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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Disclosure of comments: Public	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**.*	
	The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006). **Please follow the instructions for filling in the template:** ⇨ Do **not** change the numbering in column "Question". ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty. ⇨ 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. ○ 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. **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).**	
Question	**Comment**	
General comment	We wish to make the following general comments, which in many ways we view as more important than the detail of some of the specific questions. We make them based on our experience in the UK	

of advising IORPs and their sponsors (including advising on sponsor covenants), and of auditing IORPs. The comments focus largely on IORPs in the UK.

We cannot emphasise enough the importance of impact assessments, before any decisions are taken as to whether any elements of Solvency II should be incorporated into the IORP directive. Many IORPs are starting from a different history and base, and different regulatory backgrounds, to those of insurance companies before Solvency II was put forward. The overall impact of a full or even partial implementation of Solvency II is potentially crippling for IORPs and their sponsors in a number of member states, particularly in the UK.

Further, there should be an impact assessment at the macro-economic level for each member state. In the UK in particular, which accounts for some 60% of defined benefit IORP liabilities in the EU, if a regime close to that for Solvency II for insurers were to be mandated it could require a shift of assets of well over £1,000 billion from sponsors to IORPs. At the same time, with much higher funding requirements, IORPs would seek to de-risk their asset portfolios, to avoid even higher and riskier funding requirements. This could involve very significant shifts from equity and debt markets to government bonds, and the potential de-stabilisation of markets.

A third part of impact assessment should be the advice costs associated with such change for the large number of IORPs. This should take account of the likely extent of Level 2 rules. We say this cognisant of the very high costs currently being experienced by insurers in their implementations of Solvency II, as well as the availability of a finite actuarial resource to do so.

A considered implementation of proportionality (in relation to the size of an IORP) will be vital if any of the proposed new measures are introduced. The present 'cut-off' of 100 members for some aspects of the IORP Directive is too simplistic and low-level a measure. Expressing some of the proposals at a principle-based level only will help to avoid undue costs for many IORPs.

The Commission has stated, in its Call for Advice, that "The Commission intends to propose measures that simplify the legal, regulatory and administrative requirements for setting-up cross-border pension schemes." The proposed amendments do not appear to offer much hope of simplification, nor will they in our opinion serve to increase the appetite of employers for cross-border schemes. At least one of the disincentives to establishing cross-border schemes at present is the stronger funding

	requirement which applies to them, relative to single country schemes. We suggest that evidence-based research is carried out to ascertain if there really is any significant demand for cross-border IORPs, and what employers would require by way of the removal of present requirements before considering them.	
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4.	The PSV in Germany and the PPF in the UK.	
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12.	The proposal of a holistic balance sheet would in theory allow for a consistent approach to the three stated types of IORPs. However we see great practical difficulties in formulating rules for the evaluation of Component 6 (Contingent assets) and particularly Component 7 (Sponsor covenant and Protection schemes). Even if such rules can be formulated, to cover all the different types of sponsoring employers (listed companies, private companies, charities, other not-for-profit organisations, etc), the costs of carrying out such calculations on a regular basis are likely to be excessive. As with other proposals, it is essential that an impact analysis be carried out , to cover both the practicality and the costs of such a proposal. It may be that the aim of a single regime to cover all three types of IORPs is not achievable in practice.	

	We note our understanding that the UK Pensions Regulator already effectively carries out such holistic assessments, but inevitably on a largely qualitative basis, when assessing the funding plans of UK sponsor-backed IORPs. We would recommend consideration of such a qualitative approach, before embarking on a detailed consideration of a quantitative approach. We do wonder what the consequences of an insolvent holistic balance sheet would be. If all future possible support from a sponsor is already factored into the asset valuation as per Components 6 and 7, where can any further support for the IORP come from?	
13.	We agree that assets should continue to be valued on a market consistent basis.	
14.	We would see great difficulty in determining an appropriate standard basis for transferring liabilities between IORPs. However the concept of a transfer to a regulated insurance company should not be ruled out as an option.	
15.	We would find it difficult to assess the 'own credit standing' of many IORPs, so agree that this should not be considered.	
16.	'To the extent appropriate' is reasonable, accepting that such extent may be very limited in practice.	
17.	This assumes that Solvency II is to be adopted into the IORP directive – and we consider that higher-level consideration of this question needs to happen before answering such detail.	
18.	This assumes that Solvency II is to be adopted into the IORP directive – and we consider that higher-level consideration of this question needs to happen before answering such detail.	
19.	Only if all future contributions are pre-defined and contractual, with no possibility of their cessation.	
20.	Yes, gross liabilities are appropriate. Amounts recoverable from (re)insurance and SPVs should be taken into account as assets.	
21.	We see the Level A / Level B approach as the only way in which any such change as suggested by the consultation could possibly be implemented in the UK, if harmonisation is an over-arching goal. However we believe that much further work is required to establish the regulatory regime for Level A technical provisions, as per our comments on the holistic balance sheet, and taking account of what the regulatory regime would be for Level B technical provisions.	
22.	Where there is ongoing sponsor support for an IORP, sponsors should be able to continue to pay	

	expenses on an ongoing basis.	
23.	We agree that conditional and discretionary benefits should be treated separately from unconditional benefits. Discretionary benefits should not be included in technical provisions – otherwise this would lead more sponsors to stop granting such discretionary benefits (as we are already seeing in the UK under the present regime).	
24.	Yes, on a proportionate basis.	
25.	We do not see any need for any further rules on the segmentation of risk groups, given the present wording of the IORP Directive.	
26.	Option 1 for the treatment of recoverables would be more appropriate.	
27.	No comment.	
28.	This would be appropriate, if applied in a proportionate manner.	
29.	This is appropriate, and is already effectively in place in the UK.	
30.	This is a political question as to the extent of the powers of a regulator.	
31.	We would caution against considering any significant volume of Level 2 provisions. This is likely to lead to a non-proportionate approach as principles become more rules-based, as seems to be happening with the insurance industry's ever-longer and more expensive implementation of Solvency II.	
32.	This is a political question.	
33.	Sponsor support is an asset – but one which is, at best, very difficult to quantify. Further, the metrics for such quantification can vary very significantly by industry and by type of employer. Before taking this any further, consideration needs to be given as to exactly what should be measured and valued. Is it an enterprise value of an organisation? – which requires assessments of future free cash flows, industry multiples, and balance sheet strength. Or is it a distressed sale value of a business? - which could require assessments of property and plant valuations, as well as brand and intellectual property valuations. In all of this, how is the IORP to be assessed alongside other potential creditors, and what is truly affordable for the business to pay to the IORP? Further, such	

	valuations can be very volatile over time, and so any snapshot measurement can soon be out of date. Alternatively, any simplistic formulaic approach to valuation of sponsor covenants is likely to produce potentially misleading results for many sponsors. We therefore believe that in practice it will not be practicable for most IORPs to quantify this in meaningful ways, without inordinate cost and effort. However sponsor support should be recognised, in a qualitative sense, as described in our response to Q12 above.	
34.	In the UK most schemes do not have "own funds". Any which do would be able to buy out their liabilities with an insurance company, and so tend to do so. Therefore it would seem perverse to require any funding or security measure in excess of that required to buy out benefits with an insurer (which itself is subject to Solvency II).	
35.	Yes, although these are not used in the UK at present. Consideration should be given as to whether they would constitute an acceptable form of self-investment risk.	
36.	We do not believe that a Solvency II approach to security is at all practical in the UK, given the thousands of small and medium-sized defined benefit IORPs which exist. Having seen the amount of effort required by insurers to model solvency and security, it is essential that an impact assessment on the mechanics of any such approach be carried out, to see if it is at all practicable, before considering the details of such an approach.	
37.	The time horizon should be determined by the purpose of the test.	
38.	See Q34.	
39.	See Q34.	
40.	See Q34.	
41.	If there is value in a protection scheme, it would be better regarded as an asset. Its value could be difficult to determine, but it would be even more difficult to determine adjustments to a sponsor's insolvency risk.	
42.	Only if the members are likely to bear any costs of operational failures. If such failures are the responsibility of outsourced providers, or employers, they should not be included.	

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47.	We believe that the current prudent person principle is sufficient for IORPs – we have no evidence to suggest that the present investment behaviour of IORPs requires any expansion of this principle. Making the principle more complicated would lead to increased compliance costs by trustees, with no obvious benefit.	
48.	Our general view is that there should be no limitations set by individual member states.	
49.	So far as possible the requirements for defined benefit and defined contribution schemes should be the same. However we agree with the suggestion that suitable investment options and risk management in defined contribution schemes would be better achieved by regulatory encouragement and sharing of good practice, rather than by prescriptive rules. We would caution against any prescriptive rules on assets, as these would be likely to lead to concentrations of assets in permitted classes, and so lead to an increase in systemic investment risk.	
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51.	We agree that the current prohibition on borrowing should be retained, subject to clarification that it only applies to direct borrowing for other than short-term liquidity requirements.	
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61.	We see a number of problems in implementing such requirements for IORPs, given: • the non-regulated nature of pensions administration in some states (including the UK) • the possible duplication of regulation in those states where one regulator is responsible for asset managers, and another for IORPs • the use in some states of asset managers and other providers who are not located in member states, and/or the use of sub-contractors by asset managers (e.g. for custody services) • In the UK, this is currently managed by a number of mechanisms, including contractual conditions and the use of controls reports under SSAE 3400. We recommend that this framework remain. Prior notification by IORPs of the contracts would be very burdensome for both them and the Regulator, particularly bearing in mind the large number of IORPs in the UK.	
62.	The definition of home state for this purpose could be problematic. The state in which "the main strategic decisions of the IORP's decision making body are made" is not necessarily the same state in which some or all of the administration is carried out.	
63.	We agree that the material elements of the Solvency II requirements for governance could apply equally to IORPs. However we strongly agree that this needs to be subject to proportionality, as outlined in section 18.3.5 et seq. Further, proportionality needs to be taken account of in a more thoughtful manner than e.g. specifying a simple limit of 100 members below which the requirements do not apply.	
64.	Yes, subject to an impact assessment.	
65.	Yes in principle, but the application of proportionality is key. Particularly where IORPs outsource many or all of the key functions, it is the overall fitness of a combination of the IORP's board and its providers which matters. In particular, there should be no bar on lay trustees (e.g. member representatives). This means that a universal requirement for professional qualifications for all would be disproportionate.	
66.	Fit and proper requirements should apply at all times. Supervisory authorities should have the ability to assess fitness and propriety, but they should not be required to carry out such assessments for all IORPs on a regular basis – proportionality should dictate that it should be up to the supervisors how and when they carry out any such assessments.	

67.	Supervisory authorities should have the power to replace persons who do not satisfy the fit and proper requirements, subject to being able to justify such actions.	
68.	As a high-level principle we agree with the need for proper risk management by IORPs. However any specific requirements must be practical if they are to have any effect. For instance, a requirement on all IORPs for a *continuous* basis of monitoring risks would not be practical.	
69.	No. We struggle to see what extra value would be added, over and above the present annual reviews of funding which are carried out for defined benefit IORPs with sponsor support, for entities which have such long-term time horizons. Ever-more frequent assessments could lead to behaviour which could be damagingly pro-cyclical. If any form of ORSA is to be mandated, it should be subject firstly to a proper impact assessment and cost-benefit analysis. We would also point out that many IORPs, unlike insurance companies, do not have full-time professional managers or staff, making continuous assessment of any kind a practical impossibility.	
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71.	Given the difficulties which we envisage with any quantitative measure of a holistic balance sheet (see Q12 and Q13), we do not view an ORSA which would include this to be practical.	
72.	Why is the proposal an optional one for member states, given the emphasis on harmonisation in other major parts of this consultation?	
73.	This seems sensible. We very much agree with the need for IORPs to have flexibility as to how the compliance function is assigned and carried out, for the reasons given in the consultation paper.	
74.	"that the internal audit function requires the appointment of an internal auditor could be overelaborate for some IORPs" is in our view an understatement – it could be the case for many IORPs who already have suitable arrangements in place, particularly with outsourced functions, and external audit.	
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76.	Our only comment on the role and duties of the actuarial function is, in paragraph 24.5.6, to replace the suggested word "assess" in relation to the appropriateness of methodologies and underlying models with "advise upon". This more properly reflects the relationship between the actuarial function and an IORP.	

77.	We agree with the analysis of the Solvency II actuarial requirements and how they can be adapted for IORPs.	
78.	We agree with the principle of independence of the actuarial function. However any criteria of independence should be expressed at the principle level only, to avoid any conflict with Member States' requirements, and actuarial professional body requirements.	
79.	Subject to a detailed impact analysis, and appropriate application of proportionality, we agree with the analysis of options. In particular, we agree that it should not be necessary to require additional certification by another actuary.	
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82.	Outsourcing contracts could contain a requirement within the contract terms to allow access to IORP auditors and to Regulators.	
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89.	The requirement to inform the Regulator is unduly burdensome. The small size of manyIORPs in the UK would mean that the cost would be disproportionate and discourage pension provision. Extension of the scope of the annual audit as an independent review might be a better approach. We recommend that this be part of impact assessments.	
90.	Convergence of the provision of information to regulators would seem to us to be neither necessary nor desirable. Expansion of the numbers of cross-border IORPs does not appear to be likely in the short or medium term, and this could give rise to very significant costs.	
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