

**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:	The Society of Actuaries in Ireland	
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 Society of Actuaries in Ireland is the professional body representing the actuarial profession in Ireland. The Society is dedicated to serving the public through the provision by members of actuarial services and advice of the highest quality. In this regard, a large	

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	<p>number of the Society's members provide advice to trustees and employers in relation to occupational pension schemes. We believe that we are well placed to make this submission to EIOPA's "Response to Call for Advice on the review of Directive 2003/41/EC: second consultation" and we are grateful for the opportunity to do so.</p> <p>The Society is an active member of the Groupe Consultatif Actuariel Européen. We have contributed to the preparation of the Groupe's response. However, we wish to submit our response separately too as it includes some commentary on matters as they relate to the Irish pensions environment.</p>	
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13.	Yes – for illiquid assets, an appropriate proxy should be used.	
14.	<p>Option 2: The concept of an IORP differs to that of an insurance contract. In particular:</p> <ul style="list-style-type: none"> • the contributions payable by the sponsoring employer can usually be amended in order to fund any shortfall • in addition, it is possible to amend the contributions payable by the members and in some cases amend the benefits to be provided to the members to remove any shortfall 	

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	<ul style="list-style-type: none"> • an IORP is a non-profit instrument which has no shareholders • an IORP is not required to attract new business <p>The list above is not exhaustive, but in itself does illustrate the significant differences between an IORP and an insurance undertaking. Therefore we agree that the principle for valuing the liabilities of an IORP should contain no reference to transfer value. In theory we would agree with the market consistency principle, however there is a lot of detail outstanding as to how it is defined.</p>	
15.	Not applicable in the Irish context	
16.	<p>It is our view that there would be no value to inserting a recital etc....for a number of reasons:</p> <ul style="list-style-type: none"> • The objectives and use of numbers between the two valuations differ and are not consistent with each other • The cost savings would not be material in so far as to warrant the use of only one basis 	
17.	<p>We agree with EIOPAs view to adopt Articles 76(1), (4) and (5) with appropriate amendments into a revised IORP Directive.</p> <p>For Article 76(3), we advocate Option 2 (no amendment to the IORP Directive) – but at the same time highlighting only if “market consistency” does not automatically imply the use of risk-free rate. We would support the view that the calculation of technical provisions should make use of and be consistent with the information provided by financial markets i.e. allow for a risk premium on investment growth assets which does not automatically imply the use of risk-free rate.</p>	
18.	<p>Option 1: Explicit risk margin in technical provisions calculated according to the IORP Directive – the risk margin is not related to the concept of transfer value/cost of capital, but to the risk of adverse deviations from assumptions.</p> <p>We do not advocate Option 2 as the cost of capital concept is not easily related to pensions. The alternative is to capture the risk margin in a single buffer outside of the technical provisions, but ultimately this would end up in the same position as Option 1.</p>	

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19.	<p>Pension schemes typically take a balance of cost approach with flexible contributions in the future to meet the accrual of benefits in the future. Therefore it is our opinion that it is not necessary to take into account future accrual when establishing technical provisions.</p> <p>If there is no recourse to future contributions or if future contributions are fixed with no scope to adjust e.g. like an insurance contract, then future accruals should be taken into account when establishing technical provisions.</p>	
20.	<p>Yes, reinsurance/insurance companies have their own Solvency II risk margins so to take them into account here would be doublecounting. We believe that displaying this risk margin is appropriate for transparency reasons, however in practice the assets should net off against the liabilities. If this is not the case the difference should automatically imply the creation of an appropriate reserve.</p>	
21.	<p>In Ireland, the expected return approach is adopted when determining the discount rate to use in the valuation of liabilities. Whilst a move to a "risk-free" rate would create greater security, the financial impact of such an approach would likely to lead to the closure of many schemes or a material reduction in benefits.</p> <p>Once the details of Solvency II are finalised and made available, this question should be readdressed.</p>	
22.	<p>Yes. It should be noted that this will represent a change from current Irish practice. The allowance for ongoing administration expenses incurred by the IORP is usually taken into account in the future contribution rate, rather than being shown explicitly as an accrued liability of the scheme.</p>	
23.	<p>Yes we agree with the analysis regarding the inclusion of unconditional, conditional and discretionary benefits in technical provisions.</p> <p>We do not agree that discretionary benefits should be included in the best estimate of technical provisions. Any inclusions would be in direct conflict with the concept of a discretionary benefit as members have no realistic expectations of such benefits and so should not be included in the technical provisions.</p> <p>No, as it would discourage the employer against making additional contributions to the fund. We would push back on the concept of surplus funds solely being used to provide additional benefits for members.</p>	

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24.	We have no strong opinion in this regard.	
25.	No strong opinion – not essential to the framework, we do not believe it adds any value to the Directive	
26.	No strong opinion	
27.	No strong opinion	
28.	No strong opinion	
29.	No strong opinion	
30.	No strong opinion	
31.	Future rules and regulations are not known at this time and cannot be commented upon.	
32.	We do not support the view that Member States should not be permitted to set additional rules in relation to the calculation of technical provisions as currently allowed under Article 15(5) of the IORP Directive. We are of the opinion that maximum harmonisation in relation to scheme governance is not possible and the outcome will be a minimum level of harmonisation across Member States. For those existing Member States which currently have an existing framework that provides greater security for benefits than the proposed regime, it would be appropriate to allow them to set additional rules than those currently allowed under Article 15(5) of the IORP Directive.	
33.	Sponsor covenant should be taken into account only to the extent that it is legally enforceable. There is no debt on employer provision in Ireland, nor is there a Pension Protection Fund (UK initiative),	

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	<p>therefore taking account of sponsor covenant in the calculation of the solvency capital requirements would be inappropriate unless there were a legally enforceable contract between the employer and the IORP.</p> <p>The UK requirement to assess sponsor covenant remains quite qualitative, it is not an exact science. To build any regulatory system on a qualitative measure may not be appropriate. If the Commission do want to allow for sponsor covenant to be taken into account, there would need to be a consistent method of quantifying it.</p>	
34.	<p>Yes, we agree that these Articles can be adopted for IORPs. However some of the items defined may not have relevance in the context of an Irish IORP.</p> <p>The need for supervisory approval for ancillary own funds for each IORP would create an excessive work load on the supervisory authority. We therefore believe prior approval should not be a requirement for an IORP.</p>	
35.	<p>Yes, we agree that subordinated loans should be explicitly allowed for in a revised Directive. They could be used to cover the SCR and technical provisions. The value given to the subordinated loan is a matter for level 2 and there should be some cap on them relative to total assets.</p>	
36.	<p>The concept of uniform security is more applicable to Insurers where the security of the provider is an important consideration for policyholders. Members of IORPs do not generally have the freedom of choice between IORPs to a large degree and therefore the idea of a uniform level of security may not be as relevant for IORPs. What is important is to understand the level of security provided by their particular IORP for their benefit and not the security relative to another IORP. We would therefore favour Option 2 i.e. a non-harmonized confidence level.</p> <p>We agree with EIOPA not to recommend a specific confidence level.</p>	
37.	<p>We would agree with the one year time horizon as per Solvency II. The ease of calibration of the model and consistency with Solvency II work is important. The presumption of mean reversion and an expanding funnel of doubt with a longer time period would be a concern for horizon of</p>	

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	<p>more than one year.</p> <p>Inconsistency with point 39 below re an annual assessment can be overcome by having appropriate annual monitoring of the scheme by the actuary.</p>	
38.	<p>Should a Solvency II type framework be introduced, we are happy with the calculation of the SCR. However in previous questions we have favoured the existing IORP Directive approach to the calculation of technical provisions which includes a risk margin allowing for prudence in the assumptions.</p> <p>In calculating the SCR we agree that the specific security mechanisms for each IORP should be taken into account for the sponsor covenant and pension protection scheme. However we believe that the choice of applying the SCR calculation is a political issue.</p>	
39.	<p>We believe a full solvency assessment should be required every 3 years with annual estimations. The details on the 3 year assessment will be a matter for Level 2 and the annual estimation should be proportionate. Any change which in the opinion of the actuary is material should require a reassessment of the SCR.</p> <p>Inconsistency with point 37 above re an annual assessment and a one year time horizon can be overcome by having appropriate annual monitoring of the scheme by the actuary in between the 3 year assessments.</p>	
40.	<p>We do not agree with the concept of an MCR applying to IORPs. It would be an excessive requirement and would not provide any additional security on top of an SCR and a recovery plan that would already be in place.</p> <p>However if it is considered that an MCR should apply then it should not be overly complex to calculate. Consideration should be given to the type of assets are required to cover the MCR. In addition any minimum absolute MCR would need to be carefully defined relative to the technical provisions and/or assets of the scheme.</p>	

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41.	<p>This is largely not applicable in an Irish context. Currently we have a limited pension protection scheme when an employer is insolvent and the scheme winds up. In these cases a scheme may make a claim for any outstanding sponsor contributions prior to wind up/insolvency.</p> <p>However in countries where such schemes exist we do agree with including them on the holistic balance sheet. Option 2 would be our preferred route for valuing a pension protection scheme – reduce the credit risk of the sponsor. However we acknowledge that Option 4 is also worth considering as it would enhance the security for members.</p>	
42.	<p>We agree that capital requirements for Operational Risk should apply to DC schemes but should be tailored to reflect the actual risk profile. We would select Option 3 as the preferred method of allowing for Operational Risk as it would encourage good risk management and controls within the scheme. It would also be important to distinguish between DB and DC scheme in allowing for Operational Risk. In addition we consider that where the asset management and administration is outsourced to a regulated provider, which will be the case in the vast majority of Irish DC schemes, there would be no requirement for the IORP to hold a reserve for Operational Risk.</p>	
43.	<p>We would agree with the adoption for IORPs of the duties and powers outlined in Solvency II. However careful consideration of the timelines is required and the long term commitment of IORPs should be acknowledged. The burden of reporting should also be considered. Excessive reporting requirements may not serve its intended objective if demands on Regulators are excessive and IORPs have high costs in meeting these deadlines.</p>	
44.	<p>We agree in principle with the requirements to submit recovery plans. However, the timescales set out in Article 138(2) and 139(2) if an MCR is required are too short for IORPs, as there is usually a need to consult with employer and employee representatives in agreeing a recovery plan. Recovery plans should have a longer term for meeting SCR. Longer periods will better reflect the</p>	

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	nature of the liabilities, short term volatility and avoid short term pro cyclical. Insurer's liabilities have different characteristics and therefore require tighter time lines for recovery. In particular a pension scheme may technically be insolvent but still represent a high level of security for the member's future benefit.	
45.	We would like further clarification on this issue and whether it is applicable to IORPs. On the basis of the information supplied we believe this is not applicable for an IORP.	
46.	Yes, we agree with the recovery plan as outlined. However the particular details of what is required to be submitted in the plan will be different to an insurer	
47.	We consider that a requirement to follow the prudent person principle should be sufficient for defined benefit IORPs. However, it may be considered desirable to retain the restrictions with regard to self-investment risk and concentration risk as in the current Directive.	
48.	There are no additional investment restrictions in Ireland – we are not in a position to comment on other Member States. We consider that it should not be possible for a host member state to require investment restrictions to apply in a cross border defined benefit IORP where there are no investment restrictions in the home state.	
49.	<p>We believe that the overriding requirement to follow the prudent person principle should apply for all schemes, but where members make investment choices and bear the investment risks ("pure DC schemes"), there should be a requirement on the IORP to:</p> <ul style="list-style-type: none"> • Provide an appropriate range of investment options • Provide sufficient information to members to enable them to make an informed choice • Provide a suitable "default option" for members who do not make an investment choice. <p>We consider that the detail of these issues should be considered at Level 2.</p>	
50.	The analysis is fragmented and in some cases inconclusive, so we do not propose to respond to this question other than to refer to our answers to the previous questions which we consider to be the key issues.	
51.	Borrowing should be permitted where it is facilitates the reduction in or management of risk, but not where it is intended to increase risk. We consider that subordinated loans are a risk mitigating tool and should therefore be permitted.	

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52.	It seems appropriate to include a reference in the Directive to the main principles of supervision as outlined in the text. It also seems appropriate to require supervisors to consider the potential pro-cyclical effects of their actions although as noted the detail needs further analysis.	
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76.	<p>We agree with the analysis as set out in 24.3.1 to 24.3.28. In particular:</p> <ul style="list-style-type: none"> • the "actuarial function" should perform the role currently undertaken for IORPs by the actuary (or similar qualified specialist) referenced in Articles 9 and 15 of the IORP Directive i.e. compute and certify the technical provisions • on grounds of cost, the Directive should not require an IORP to have two separate functions to compute and to certify the technical provisions (although member States could impose this additional requirement) • the actuarial function can be an internal or an external (out-sourced) appointment • the definition of the actuarial function should be sufficiently flexible to deal with the wide variety of IORPs in Member States • an actuarial function should be required for all IORPs which bear biometric or investment risk i.e. all but "pure DC" schemes, although actuaries can perform other tasks in such schemes e.g. advice on investment options, member communications 	
77.	<p>The list set out in Article 48(1) is appropriate with the amendments suggested in relation to</p> <ul style="list-style-type: none"> • underwriting policy • reinsurance <p>as these issues may not arise in many IORPs.</p> <p>We agree that the actuarial function should have whistle-blowing responsibility within appropriately defined parameters to the Board of the IORP and to the supervisory body.</p> <p>We strongly support the inclusion of the reference as in Article 48(1)(j) in relation to contributing to the risk management function.</p> <p>We agree with the comment in 24.3.16 that the actuarial function should be required to advise on the adequacy of future expected contributions to meet the benefits to be provided for future service, or where the IORP is established on a "balance of cost" basis, to recommend contribution rates to support the future accrual of benefits.</p>	
78.	<p>We strongly support the view set out in 24.3.24 that the actuarial function should provide competent, appropriate and independent advice to the IORP.</p> <p>We agree that the actuarial function should have "operational independence" so that it can discharge its</p>	

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	<p>duties objectively without being inappropriately influenced, constrained or controlled by the IORP, the sponsoring employers or other stakeholders in the IORP, in relation to the data used or the methods or assumptions adopted in undertaking its work, and without any conflict of interests. The framework within which the actuarial function operates may differ from IORP to IORP, but there should in all cases be appropriate safeguards against the independence of the function (and the advice provided) becoming prejudiced.</p> <p>We agree that the actuarial function should be subject to fit and proper requirements.</p> <p>We note the possible criteria set out in 24.3.26 in relation to the qualifications required to perform the actuarial function. We believe that actuaries who are members of their national associations and are therefore subject to the professional (technical and ethical) standards of that association and indirectly of the GCAE are best placed to fulfil the actuarial function in relation to IORPs. Indeed a number of countries currently require the actuary to an IORP to be registered with, or hold a practising certificate issued by, the national actuarial association. In general, such actuaries will satisfy the 3 criteria listed in this paragraph.</p> <p>We would be supportive of any requirement (either in the Directive or by the national regulator) to require the actuarial function holder to be a member of the national association as we believe this would enhance the operation of IORPs and the security of their members, although we understand that it may not be possible to impose such a requirement in certain Member States. As an alternative, Member States could be permitted to impose such additional requirements in their own jurisdiction: indeed not to permit this would weaken the governance of IORPs in countries where this is currently a requirement.</p> <p>International standards promulgated by either or both of the International Actuarial Association and the GCAE can very valuably support consistency and transparency of practice on the part of holders of the actuarial function.</p>	
79.	We agree with the analysis and options as laid out, and support Option 2. We agree that this should not have a major cost impact as IORPs are already required to have an actuary (or similar qualified specialist) to compute and certify the technical provisions.	
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91.	<p>We believe that the information requirements already in place in Ireland, including Statements of Reasonable Projection, comprehensively cover the additional information requirements for both DB and DC plans. However, the question of whether this information is provided in a form that is comprehensible to all is possibly a different but nonetheless equally important question.</p> <p>We would add that, for DB schemes, it may be advisable to consider information requirements which reference risk. For example, clarify which benefits are guaranteed, whether there are sufficient funds to pay these and other benefits and whether a legally enforceable covenant exists.</p>	
92.	<p>We are generally supportive of this initiative. As this is only a short summary document which provides key information, we would favour the document to be provided in electronic format to facilitate links to other important scheme documentation and websites.</p>	
93.	<p>We believe that scenarios should be shown, with high, medium and low risk events. We do not believe that the communication should be too precise as this could be misleading. We believe the time factor to be a very important component in any profile.</p> <p>We believe risk ranking should take account of time horizons as the relative risks vary for members with</p>	

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	<p>different time horizons to retirement.</p> <p>Ideally, we believe members should be provided with the facility to enter their own investment strategies within the model. The model would provide the outcome of various scenarios for a range/spread of risk. We believe it would be appropriate for members to be able to interactively do their own scenario testing in a simplistic manner which would show a high level measure of volatility for each scenario.</p> <p>We believe this should be considered at a later level.</p>	
94.	<p>In Ireland, we already provide members with a personal annual benefit statement. We don't explicitly show costs on these statements.</p> <p>Typically if a member entered a scheme the costs would have been set out at the outset and should not have changed in that time. However, we do believe that it is important to ensure that the charges members are informed of are aligned to those actually charged to the member. Therefore it may be considered appropriate to be able to demonstrate this to the member.</p> <p>We believe it is important for an IORP to effectively have processes in place to ensure that the charges in place reflect the pre contractual agreements. However, we do not believe it is practical to quantify these charges on an annual benefit statement. As an intermediate step the statements could contain a note to state that the charges levied are as set out at the outset. Overall, we believe that the Trustee Annual Report is a more appropriate document within which to provide a central source of information on costs.</p>	
95.	<p>We are of the view the there should be a minimum level of information which all countries must include.</p>	

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	<p>Countries may then be given the ability to enforce additional requirement as are appropriate to their culture, social security and taxation systems.</p> <p>No, we do not believe that there are other parts of the regulation that should be harmonized.</p>	
96.	<p>We believe the impact assessment is appropriate for some countries. However, from an Irish perspective the impact is likely to be more modest as we have a number of the requirements already in place</p>	