into insolvency. The recent recession is a clear illustration of the benefits of having a more flexible approach to recovery periods. Despite the significant impact on company cash flow and the drying out of credit lines, mass insolvencies and job losses were avoided by national regulators allowing longer recovery plan periods to be put in place, which were negotiated between employers and scheme trustees. This protects affordability and ensures the solvency of scheme sponsoring employers. Therefore we believe that the current Article 16 of IORP Directive is adequate in regulating the powers fo supervisors.</p>	
45.		
46.		
47.		
48.		
49.		
50.		
51.		
52.	<p>We do not agree with the analysis regarding the objective of supervision. The Solvency II Directive's main objective (Article 27) is to strengthen consumer protection achieving a balance between the commercial interests of insurance or financial service providers and individual consumer interests in the absence of a third party guarantor or lender of last resort. For Occupational Pensions and IORPs, which are per definition sponsored by an employer, whose stakeholders' interests are aligned and whose beneficiaries are protected by a web of interacting security mechanisms in social and labour law and also for the IORPs itself, the objective of Solvency II is not relevant. It is essential to continue in this regard with the concept of IORP I. So taking inspiration from Recital 7 of the current IORP Directive, we would redefine the objective for supervision of IORPs in IORP II as follows: "... to achieve the main objective of IORP supervision, namely both to clear the way for a sound development of occupational pension schemes provided by IORPs and to protect members and beneficiaries." In addition we propose to define the purpose of the IORP II Directive as: "This</p>	

**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**

	<p>Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries”.</p> <p>Furthermore the best way to avoid pro-cyclical effects is to disconnect from regulations based on market to market valuations.</p>	
53.		
54.	<p>We agree that the need to enhance benefit security differences between IORP and insurance supervision and diversity of IORP also require a different treatment of insurers and IORPs. The different roles and functions of IORPs and insurers should be reflected.</p>	
55.		
56.	<p>BAVC is opposed to reinforcing the sanctions regime for IORPs.</p>	
57.		
58.		
59.	<p>Member States should be free to determine the most suitable ways of supervision for their IORPs. BAVC therefore prefers option 3: The IORP Directive provides adequate principles for supervisory review process and there is therefore no need to use the Solvency II Directive as a starting point.</p>	
60.	<p>BAVC strictly opposes to provide supervisors with the power to impose capital add-ons for insurers to IORPs.</p>	
61.	<p>We do not support option 2. The revised directive should include the principle, that the IORP remains responsible for the outsourced activities. Therefore we reject considerations to empower the supervisory authority for direct inspections to the service provider in case the service provider is located in another member state.</p>	
62.		
63.	<p>In our view the proposed principles of the revised directive are applicable, provided they are modified by a general proportionality clause. It seems more effective not to refer to the size of the IORPs but rather to the nature and complexity. It is very important, to avoid needless bureaucracy and</p>	

**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**

	additional costs for IORPs. Account must be taken of the fact, that many IORPs have rather simple pensions plans and no staff of their own, because they are administered by the staff of the undertakings. Such IORPs should not have with additional burdens imposed on them.	
64.		
65.	<p>Of course it is essential, that the staff and all responsible persons of IORPs are fit and proper. But the responsibility has to remain by the management board members and should not be extended to staff members who have key-functions.</p> <p>The "fit and proper" requirements have to be linked to the nature and risk profile of an IORP and need to be adapted to the specificities of the IORPs. It is important that the Board as a whole has an adequate level of expertise; it should not be required that each and every member of the Board of the IORP fulfil all "fit" professional expertise requirements.</p>	
66.		
67.		
68.	<p>BAVC supports EIOPAs view to introduce general principles of risk management. We also agree the proposed requirements could significantly increase. Nevertheless the IORPs will need an adequate period for implementation. We agree with EIOPA's assessment that a proper impact assessment is necessary in order to guarantee that the requirements are suitable for IORPs. We reject risk-based capital requirements which are not appropriate for IORPs.</p> <p>We also agree with the impact assessment made by EIOPA. From our point of view, the main negative impact would be the sharp increase in costs to beneficiaries, sponsoring companies and IORPs if the requirements are not defined in a reasonable and proportional manner.</p>	
69.		
70.		
71.		
72.	We are strongly opposed to the idea that the regulation should make it possible for the compliance function, should it come to existence, to also inform the supervisory authority. We believe that as a	

**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**

	general principle staff of an IORP is responsible to the managing board of the IORP and that the managing board of the IORP is responsible to the supervisory authority. This applies for all required governance functions.	
73.		
74.		
75.		
76.		
77.	No, we believe that the current IORP Directive should be the starting point.	
78.		
79.		
80.	BAVC does not agree with EIOPA that the material requirements on insurers in respect of outsourcing should also apply to IORP's.	
81.		
82.		
83.		
84.		
85.		
86.	<p>The written contract will involve administrative costs. Moreover, the elements of the contract are not known yet (level 2), thus the costs could be bigger than those included in the providing of the flow of information.</p> <p>Furthermore, the costs related to safe keeping are not clear yet since the definition of the term "financial instruments" and the type of financial instruments that can be included in the scope of the depositary's custody functions is still under discussion.</p> <p>The oversight functions that should be performed by the depositary will entail some costs that will have an impact on the fee that IORPs have to pay to them. These costs will trigger either an increase</p>	

**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**

	<p>of contributions or a decrease in benefits for the members and beneficiaries.</p> <p>BAVC agrees with the rules regarding conflicts of interest because such conflicts are seen as costly for members and beneficiaries as well as for supervisory authorities. A rule on conflict of interest will raise the level of protection for the members/beneficiaries.</p>	
87.		
88.		
89.		
90.		
91.		
92.		
93.		
94.		
95.	No, BAVC does not see other parts of regulation that should be harmonized.	
96.		