

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:	European Metalworkers Federation Boulevard du Roi Albert II, 5 (bte10) B-1210 BRUSSELS	
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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	

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General comment

EMF regrets that the consultation period on such a complicated and highly technical topic is taking place within such a short time frame. It might influence the quality and quantity of the response. A topic with such massive and long-term impact does not combine with the time pressure on respondents and the processing responses. The given format with specific questions limits us as respondent and does not mean that we agree to everything that is proposed and not specifically asked.

Second-tier retirement provisions are primarily the domain of social partners and the regulation the domain of the Member State, so by definition the subsidiarity principle applies. EU regulation might elevate the weakest but also disturb tailor-made best practices. Extreme financial and administrative demands might raise the operational costs to unacceptable levels.

A level playing field between operators is often brought forward as one of the objectives that should be achieved. In most Member States, IORPs are not-for profit institutions established by social partners for the sole and unique goal to manage the occupational pension in the best interests of the pension plan members and the beneficiaries (spouses, orphans, etc.). In many Member States they have their own specific adjustment and security mechanisms, very different from the way commercial insurers operate. And last but not least, many pension funds have a form of democratic control. They have a fundamentally different activity to that of a commercial undertaking, and should therefore not be treated in the same way.

Following all of EIOPA's proposals would endanger the existence of IORP's. Indeed, when new solvency requirements are imposed upon them, they increase the financing cost for the scheme's sponsor(s).

A review of the IORP directive cannot be handled separately from other initiatives of the Commission with respect to pension policy. The review as it is presented through the questionnaire touches also upon issues like the organisation of social protection, which are of a political nature.

The goal of the regulation should consist in facilitating the existence of good pension schemes for

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	<p>European workers and citizens. In a number of Member states pension schemes have existed for a long time. They are regulated and function well, and have a good track record of delivering pensions for successive generations. The aim of the directive should not be to bring new regulation to systems that function well in Member States that have already a sound regulation in place.</p> <p>The freedom of social partners to negotiate on occupational pensions should not be hindered.</p>	
1.	Yes	
2.	Not to our knowledge	
3.	Option 1	
4.		
5.	<p>EMF agrees that a clear and concise definition of cross-border activity is required in order to avoid any gaps or conflicting interests between different Member States. In this respect also clarity is needed on what is covered by prudential regulations and social and labour legislation.</p> <p>EMF wants to stress that the respect of social and labour law, including compulsory membership and the existence of solidarity elements, together with the recognition of the role of social partners in negotiating pension schemes, is a crucial factor in the security and sustainability of pension schemes and systems.</p> <p>Adding a new article specifically for cross-border situations would address the issue to some extent, but the provision “without prejudice to social and labour law” of the host Member State should be interpreted widely enough to cover prudential regulation as well, if this is part of the social and labour law.</p> <p>EMF considers it more appropriate to link the definition of Host Member State to the state in which social and labour provisions are applicable in the relation between the employer and its (former)</p>	

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	<p>employees, than to the mere location of the Sponsoring Undertaking. Sponsorship from outside the European Economic Area (e.g. from a foreign mother company) could then be allowed.</p> <p>The requirement of full funding in case of cross-border activity is contradictory to the principles of a single market.</p>	
6.	In our view, the principles laid out by EIOPA correspond to the concerns expressed in the CfA. We especially refer to the statement that EIOPA does not prejudice Member States' abilities to require additional measures to safeguard the rights of the members and that Member States should have the possibility to prohibit ring-fencing in order to maintain a certain level of solidarity in the pension system.	
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9.	Privileged rules are positive for the protection of members of Pension Schemes. Member States should have the possibility to introduce them by national law. However this should not be mandatory.	
10.	From the viewpoint of participants of IORP pensionschemes there is no need to extend or adjust existing regulation on cross-border activities of IORPs	
11.		
12.	EMF believes that any decision over this matter has a political component, since there might be relevant impacts over the structure and nature of occupational pension schemes in Member States.	
13.	<p>EMF considers that the evaluation of assets, according to the 'fair value' principles should not be the only principle applicable because the long-term horizon in which IORPs operate can permit other criteria. The use of a fair valuation of long-term or non-liquid assets as an equivalent to market consistent valuation should be appropriate.</p> <p>Pensions schemes, formulas and systems, especially those driven by social partners, are adapted when new economic and/or societal occurrences appear. A revised IORP Directive should be flexible enough to accommodate future developments and innovation of pension systems.</p>	
14.	We agree that no reference should be made to the transfer value. Liabilities should be valued in a	

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	'market consistent' way. This is not necessarily the same as the transfer value, since the concept of transfer is not fully applicable to IORPs in the same way as this is used for insurance companies. Where insurance companies always need to take into account the possibility of a forced transfer in case of insolvency, IORPs do not face this threat. We also especially agree with the point made that the transfer value for a pension contract would differ in the event the liabilities are transferred to an insurer on the one hand or to another IORP on the other hand. This makes the concept of transfer value unclear and therefore ineffective. Since the two options offered in option 1 contain the most flexibility, we prefer option 1.	
15.	EMF believes that taking into account the specific structure and functioning of IORPs, the own credit standing of IORPs should not be taken into account when valuing liabilities.	
16.	EMF believes that harmonization with accounting rules should not be a driver for a new IORP framework.	
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22.	As said in our general comments, the solvency II regulation is not the appropriate starting point to regulate the specifics of an IORP	
23.	See response question 22	
24.	See response question 22	
25.	See response question 22	
26.	See response question 22	
27.	See response question 22	
28.	See response question 22	
29.	See response question 22	
30.	See response question 22	
31.	See response question 22	

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32.	See response question 22	
33.	See response question 22	
34.	See response question 22	
35.	See response question 22	
36.	See response question 22	
37.	See response question 22	
38.	See response question 22	
39.	See response question 22	
40.	See response question 22	
41.	See response question 22	
42.	See response question 22	
43.	See response question 22	
44.	See response question 22	
45.	See response question 22	
46.	See response question 22	
47.	<p>In most Member States IORPs are operated or controlled by the social partners or the representatives of the members and beneficiaries. They are not commercial financial institutions because their aim is not to sell investments in a market but to provide social protection to their beneficiaries. This control structure and this objective, combined with good governance rules and the obligation to invest all assets in the best interests of the members and beneficiaries, constitute a strong mechanism to make sure that investments are made in a sound way. Investment rules should be consistent with the retirement objective of the IORP, and should therefore be based on the future liabilities and on the asset-liability context, with appropriate internal risk management procedures.</p> <p>IORPs are important long-term investors, and are important suppliers of risk-bearing capital. This should remain, and investment or prudential rules should not interfere with this role. In this respect,</p>	

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	more macro-economic analysis on the role of IORPs for the EU economy is desirable.	
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53.	As said in our general comments, the solvency II regulation is not the appropriate starting point to regulate the specifics of an IORP	
54.	The present regulation is sufficient	
55.	Supervisors already have the power to ask for stress tests under the current IORP Directive. EMF wants to underline again that the operation of an IORP is fundamentally different from an insurance company. As a consequence we believe that if a supervisor considers it necessary to have a stress test conducted by the IORP, it should be a tailor-made stress test which takes into consideration all the particular characteristics of an IORP as well as the principle of proportionality.	
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63.	We agree with the analysis of the EIOPA that in principle the material elements of the Solvency II requirements for governance could be applied to most IORPs "subject to the proportionality principle and a proper impact assessment to assess the real impact of the new requirements." EMF would like	

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	to stress that on the basis of the impact assessment exemptions should be possible.	
64.	EIOPA identified correctly the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance requirements. A proper impact assessment regarding the efficiency and the effectiveness of such new governance rules to IORPs seems necessary.	
65.	We do not agree with the EIOPA that the same 'fit and proper' requirements as for insurance and reinsurance undertakings as in Art. 42 (1) of Solvency II shall be applied to IORPs. The 'fit and proper' requirements have to be linked to the nature and risk profile of an IORP. There may be some general principles of 'fit and proper' requirements that are be similar to insurance and reinsurance undertakings, but the content of the requirements need to be adapted to the specificities of IORPs. As EIOPA correctly stated, a proper impact assessment is necessary in order to make sure that the requirements are proportionate for IORPs. It is important that the Board as a whole has an adequate level of expertise; it should not be required that each member of the Board fulfil all "fit" professional expertise requirements. Also the role of employee representatives as a non-executive board member, supervisory board member or trustee should be taken into consideration. For this kind of participation there should be proper training.	
66.	EMF agrees on condition that the proportionality rules will be properly applied.	
67.	Experience shows that today supervisors have all the powers needed to react accordingly if they think that fit and/or proper requirements are not fulfilled or not fulfilled anymore. Therefore EMF does not see the need for an amendment of any legislation.	
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94.	EMF believes that scheme members should receive regular and sufficient information on the general performance of their IORP and their personal entitlements in a comprehensive, transparent and	

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	accessible way.	
95.	EMF agrees with EIOPA's analysis.	
96.	The additional information requirements as proposed by EIOPA will indeed lead to additional compliance costs for IORPs and additional supervisory costs for supervisory authorities, which might ultimately be reflected in a charge towards the IORP. EMF would therefore urge for a proportionality between the additional information requirements (mostly for DC schemes) and the additional costs they would lead to.	