

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:	IBM Deutschland Pensionskasse VVaG and IBM Deutschland Pensionsfonds AG	
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	The IBM Germany Pensionskasse/Pensionsfonds (PK/PF) welcomes the possibility to comment on EIOPA's 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	

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	economic impact of any proposals 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.</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>	
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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 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.	

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	<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 constulation 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>	
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12.	<p>We strongly recommend to maintain the clear distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs (policy option 1).</p> <p>As a consequence we reject the undifferentiated usage of the holistic balance sheet as a catch-all approach because it doesn't fit the diversity of European IORPs: In our opinion, the holistic balance sheet approach doesn't meet the characteristics of sponsor-backed IORPs and to some extent Article 17 (3) IORPs. A resonable holistic balance sheet model implies</p>	

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	<p>that the value of the employer covenant (backed by the pension protection scheme) will have to be determined by the gap it is supposed to fill. This will be the gap between the financial assets on the one hand and technical provisions</p> <p>IORPs should only be bound to hold additional assets above the technical provisions to the extent they are not sponsor-backed.</p>	
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14.	<p>IBM Germany PK/PF 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.</p> <p>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.</p>	
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21.	We strongly oppose both options presented by EIOPA. The use of a market-consistent risk-	

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	free interest rate leads to results which are too volatile for the management of an institution that covers long-term obligations spanning generations. It would also not make allowance for the specific investment policy of the IORP. The possibility to use only an interest rate based on expected returns on assets to calculate technical provisions must remain.	
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33.	For sponsor-backed IORPs with additional PPS, Component 7 should not be interpreted as a calculated (by evaluation) asset position, instead it has to be interpreted as a flexible compensation position. Regardless of the definition of capital requirements, Component 7 has to be regarded as an asset to fulfil any solvency capital requirement the IORP might face. In any event component 7 has to be qualified as an equivalent to financial assets	
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38.	We reject the proposal of applying the Solvency II-rules for calculating the SCR to IORPs. Pension security is about much more than scheme funding levels alone. A broader approach	

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is required, taking into account the full range of mechanisms that IORPs across different member states now use to ensure that pension incomes are safe and secure.

The focus of IORP II is - beside the sound development of occupational pension schemes provided by IORPs in Europe - on security for members / beneficiaries. Therefore, essential security mechanisms like employer support and pension protection schemes have to be taken into account, making the whole concept of SCR dispensable for IORPs and a mere complex and costly exercise.

Additional SCR-requirements (and the complex process of calculating them) will raise cost and mean dead capital for employers. This will lead to a decline of their willingness to offer occupational pensions and therefore harm the second pillar within 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 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

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	<p>employees an occupational pension.</p> <ul style="list-style-type: none"> • Pension funds have long periods for recovering deficits. Their investment strategies are also based on this. Therefore their financial stability 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. • 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 and the UK). <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, quantitative impact assessment should be carried out.</p>	
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40.	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.	
41.	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.	
42.	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.	
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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 carry	

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	out a full review of its funding position every year and any deficit repaid back by the employer within a year (as in Solvency II), is not appropriate. This would put companies' cashflow under significant pressure. Longer periods of deficit recovery plans for IORPs are therefore necessary.	
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63.	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	

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	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.	
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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 to take 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 with the characteristics of the pension system, the social and labour law and the history of the pension system in their country. We therefore adhere to the principle that detailed rules on information requirements in combination with maximum harmonisation would often be</p>	

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	inappropriate.	
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