

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:	BNP PARIBAS SECURITIES SERVICES	
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	BNP PARIBAS SECURITIES SERVICES welcomes the opportunity to contribute to the EIOPA Call for advice on the review of directive 2003/41/EC – second consultation . As BNP PARIBAS SECURITIES SERVICES is a major European player in the depositary activity with a	

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**Deadline
02.01.2012
18:00 CET**

	<p>presence in most European markets, it can provide the European Regulators with a very constructive view on concrete and operational aspects that need to be taken into consideration where defining the depositary function. At the same time, one of BNP PARIBAS SECURITIES SERVICES ' key priorities is to make proposals which enhance the harmonisation of the depositary function at the European level and which consequently reinforce the level of investor protection within the EU.</p> <p>In its submission, the response of BNP PARIBAS SECURITIES SERVICES to the EIOPA consultation will focus on the depositary issues.</p> <p>BNP PARIBAS SECURITIES SERVICES agrees with the aim of the EIOPA's advice to strike the appropriate balance between the Directive's objective of ensuring a high level of members/beneficiaries' protection by introducing a requirement for compulsory appointment of a depositary when the risks associated to the sakekeeping of assets and the investements are borne by the members/beneficiaries, while refraining from placing the entire responsibility on depositaries which would adversely impact members/beneficiaries through increased costs .</p>	
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**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**

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**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**

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**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**

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83.	<p>83.What is the view of the stakeholders on the proposed treatment of depositaries?</p> <p>We support the EIOPA's recommendation making the appointment of depositary compulsory for IORPs/schemes that are segregated pools of assets co-owned by members/beneficiaries which bear the cost of operational failures associated with the asset safeguard and investment risks. In these</p>	

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	<p>circumstances regulation should require to separate management functions from assets safe-keeping and oversight functions in order to protect members/beneficiaries</p> <p>Consequently we believe that the appointment of a depositary should be compulsory for IORPs which have no legal personality or for DC schemes (option 2 and option 3). In addition, we suggest that the appointment of a depositary should be mandatory in case of ring-fenced funds, regardless of the legal form of the IORP or of the type of the pension scheme whenever the cost of any operational failures associated with the asset safeguard and investment risks are borne by the members/beneficiaries</p>	
84.	<p>84 .How do stakeholders evaluate the positive and negative impacts of the proposals?</p> <p>The long-term nature of IORPs reinforces the need to perform on-going controls of adequate record-keeping of assets and of compliance with the investment’s rules in order to identify possible problem and take adequate response to poor administration, negligence or fraud within the IORP. We believe that the tasks listed below have to be performed :</p> <ul style="list-style-type: none"> • centralizing in one place, independant from the IORP , the comprehensive and up to date inventory of all assets that are safekept on behalf of the IORP/Pension Scheme , in order to reduce the risk of fraud and operational risks , • controlling that the investments are carried out in accordance with the IORP’s investment rules, 	

**Comments Template on EIOPA-CP-11/006
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02.01.2012
18:00 CET**

- controlling that contributions and investment returns are allocated to the correct accounts.

We believe these tasks are a necessary part of the risk management of a pension system. The increase of costs will depend on whether these tasks are already performed by a third party or not.

85.

85 .What do stakeholders anticipate in terms of cost and other consequences of the implementation of a compulsory regime regarding the appointment of a depositary under options 2 and 3 for: (a) the safe-keeping of assets; (b) oversight functions?

positive impacts

the value of the depositary's controls and functions are linked to its expertise and its statutory independence from the manager . The appointment of a depositary provides the IORPS and their members a higher protection from operational failures and investment breaches.

Negative impacts

The potential additional costs should be limited thanks to the EIOPA's proposal to define depositary's liability as its unjustifiable failure to perform its obligation or its improper performance of them.

**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**

86.

86. What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements regarding: (a) the need for a written contract; (b) the role of a depositary in terms of safe-keeping; (c) the liability regime of depositaries; (d) the list of minimum oversight functions that should be perform; (e) conflict of interest?

We support the general requirements regarding the depositary as they will clarify and harmonize the roles played by the depositaries and their duties and consequently they will harmonize the level of protection for members/beneficiaries at a reasonable cost .

(a) **the need for a written contract:** The need for written contract will create benefits for the reason that it helps to establish all the relevant information / communications flows, which is essential for an adequate members/beneficiaries' protection.

(b) the role of a depositary in terms of safe-keeping : we support the EIOPA's proposal. In addition we suggest that the scope of "assets held in custody" should be clearly defined. as transferable securities, money market instruments or units of collective investment undertakings – as listed in Annex I, section C of Directive 2004/39/EC. Furthermore those financial instruments should have the following characteristics:

1. they are registered in the name of the depositary or in the name of its sub-custodian acting on behalf the depositary;

**Comments Template on EIOPA-CP-11/006
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2. They are settled in a settlement system which maintains the relevant issuer account; in order to promote and protect investments and financial stability in Europe, the European banking system should not be exposed and made liable for weaker or less regulated financial markets outside the EU. We therefore suggest to restrict the settlement systems to those designated in Directive 98/26/EC".

3. They have not been provided as collateral.

(c) the liability regime of depositaries:we support the EIOPA’s advice that the depositary should be liable as a result of its unjustifiable failure to perform its obligation or its improper performance of them ;We support not to place the entire responsibility on depositaries which would adversely impact members/beneficiaries through significant increased costs .

(d) the list of minimum oversight functions that should be perform : see answer 87 below

(e) conflict of interest : we believe EIOPA’s advice propose the adequate response to the management of conflict of interest in order to protect the interest of members/beneficiaries.

87.

87.Do stakeholders agree that the list of minimum oversight functions that should be performed by a depositary is appropriate?

BNP PARIBAS SECURITIES SERVICES agrees that the list of minimum oversight functions proposed by EIOPA is appropriate but would like to make the following observations and comments regarding the point 9.a) :

**Comments Template on EIOPA-CP-11/006
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- i. the depositary oversight duties are to be performed by *ex post* controls.
- ii. the depositary should not perform first levels of control (operational & internal control) that are performed at the IORP level. The depositary performs secondary level controls. Therefore the depositary should neither substitute nor replicate the controls performed internally by the IORP.

Provided the principles listed above are followed BNP PARIBAS SECURITIES SERVICES does not believe that the EIOPA's proposal will be burdensome for IORP and other IORP's third party providers.

Therefore BNP PARIBAS SECURITIES SERVICES suggests the following amendments:

~~9;a) carry out instructions of the IORP, unless they conflict with the applicable national law or the IORP rules;~~ verify the compliance of the IORP **regarding investment restrictions and leverage limits** with applicable national law and regulation as well as with the IORPs rules

88.

88.What do stakeholders anticipate in terms of cost and other consequences of the implementation of the general requirements that should be verified in case a depositary is not appointed?

In case a depositary is not appointed this will result in a lower level of protection of members/beneficiaries as the depositary constitute a major external control.

**Comments Template on EIOPA-CP-11/006
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**Deadline
02.01.2012
18:00 CET**

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