

**Comments Template on  
Discussion Paper on Sponsor Support Technical Specifications**

**Deadline  
31 October 2013  
18:00 CET**

Name of Company:	Association of Pensions Lawyers (APL)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Do <b>not</b> change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool</li> <li>⇒ Leave the last column <u>empty</u>.</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>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:DP-13-001@eiopa.europa.eu">DP-13-001@eiopa.europa.eu</a></b></p> <p><b>Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the questions refers to Discussion Paper on Sponsor Support.</p>		
<b>Reference</b>	<b>Comment</b>	
General Comment	<p>This is the response of the International Sub-Committee of the Association of Pensions Lawyers ("APL"). The APL is an organization representing members of the UK legal profession with a particular interest in pensions. Currently it has over 1100 members. Our members include most, if not all, of the leading practitioners in the UK in this field.</p> <p>We note the proposals set out in this discussion paper are part of a programme of further technical work to better assess and compare IORP solvency, and to contribute to future decisions regarding European initiatives regarding solvency of pension funds. We also note, and greatly welcome, the European Commission's announcement that its forthcoming legislative proposal for a revised IORP Directive will not cover solvency</p>	

**Comments Template on  
Discussion Paper on Sponsor Support Technical Specifications**

**Deadline  
31 October 2013  
18:00 CET**

rules for IORPs and that further technical work in this area is necessary.

Given the European Commission's recent announcement, it is not clear what the policy and legislative objectives of the proposals set out in this discussion are. Not knowing how these technical specifications for sponsor support are to be used makes it difficult to comment on their effectiveness and appropriateness. We remain concerned that this work is intended to serve a long-term aspiration for the harmonisation of the regulation of IORPs with the Solvency II regime without there being a clear legislative mandate for such harmonisation.

This response is not the place to rehearse all of the arguments against that aspiration. Instead, we would direct you to our response dated 14 October 2010 to the European Commission's Green Paper "*Towards adequate, sustainable and safe European pension systems*" dated 7 July 2010 and our response dated 2 January 2012 to "*EIOPA's Response to Call for Advice on the review of Directive 2003/41/EC: second consultation*" dated 25 October 2011. Key points we would however emphasise are that:

- the vast majority of IORPs in the UK are not commercial entities and are in no sense market participants or permitted to conduct themselves as such or seek new members or make a profit and are not therefore participants in any internal market in financial services;
- there are many other material differences between IORPs across the European Union and between IORPs and insurance companies regulated under Solvency II which are relevant to their funding arrangements; these differences are not limited to employer support and source of capital but include the level of commitment made in relation to the pensions promise (guaranteed or subject to funding etc) and interaction with state benefits

In response to the discussion paper, we have the following general comments to make.

**Comments Template on  
Discussion Paper on Sponsor Support Technical Specifications**

**Deadline  
31 October 2013  
18:00 CET**

It seems to us that “*a simple tool to achieve market consistent valuation of sponsor support*” seems neither feasible nor desirable. One needs to be clear about the market that is being referred to. There is no market for UK IORPs although that seems to be what is referred to. IORP sponsors do however participate in the labour market and the markets related to their principle businesses. Pension promises and funding obligations may impact the participation of IORP sponsors and others in these markets.

A one-size fits all approach would not take full account of the differing powers and obligations from IORP to IORP, industry to industry and country to country for the following reasons.

- A standardized pan-European approach would not recognise the difference between each sponsor’s industrial context. These differences can include differences in social and labour laws, business practices, culture and union strength to name but a few. Some of these differences are legal and some de facto insurmountable, a reason for greater flexibility.
- There are also differences in the nature of pension provision across member states. Some countries have substantial defined benefit liabilities while others have greater State provision for example. To have too rigid a regime could be a commercial impediment to some member states compared to others.

To the extent that the European Commission concludes there is a need for consistent assessment between member states (noting we do not consider there is), any such equivalence should be principles based and not as narrow or restrictive as the proposals set out in the discussion paper.

Q01.

Whilst stochastic mechanisms may assist in part, they are not very well suited to accurately predict risk over a longer period. Stochastic analysis has limitations. Professional judgment is key and the guidance might better put emphasis on obtaining legal and financial advice to ascertain the specific circumstances of the IORP in question, subject to cost and proportionality.

**Comments Template on  
Discussion Paper on Sponsor Support Technical Specifications**

**Deadline  
31 October 2013  
18:00 CET**

Q02.		
Q03.		
Q04.	There is a need to make greater distinction between balance sheet strength and cash flow affordability. Strong balance sheets do not necessarily evidence that cash payments can be readily made and the extent to which this is the case will vary from sponsor to sponsor. For example, one sponsor may have far greater capex demands than another.	
Q05.	Use of credit ratings is not of itself a certain predictive tool for affordability. In particular, none of this solves the difficulties of establishing credit ratios for not-for-profit organisations and multi-sponsor IORPs.	
Q06.	See response to Q05 above.	
Q07.	See response to Q05 above.	
Q08.	We would question whether a risk-based approach is better than the stated approach that stronger employers may be required to pay off their recovery plans over a short period and weaker employers over a long period. If the strong employer represents no real risk to the IORP paying benefits out in full, why need there be a short recovery period? Similarly, if an IORP with a GBP 50 million deficit is provided with a first charge over property worth GBP 75 million, why does it need a short recovery period?	
Q09.		
Q10.		
Q11.	Simplified approaches for small IORPS could create risk. It is often the smaller IORPS that require flexibility and for which too much rigidity could be a business threat.	
Q12.		
Q13.		

**Comments Template on  
Discussion Paper on Sponsor Support Technical Specifications**

**Deadline  
31 October 2013  
18:00 CET**

Q14.		
Q15.		
Q16.		
Q17.		
Q18.		
Q19.		
Q20.		
Q21.		
Q22.	See response to Q08 above.	
Q23.	Some large UK IORPs have either limits on sponsor contributions or automatic knock-on effects on member contributions where sponsor contributions are increased. Others are funded on a shared costs basis between the sponsor and the members. It is not clear how these would be assessed and, perhaps more importantly, how assessing sponsor support would be enhancing members' interests.	
Q24.		
Q25.		
Q26.	The proposals take no account of the various complex trigger mechanisms that some IORPs have in place for accelerated funding.	
Q27.		
Q28.		
Q29.		
Q30.		
Q31.		
Q32.		
Q33.	As noted above, it is not possible properly to assess these proposals without knowledge of the purpose they would serve or how they are to be used by national	

**Comments Template on  
Discussion Paper on Sponsor Support Technical Specifications**

**Deadline  
31 October 2013  
18:00 CET**

	<p>supervisory authorities? For example, the relationship between the methodology and the length of the recovery plan.</p> <p>To the extent EIOPA is concerned with equivalence of behaviours between national supervisory authorities (which we understand it is), the UK regulator already takes into account covenant support but takes account of a wider number of factors than in the proposed methodologies. Therefore, the proposals would be levelling in a "downwards direction" for UK IORP purposes. If anything, the UK regulator's approach should inform the other national supervisors.</p>	
Q34.		
Q35.		
Q36.	<p>There is little reference to the specific characteristics of different industries and indeed different business within each industry. Additional flexibility should be allowed for this.</p>	