

**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:	Italian Banking 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 <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		
1.	The Italian Banking Association (ABI), representing the entire Italian banking industry with over 800	

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	<p>member banks, welcomes the opportunity to contribute to this EIOPA Call for Advice on the review of Directive 2003/41/EC (IORP Directive).</p> <p>The Italian banking industry is strongly committed to the supplementary occupational pension system, where banks and the controlled companies (asset management companies and investment firms) are involved as sponsor employers, undertaking institutions, distributors, professional asset managers, depositories.</p> <p>ABI agrees with the need to enhance the internal pension market through a greater harmonisation in the IORP Directive between pension schemes permitted to carry out cross-border activity.</p> <p>Our attention is mainly focused on the following items covered by this Call for Advice:</p> <ul style="list-style-type: none"> <li>• the scope of the IORP Directive</li> <li>• definition of cross-border activity</li> <li>• prudential regulations</li> <li>• security mechanisms</li> <li>• investment rules</li> <li>• general governance requirements</li> <li>• outsourcing</li> <li>• custodian/depository</li> <li>• information to supervisors</li> <li>• information to members/beneficiaries.</li> </ul>	
2.		
3.	Option 2 is preferable for ABI as clarified alongside the answer to question 4.	
4.	ABI would like to direct EIOPA's attention to some Italian occupational pension schemes which are borderline cases in the IORP Directive. In more detail, ABI refers to occupational pension schemes offered by banks, asset management companies, investment firms and insurance companies pursuant to Law no. 252/2005 which:	

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- offers retirement benefits to subscriptions performed on the basis of collective agreements between employers and unions/employees, which identify the occupational pension fund chosen and the level of contribution both for employers and employees;
- do not have legal personality, but full segregation of liabilities and assets as well as common funds;
- are managed by authorized entities specifically supervised by COVIP (Italian supervisory authority on pension schemes, both occupational and individual) for satisfying professional, administrative and organisational requirements established by law and regulations for occupational pension funds;
- have specific governance requirements, in addition to those provided for the managing entities, mainly based on two different safeguards: i) the responsible party for the occupational pension scheme, in charge of verifying that the management of the scheme is carried out exclusively on behalf of the members/beneficiaries and consistently with legislative and regulation provisions; ii) surveillance committee made of two members designated by the managing entity and ten members designated from firms who have at least 500 employees on the pension scheme.

These occupational pension schemes are borderline cases as:

- Art. 2.2 (b) of the IORP Directive explicitly excludes institutions which are covered by Directive 73/239/EEC, Directive 85/611/EEC, Directive 93/22/EEC, Directive 2000/12/EC and Directive 2002/83/EC;
- Art. 4 provides the option for Member States to apply Articles 9 to 16 and Articles 18 to 20 only to the occupational-retirement-provision business of insurance undertakings which are covered by Directive 2002/83/EC;
- Italy applied the IORP Directive to them as they are characterized by the effective role of employers in establishing and funding.

Therefore, ABI proposes to amend the IORP Directive with an Art. 4-bis which extends to Member States the same option provided by Art. 4 to the occupational-retirement schemes of banks and investment firms covered by Directive 93/22/EC and asset management companies covered by

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	<p>Directive 85/611/EC.</p> <p>The approach adopted by Art. 4 and to be extended (according to ABI's proposal) to new Art. 4-bis implies a preference for option 2 (Partial application of the IORP directive to all types of pension schemes existing in some Member States that do not fall under any EU prudential regulation).</p>	
5.	<p>ABI agrees with EIOPA's advice on how the wording of the IORP Directive needs to be amended in order to clarify that cross border activity arises only when the sponsoring undertaking and the IORP are located in two different Member States.</p>	
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10.	<p>ABI agrees with the analysis laid out in EIOPA's advice as it is important to clarify the scope of prudential regulations in order to properly allocate tasks between the Home supervisor and the Host supervisor in the event of cross-border activity.</p> <p>ABI prefers option 2, with the exception of the statement which states that: "In parallel, the same article should formalize the "concurrent competence" regime currently in place with respect to the information requirements pursuant to art. 11". In ABI's view, providing concurrent competence would mean that both Home and Host information requirements could be satisfied, which is not acceptable.</p> <p>Therefore ABI proposes to review the aforementioned statement as it follows: In parallel, the same article should formalize "the only competence" regime of the Host supervisor with respect to the information requirements pursuant to art. 11".</p>	
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36.	<p>In ABI's view it is not appropriate to introduce a uniform security level for IORPs across Europe, as the acceptable level in each country depends very much on political factors (e.g. social and labour law, possibility of reducing benefits, etc.), that cannot be overcome by an EU-wide prudential regulation.</p> <p>ABI agrees on the introduction of prudential rules based on risks in the IORP Directive, but considers that it is not possible to extend to pension schemes the same rules of insurance companies as defined in the Solvency II Directive. ABI considers it preferable to adopt a flexible regulatory</p>	

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	<p>framework at Community level which leaves Member States the possibility of modulating the internal rules to the specificities of the industry according to the risk-sharing mechanism considered acceptable in the national Social and Labour Law.</p> <p>The new IORP Directive must take into account the possibility of defined benefit pension plans to review the level of performance over time to ensure the necessary balance between assets and liabilities. Pension schemes, in fact, unlike insurance companies, in cases of capital imbalances are unlikely to increase their income by increasing inputs of capital or significantly changing investment policies. Ex post adjustment mechanisms of pension benefits make it possible to adopt a more flexible regulation than that proposed by Solvency II for insurance companies. The adoption of a strict regulation could affect the operation of certain pension schemes and thereby reduce the ability to meet the needs of participants.</p> <p>In adopting more flexible rules, it is considered appropriate to pursue proper communications for participants and beneficiaries.</p> <p>Therefore, ABI requires that EIOPA does not take a technical stand in terms of the adoption of a uniform level of security across Member Countries and argues for the adoption of Option No. 2 "Non-Harmonized confidence level", as defined in paragraph 10.3.64.</p>	
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47.	See answer to question 49.	
48.	See answer to question 49.	

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49.	<p>ABI believes that EIOPA's advice related to whether to admit national quantitative restrictions in addition to those set out in the IORP Directive would leave the directive substantially unchanged for DC schemes, which currently represent the majority compared with DB schemes as the options supported by EIOPA aim at clarifying that further restrictions at national level would be admitted for schemes where members bear the investment risks.</p> <p>This approach would not enhance harmonisation for the investment rules among pension schemes permitted to carry out cross-border activities.</p> <p>This is why ABI would prefer to permit restrictions to investment to be agreed at EU level where members bear the investment risk for the purposes of member protection, and suggests setting out some level 2 measures in order to better define the right equilibrium.</p>	
50.	<p>ABI agrees with EIOPA on the importance of amending Art. 18 of the IORP Directive by option 3, which proposes to adapt the approach provided by Art. 132 (2) of the Solvency Directive in order to properly address the issue of understanding and controlling investment risks, taking into account the characteristics of different types of pension funds. As a matter of fact, it must be underlined that where IORP are obliged to delegate the investment function to professional asset managers (this is the case with many Italian IORP), what it is really important is not the knowledge of the single financial investment, but the whole investment process and its monitoring. Therefore option 3 correctly recognizes that "the IORP is responsible for the supervision and control of the investment process. It may outsource some or all of the investment functions, but it will still keep full responsibility for all its aspects and its general consistency. The IORP shall ensure that its portfolio is invested only in assets and instruments whose risks, directly or through outsourced functions, it can properly identify, measure, monitor, manage, control and report, and, where applicable, appropriately take into account in the assessment of its overall solvency needs".</p>	
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63.	ABI agrees with EIOPA's advice on the way to adapt the material elements of Art. 41 of Solvency II requirements for governance to IORPs, which takes into account the principle of proportionality, the difference between governance systems in IORPs in different Member States and the special characteristics of IORPs.	
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80.	See answer to question 82.	
81.	See answer to question 82.	
82.	ABI agrees with EIOPA's advice which considers the material elements of Art. 49 of Solvency II requirements in terms of outsourcing generally applicable also to IORPs, and suggests some amendments aimed at adequately addressing the specifics of IORPs.	
83.	<p>ABI strongly supports the EIOPA proposal of reviewing Art. 19 (2) and 19(3) in order to always refer to the word "depository" in the legal text, as in the case of the AIFM Directive. This approach is a good starting point to enhance the protection of members/beneficiaries of IORPs and the level playing field for IORPs operating cross-border.</p> <p>ABI prefers option 2, which proposes that for IORP without legal personality the appointment of a depository for safe-keeping of assets and oversight functions should be compulsory, while for IORPs with legal personality the decision whether to require the appointment of a depository should remain at the discretion of the Member State concerned.</p> <p>This approach would produce a minimal convergence and not prevent the Home Member State from making the appointment of a depository compulsory for all IORPs located in the same Member State (this is the case with Italian legislation).</p>	
84.	ABI positively evaluates the impact of this approach as already observed in answer to question 83.	
85.	ABI believes that the evaluation of costs and other consequences should be addressed taking into account the importance of providing IORP members/beneficiaries the same protection already provided by AIFMD.	
86.	See answer to questions 84 and 85.	
87.	See answer to questions 84 and 85.	
88.	See answer to questions 84 and 85.	
89.	ABI agrees and prefers option 1.	
90.	ABI would welcome the convergence of provisions on information to supervisors.	
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92.	ABI agrees with EIOPA's advice which suggests some modifications to the IORP directive inspired by essential general principles common also to other Directives (MiFid, UCITS and Solvency II) and strongly supports the introduction of a KIID-like document adapted to the specific situation of IORPs	

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	<p>and containing information that goes beyond investment information. This document would help potential members to focus their attention on essential information and to compare IORPs. The importance of comparisons between IORPs is very high in those Member States (as in the case of Italy) where potential members can sometimes choose between different IORPs.</p> <p>ABI believes that it is not possible to propose the same level of harmonization for pre-enrolment information documents (standardised documents for all members) and the personalised annual statement (which contains personalised information based on heavy organisational investments already carried out by IORPs). Therefore ABI agrees with option 2, but limited to the pre-enrolment document.</p>	
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