

<b>Comments Template on EIOPA-CP-11/006</b> <b>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b>		<b>Deadline</b> <b>02.01.2012</b> <b>18:00 CET</b>
Company name:	BUSINESSEUROPE	
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 <b>Public</b> in the column to the left and by inserting the word <b>Confidential</b>.</i>	Public
<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in column "Question".</li> <li>⇒ 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>.</li> <li>⇒ 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.</li> <li>⇒ 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"> <li>○ 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.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-006@eiopa.europa.eu">CP-006@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p>		
<b>Question</b>	<b>Comment</b>	
General comment	BUSINESSEUROPE welcomes the possibility to comment on EIOPA's draft response to the Commission's call for advice on revision of the IORP Directive. We urge EIOPA and the European Commission to ensure a robust analysis of the economic impact of any proposals	

**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**

	put forward, including the impact on the cost-effective provision of occupational pensions and on growth and job creation.	
1.	<p>We agree with the proposal of EIOPA to retain the current scope of the IORP Directive, as applying to those forms of pension provision which are established by an employer(s) and/or where they have an essential role in the funding of the scheme.</p> <p>There is considerable diversity in IORPs across EU member states, in particular considering that they are subject to the different national social and labour laws. The current directive strikes the right balance between providing for prudential regulation of IORPs whilst allowing member states the necessary flexibility to tailor pension schemes to national specificities, the needs of their citizens and those of the employers providing such pension schemes. We would also stress that the principle of proportionality should be adhered to and reflected in the EIOPA response to the Commission's call for advice. This means that any revision of the IORP Directive should not result in regulation that applies to the dominant provisions of only a handful of countries in the EU.</p> <p>As the consultation document states, there are borderline cases where it is not clear if the IORP Directive applies. This is a more general point regarding a lack of clarity on which EU legislation applies to which forms of pension provision across all three pillars. This also includes legislation on social security coordination. However, we agree that these issues would be better dealt with in implementation of the legislation rather than changing the scope.</p>	
2.		
3.	See answer question 1.	
4.	See answer question 1.	
5.	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	

**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>further development of cross-border provision of IORPs. However, it is important to remember that there has been some improvement, as EIOPA in July 2011 reported an increase of cross-border pension provision of 8% over the past year.</p> <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. 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> <p>As highlighted in the consultation document, the lack of cross-border activity of IORPs is also 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>	
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		

**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**

14. BUSINESSSEUROPE 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 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, the meaning of 'transfer value' differs across Member States. Therefore, using the principle of transfer value to value liabilities would be overly complex.

15.

16.

17.

18.

19.

20.

21. BUSINESSSEUROPE is strongly opposed to 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.

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

**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>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, thereby increasing the cost to the employer even further.</p> <p>For these reasons, BUSINESSEUROPE supports 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>The sponsor support or employer covenant is at the core of defined benefit (DB) schemes. Whilst we agree that this is an element which mitigates risk, it is very difficult and costly to measure this.</p>	
34.		
35.		

**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**

36.

37.

38.

We are strongly opposed to the application of Solvency II rules introducing a solvency capital requirement for IORPs. This 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.

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.

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:

- An occupational pension is part of the benefit package provided by an employer to his

**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**

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.

- 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 some countries which protect employee benefits in the case of insolvency of the employer. These are sometimes funded by employers (for example in Denmark, Germany, the UK and Sweden).

**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>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.</p> <p>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.</p>	
39.		
40.	<p>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.</p>	
41.	<p>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.</p>	
42.	<p>Given the growing trend towards provision of defined contribution (DC) schemes, 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</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**

	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.		
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 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.	
45.		
46.		
47.		
48.		
49.		
50.		
51.		
52.	BUSINESSEUROPE strongly agrees with avoiding pro-cyclical behaviour in the supervision of IORPs. The regime being proposed by the European Commission would force IORPs to focus on ensuring short-term liquidity despite this being unnecessary to cover the liabilities. This is contrary to the long-term investment nature of IORPs. This is why we are strongly opposed to a Solvency II-style funding regime for pensions.	

**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**

53.		
54.		
55.		
56.		
57.		
58.		
59.		
60.		
61.		
62.		
63.	<p>There may be room for improvement in the area of good governance of pension schemes. As part of the review, we agree that it is important to look at how to ensure that employers appropriately carry out their duties in terms of governance, as well as ensuring that the structures for governance of the scheme work effectively. However, any changes to governance requirements in the IORP Directive should ensure that the costs for pension funds are not increased; else offering occupational pension schemes to their employees will become unaffordable for employers.</p>	
64.		
65.	<p>We agree that scheme trustees should be properly equipped with the necessary knowledge to run the IORP effectively. However, we warn against making these requirements too strict, as in many cases member nominated trustees in particular would not be able to pass a "fit and proper test" similar to that in Solvency II. Nevertheless they play an important role in representing the voice of the employees in the IORP. For that reason we do not support a straight application of the "fit and proper" requirements of Solvency II.</p>	
66.		
67.		

**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**

68.		
69.		
70.		
71.		
72.		
73.		
74.		
75.		
76.		
77.		
78.		
79.		
80.		
81.		
82.		
83.		
84.		
85.		
86.		
87.		
88.		
89.		
90.		

<b>Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b>		<b>Deadline 02.01.2012 18:00 CET</b>
91.		
92.		
93.		
94.		
95.	<p>There may also be room for improvement in the area of provision of information and transparency to scheme members. As highlighted in the consultation document, providing information to individuals is crucial in ensuring that they understand and can take informed decisions regarding the options within the pension plan. Engagement of plan members is an essential part of this and individuals have a certain amount of responsibility in saving for retirement. In DB schemes, plan members benefit from the schemes' decision-making structure. With DC schemes, provision of information is even more crucial, as the investment risk lies solely with the plan member.</p> <p>We strongly agree with the consultation document, that the information on the occupational pension plan is only one part of what an individual needs to make choices regarding their broader retirement planning.</p> <p>The consultation document rightly acknowledges the importance of taking into account the principles of subsidiarity, in ensuring a minimum of information provision in EU member states. Information requirements have to be adapted to the national circumstances, whereby people's understanding of pension saving via an IORP is very much linked to the characteristics and history of the pension system, and national social and labour law. We therefore adhere to the principle that detailed rules on information requirements in combination with maximum harmonisation would often be inappropriate.</p>	
96.		