

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:	Verbond van Verzekeraars	
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<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	The Dutch Association of Insurers (Verbond van Verzekeraars, VvV) welcomes the Call for Advice on the review of Directive 2003/41/EC.	

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	<p>The Dutch Association of Insurers represents the interests of private insurance companies operating in the Netherlands. The Association's members represent more than 95 percent of the Dutch insurance market expressed in terms of premium turnover, which in 2010 was € 78 milliard. In 2010, Dutch insurance companies employed 57.000 people and invested € 356 milliard in the economy.</p> <p>The Dutch insurance companies are important providers of pension products. They account for an annual premium turnover in the 2nd Pillar of about €7,65bn (2009). As the total premium income of the 2nd Pillar in the Dutch pensions market is about €38bn, the insurers account for 20% of the 2nd Pillar market. The pension products of insurers are subject to similar social and labour laws as those of IORP's and Insureres are operating within a social context as well.</p> <p>The Solvency II <i>principles</i> should serve as the basis for regulating financial institutions providing occupational pension products. Not the legal vehicle should determine the level of protection towards members and beneficiaries, but the risks related to the different pension products. Economically significant characteristics of the different pension products or schemes should consequently be taken into account. However, these differences should be fully transparent and explicitly communicated towards the (future) members and beneficiaries of the concerning pension products.</p> <p>According to the 5th quantitative impact study of the Solvency II framework, some of the aspects related to the areas of long term guarantees, are not suitable for occupational pension products. Therefore it is necessary to aim for appropriate solutions in <i>both</i> the IORP <i>and</i> the Solvency II Framework.</p> <p>As a member of the CEA, the Dutch Association of Insurers supports the CEA response on the Call for Advice on the review of Directive 2003/41/EC. In case questions are not answered in this document, we refer to the CEA statement.</p>	
1.	<p>In general, the Dutch Association of Insurers aims for a level playing field amongst all providers of financial services providing occupational pension products. Same risks, same requirements. To enhance the protection for members and beneficiaries it is crucial to have a minimum level playing field across Europe without too many Member State options and exclusions. The aim is to provide an adequate level of protection for all beneficiaries of occupational pensions throughout Europe.</p> <p>Other impacts should also be considered. In our view, improving regulatory consistency would reduce market distortions and undue cross-border arbitrage to the benefit of increased cross-border activities. We welcome the suggestion made by EIOPA to assess article 4. We are of the opinion that a thorough technical assessment of the</p>	

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	<p>operation of Article 4 should be conducted. Full regard needs to be taken of the role of life insurance enterprises in providing occupational pension products within their markets, whether under the Life Insurance Directive or the IORP Directive or a combination of both. We suggest that within this assessment of article 4 other possibilities than the national option to apply the related provisions of the directive to the occupational retirement business of insurers should be taken into account. This could be for example a possibility for insurers across Member States to 'opt in' for IORP regulation for their separated occupational pensions business.</p> <p>In addition, we think that there is a need to assess other possible effects of market distortion. Where IORPs have the benefit of special economic privileges, for example a sectoral monopoly due to a specific social mission granted under national law, this mission shall be stated in writing and published. Such providers should not be able to use their economic privileges to provide other products or enter other geographic markets either directly or indirectly via connected entities.</p>	
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3.	In our view, the objective should be to create a level playing field. Therefore we support option number 2: a partial application of the directive to all types of pension schemes that are not subject to EU legislation.	
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5.	Yes, we agree with the analysis as laid out in the CfA. The definition of cross border activity should be non ambiguous in order to enhance cross-border activities. At this point, Member States have adopted different approaches when implementing the directive on identifying the cross border arrangements.	
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10.	Yes, we agree with option 2.	
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12.	<p>We support the concept of a holistic balance sheet.</p> <p>As stated by the European Commission: <i>“from a solvency perspective that focuses on the security of the pension promise made to the members and beneficiaries, all elements (security mechanisms, such as sponsor support and pensions protection schemes, and benefit adjustment mechanisms) that have an impact on securing those promises and which may have been taken into consideration implicitly so far should be considered when assessing the solvency situation of the IORP.”</i></p>	

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	The holistic balance sheet, which starts from the economic balance sheet, will present all available mechanisms surrounding the IORP. By explicitly assessing the value of all the mechanisms, the IORP must consider the likelihood of cash flows when needed and any other problems which could arise. This would provide to the IORP, the beneficiaries, sponsors and supervisors insight about how the actual situation surrounding the IORP is interpreted and managed by the IORP. In addition, we are of the opinion that the holistic balance sheet should be made public.	
13.	The principles of Solvency II follow a risk-based approach and create a sound prudential regime. These principles should serve as the basis for regulating IORP's.	
14.	<p>We support a reference to "fulfilment notion" as a basis for the economic value. When theoretically assessing the concept of fair value or economic value, several concepts could be used such as "exit value", "entry value" and "fulfilment value". All three concepts are considered to represent the economic value of an asset or liability. However there are some differences in approach. The exit value, as used within Solvency II considers the economic value from the perspective of transferring an asset or liability to a third party. The fulfilment notion, as currently tentatively used by IFRS 4 phase II considers the economic value from the perspective of fulfilling the obligation to the policyholder.</p> <p>The terms and conditions of any scheme managed by an IORP are so distinct and different that transferring to a reference entity is not workable. Furthermore the security mechanisms and surrounding legislation should aim at fulfilment of the obligation of the IORP towards the beneficiaries.</p>	
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26.	We agree with the principle that reinsurance recoverables should be recognised similar to Solvency II. However, when valuing the reinsurance recoverable, an adjustment has to be taken into account with respect to the “probability of default”. Under Solvency II the probability of default is largely dependent on the rating of a counterparty. In order to avoid another systemic risk we would support for this “probability of default” variable an approach which would rely less on the rating but more heavily on the solvency ratio of the counterparty. Under Solvency II an approach is allowed that if a counterparty is subject to a prudential supervisory regime such as Solvency II or CRD, the solvency ratio could act as a determining value for the “probability of default”.	
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33.	The sponsor support should in our view be treated as an asset, and as such be part of the holistic balance sheet.	
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36.	We think the calibration can only be decided after a carefully executed quantitative impact study. The confidence level should be based on the characteristics and goals of the pension products. The character of particular occupational pension products that could be prudentially relevant are for example the options to reduce benefit promises or payments. Specificities should be taken into account in a similar way for all providers. The provider should however offer full information disclosure towards the participant/member about the risks if there would be a difference in the applied confidence level.	
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40.	The objective of the MCR should be made clear before we could argue whether this is appropriate to IORP’s.	
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49.	The investment provisions of the Directive should not differ between DB and DC schemes.	
50.	We advice to set the investment principles as described in the Art. 132 – 135 of the Solvency II Directive as a basis.	
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52.	Considerable volatility as a result of day-to-day fluctuations on the financial markets should be avoided. Providers of long term guarantees should not be subject to a regulatory framework that is volatile. This applies to IORP's, but to insurers as well. Therefore attention must be given to the counter-cyclical adjustment in Solvency II as well.	
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57.	The imposition of penalty measures should be made public, as a measure of last resort, in order to enhance transparency towards (future) members and beneficiaries.	
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62.	With respect to outsourcing, we are of the opinion that the IORP must always be responsible regardless whether the other party is subject to supervision. If an appropriate home/host/lead supervision is embedded within the IORP directive, double supervision will be avoided.	
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65.	We agree on the introduction of the same Fit and Proper requirements.	
66.	The Fit and Proper requirements should indeed apply at all times and effective procedures to assess these should be introduced.	
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72.	There would be no need for the whistle blowing obligation if the Fit and Proper requirements of the Solvency II Directive will be introduced in the IORP directive. As part of the Fit and Proper requirements, any person effectively managing the organisation, or part of the key functions, will be required to report to their Director or Board if policies are endangering the interests of the policyholders. Then the IORP should adjust its policy accordingly.	
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79.	We agree on the analysis of the options and have a preference for option 2.	
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91.	Yes. In our view, there should not be a difference between information requirements for DB and DC schemes. In any case, members and beneficiaries of occupational pension schemes should receive information about the type and risk of the product and benefits. Even if the member is not able to make an investment choice, he or she could bare the investment risk (also to a lesser degree in certain DB schemes, for example in the Netherlands). These risks should be properly communicated.	
92.	We support the idea of a similar approach as the KID document. However, the introduction of a new harmonized format should not lead to a setback of member states activities. Furthermore, we do not agree with proposing different measures for DC/DB schemes. The Netherlands has high standards with regard to consumer information. Member States should always be able and/or allowed to implement a higher level of requirements.	
93.	There is a difference between information disclosure regarding financial advice when it comes to investment choices, and annual information about the performances of the benefits, the scheme and the pension product. According to our view, these two types and aims of communication should be kept separate.	
94.	In the Netherlands, both insurers and IORP's provide a mandatory annual (full) information disclosure format to their members with information about the type of contract, the amount of savings and an indication of the future pension benefit. These aspects are being regarded as essential communication towards members, which should be provided annually.	
95.	The revision of the IORP directive should not lead to a setback of the information activities of occupational pension providers in Member States, therefore we propose minimum harmonization. (See the answer to question 92.)	
96.	There is a need for a full quality impact assessment including quantitative aspects per national scheme.	