

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:	Siemens Pensionsfonds AG (GER)	
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>		
Question	Comment	
General comment	We believe that the terms of the current consultation are somewhat tendentious, given that EIOPA was required to provide advice on how a solvency regime for pensions might be constructed starting from the basis of Solvency II, rather than considering whether such a solvency regime is	

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appropriate in the first place. We use this General Comments section of our response to set out our opposition to the principles underlying the consultation as a whole.

IORPs should be regulated by a regime designed for pensions, not for insurance

Our view is that applying a insurance-style solvency regime to IORPs is the wrong approach in principle. Insurance policies are products taken out voluntarily by individuals or companies. IORPs are provided to employees as part of their remuneration package and employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products to the public, whereas IORPs provide an social benefit to individuals as a consequence of their employment. We therefore do not believe that the case has been made for insurance regulation to be applied to pensions.

EIOPA's draft response to the European Commission accepts that there are 'important differences between IORPS ... and insurers' (2.6.4), but nevertheless assumes that it is appropriate for a framework designed for insurers to be imposed on IORPS, provided that certain adjustments are made to allow for the security provided to IORPS by sponsor covenant and protection schemes. However, we believe that IORPs should be regulated by regulation designed specifically for IORPs and not by regulation designed for another financial vehicle altogether.

Applying a solvency regime would not meet the Commission's aims for pensions

We also believe that applying a solvency regime to IORPS will not achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety. Imposing a solvency regime would certainly increase the security of some IORP promises in the short term, in many cases providing a measure of hyper-security far beyond what is necessary. The cost of such security would, however, be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors responding to the increased funding costs by closing their defined benefit pension schemes, reducing the level of future accrual and/or replacing defined benefit schemes with often less well-resourced defined contribution schemes, under which members bear all the risks. Future generations of IORP members would pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs. This would be an example of intergenerational unfairness.

We also do not think that a solvency regime for IORPs would meet the objectives set out in the current review of the IORP directive. First, harmonising the funding regime for pensions would not be

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likely to increase the take-up of cross-border schemes. If anything, increasing the funding requirements would make such schemes even less likely. The obstacles to cross-border schemes are rather to be found in the complex legislative framework attaching to such schemes, to the stringent funding standards already applying to defined benefit cross-border schemes (which are required to be fully funded at all times), and possibly to a genuine lack of demand for such schemes. The second reason for the review of the IORP directive is to 'allow IORPS to benefit from risk-mitigation mechanisms'. However, IORPs already have a number of risk-mitigation mechanisms in place that are precisely designed for the needs of pension schemes in specific Member States. Imposing inappropriate risk-mitigation strategies in the context of funding will lead to increased risks in other areas, in particular in terms of the longer term provision of IORPS to employees.

Applying a solvency regime would lead to massive increase in costs for sponsors

We are a bit surprised, if not to say disappointed that it appears to be EIOPA's intention to provide advice to the Commission in advance of a quantitative impact assessment. We just do not see how EIOPA can be sure that it is giving the right advice to the Commission until it has seen the results of that assessment.

Applying a solvency regime to pensions is likely to lead to massive additional costs for the sponsors of defined benefit IORPs.

Our response to the specific questions asked in the document

As set out above, we fundamentally would have to disagree with the basic premise of this consultation that a regulatory regime based on Solvency II should be imposed on IORPS. All the specific questions in this consultation are based on this premise and therefore we have seriously considered making no response on any of the specific questions asked in the consultation.

However, on balance, we have decided to answer some of the specific questions asked in the document. Whilst we believe that, in many cases, all of the options under consideration are not convincing, some may be worse than others and therefore we have taken the opportunity to draw attention to these cases. The fact that we are responding to some of the specific questions should not however be taken as implying our agreement to any of the proposals, or the principles underlying them.

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	<p>Given the limited time at our disposal to respond to this consultation, and the fact that the funding and security areas are the most significant areas in the consultation, we have limited our response to some of the questions under CfA5 and CfA6. Absence of a reply to the other questions should not be taken as signifying our agreement.</p>	
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12.	<p>What is the view of the stakeholders on the holistic balance sheet proposal? Do stakeholders think that the distinction between Article 17(1) IORPS, 17(3) IORPs and sponsor-backed IORPs should be retained or removed?</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).</p> <p>As a consequence we reject the undifferentiated usage of the holistic balance sheet as a catch-all approach because it doesn't fit the diversity of European IORPs: In our opinion, the holistic balance sheet approach doesn't meet the characteristics of sponsor-backed IORPs and to some extent Article 17 (3) IORPs. 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</p>	

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	IORPs should only be bound to hold additional assets above the technical provisions to the extent they are not sponsor-backed.	
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21.	<p>What is the stakeholders' view on the two options presented regarding the interest rate used to establish technical provisions (including the positive and negative impacts)?</p> <p>We strongly oppose both options presented by EIOPA. The use of a market-consistent risk-free interest rate leads to results which are too volatile for the management of an institution that covers long-term obligations spanning generations. It would also not make allowance for the specific investment policy of the IORP. The possibility to use only an interest rate based on expected returns on assets to calculate technical provisions must remain.</p>	
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33.	<p>What is the stakeholders' view on the analysis regarding sponsor support? Do stakeholders agree with EIOPA that IORPS should value all forms of sponsor support as an asset and take account of their risk-mitigating effect in the calculation of the solvency capital requirement?</p> <p>For sponsor-backed IORPs with additional PPS, 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>	
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38.	<p>What is the stakeholders' view on applying the Solvency II-rules for calculating the solvency capital requirement (SCR) to IORPs, taking into account their specific security and benefit adjustment mechanisms?</p> <p>We reject the proposal of applying the Solvency II-rules for calculating the SCR to IORPs. Pension security is about much more than scheme funding levels alone. A broader approach is required, taking into account the full range of mechanisms that IORPs across different member states now use to ensure that pension incomes are safe and secure.</p> <p>The focus of IORP II is - beside the sound development of occupational pension schemes provided by IORPs in Europe - on security for members / beneficiaries. Therefore, essential security mechanisms like employer support and pension protection schemes have to be taken into account, making the whole concept of SCR dispensable for IORPs and a mere complex and costly exercise.</p>	

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	Additional SCR-requirements (and the complex process of calculating them) will raise cost and mean dead capital for employers. This will lead to a decline of their willingness to offer occupational pensions and therefore harm the second pillar within Europe.	
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41.	<p>What is the stakeholder view on the analysis regarding pension protection schemes? If included in the holistic balance sheet, should pension protection schemes be taken into account by reducing the sponsor´s insolvency risk or by valuing it as a separate asset?</p> <p>As highlighted in response to question 38, we are strongly opposed against solvency capital requirement for IORPs as they are currently intended. As a consequence, we do not believe that the solution put forward by EIOPA for a 'holistic balance sheet' is appropriate. 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.</p> <p>At this point it might be helpful to explain the insolvency protection system in Germany briefly. The Pensions-Sicherungs-Verein aG ("PSVaG") is the institution which was given the legal task to fulfil pension promises in case of the insolvency of employers in Germany. This pension protection institution was founded in 1974 as a mutual insurance association. The PSVaG now has more than 90,000 members (employers) representing a great part of the whole German economy. Over 10 million employees and retirees are currently insured. The PSVaG usually provides insurance for all benefits accrued at the date of insolvency up to a certain amount (at the moment about 90,000 euros a year) which should cover 100 % of promises made by employers via IORPs. Insolvency insurance provided by the PSVaG protects employees' entitlements to pension benefits from an insolvent company pension to the extent that claims for said benefits cannot be fully covered by an institution for occupational retirement provision (IORP). Given this complete and thorough protection system, it makes sense and is entirely appropriate to take such pension protection schemes into account under a regulatory protection scheme for institutions for occupation retirement provision</p>	

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	<p>(IORPs). In view of the complete protection provided by the PSVaG-system, there would appear to be no need for further significant (and possibly expensive) protective mechanisms for the protected entitlements of members/beneficiaries of IORPs. Existing protection on the basis of employer covenants and pension protection schemes is complete and sufficient to ensure protection of pension entitlements. Further mechanisms of any kind which would impose an additional burden on institutions for occupational retirement provision (IORPs), sponsoring employers or members/beneficiaries would be counterproductive, as they would actually endanger present and future employee pension entitlements. Not taking pension protection schemes into account would not reflect the basic decisions of Germany to implement the PSVaG as the core of the German system of occupational pension provision. It would also be contradictory to the holistic-balance-sheet-approach which is the explicit consideration of all mechanisms that are so far taken into account implicitly. With regard to the two options in which pension protection schemes are taken into account the result should be the same in Germany. Backed by thousands of employers representing a great part of the German economy the PSVaG and/or the sponsor support would always be strong enough to cover the difference between the liabilities and the financial assets of the IORP.</p>	
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