	Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC *Scope, cross-border activity, prudential regulation and governance*	Deadline 15.08.2011 18:00 CET
Company name:	Assuralia	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. 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.	Public
	Please follow the instructions for filling in the template: ⇨ Do **not** change the numbering in column "Reference". ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. ○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies. ○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself. **Please send the completed template to *firstconsultationiorpcfa@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).** The paragraph numbers below correspond to Consultation Paper No. 01 (EIOPA-CP-11/01).	

	Comments Template on EIOPA-CP-11/001 **Draft response to Call for Advice on the review of Directive 2003/41/EC** ***Scope, cross-border activity, prudential regulation and governance***	**Deadline** **15.08.2011** **18:00 CET**
Reference	**Comment**	
General Comment	**Assuralia**, the professional association of Belgian group insurers which manage 80% of Belgian second pillar pensions, very much welcomes the public consultation being held by EIOPA in relation to the Call for Advice on the IORP review. Although this Call for Advice is aimed at IORP regulation, it is important that the EIOPA exercise also takes into account the other providers of occupational pensions as well as the regulatory framework in which they operate. Alongside IORPs, insurers are also an important player on the occupational pensions market (in Belgium insurers manage around 80% of the second pension pillar). It is therefore important that the exercise on IORP regulation is conducted from this broader perspective: - Accordingly, it is important, among other things, that there is a level playing field between IORPs and insurers so that beneficiaries of occupational pensions enjoy the same level of protection irrespective of the type of pension provider. - Further, the IORP Directive contains an option that makes it possible to apply (part of) this regulation to insurers. With this in mind, Assuralia wishes to make the following comments on the questions of EIOPA's first public consultation. Given the short timeframe for responding to this public consultation, Assuralia believes that the issues dealt with in this public consultation should also be addressed in the second public consultation (October-November). This will enable some of the issues raised below to be examined in more detail and all aspects of the Call for Advice (including those on which EIOPA has not yet pronounced) to be taken into account. The responses below are based on the following **three basic principles** which Assuralia considers essential: • The Call for Advice must also regard the regulatory framework of the insurers because both types of pension provider (IORPs and insurers) are active in the field of occupational pensions and beneficiaries should enjoy the same level of protection, irrespective of the type of pension provider. • The regulation and the level of protection must be established according to the risk and not be	

	influenced by the nature of the pension provider (same risks, same rules). • If the employer assumes a number of obligations (i.e. does not outsource them to a pension institution), protection measures should also be put in place for these obligations to ensure the solvency of the employer is such a way that beneficiaries are sufficiently protected.	
1.		
2.	The main factor when determining the scope of the IORP Directive must be the idea that beneficiaries of (capitalised) pension rights must enjoy the same level of protection regardless of the type of pension provider. This supposes a level playing field between the different providers of capitalised pensions. It is therefore important when defining the scope to ensure that all pension providers operate according to equivalent rules (same risk, same rules) in order to avoid arbitrage in the choice of pension institution based on the least strict prudential regulation, which would result in reduced protection for members.	
3.		
4.	Assuralia considers that in terms of regulation there must be a level playing field between all pension providers engaged in capitalised pension build-up, irrespective of the type of provider (IORP, insurer, government institution, etc.). This means that the different providers operate in accordance with the "same risks, same rules" principle, beneficiaries enjoy the same level of protection for their pension rights, regardless of the type of pension provider, and beneficiaries have access to the same level of transparency as regards the underlying risks associated with their pension commitment.	
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9.	Assuralia notes that when devising the prudential framework a clear distinction must be drawn between the obligations of the pension institution itself and the obligations of employers. This is because, when pension commitments are made to employees, there are obligations both for employers and for the pension institution that implements the pension commitment.	

With a view to adequate prudential protection of beneficiaries' pension rights, it is important that the prudential framework takes this into account:

- Accordingly, the prudential regulation of the pension institution must be tailored to the (usually operational, financial and/or biometric) commitments incurred by the pension institution itself. When developing this framework, a level playing field must be created between the different types of pension institution (same risks, same rules).
- Given that an employer usually also has obligations in relation to the pension commitment, prudential rules (inter alia on the solvency of this employer) must also be established in order to ensure that the employer's obligations are actually met.

In practice, a pension institution can manage pensions both in the form of a best efforts obligation and of an obligation of result. To ensure the necessary certainty that pension obligations will be met, it is important that the prudential framework be tailored to the actual commitment of the pension institution. The general principle that must apply here is: "the bigger the risk associated with the obligations incurred, the stricter the prudential requirements".

Where an organiser relies on a pension institution for all of its pension obligations, the prudential regulation should focus primarily on the pension institution. However, where the pension institution manages the pension reserves in the form of a best efforts obligation, the risk for meeting the pension obligations lies primarily with the employer.

In the latter case, therefore, it is important that there are prudential rules (inter alia on the solvency of the employer) which apply to the employer with a view to its meeting its obligations. The question may arise whether the employer must comply – for the obligations that it takes upon itself – with the same prudential rules as a pension institution, or whether a different level of rules and solvency is required.

For the beneficiaries, it is important to have a clear idea of:

- which obligations are incurred by the employer;
- which obligations are transferred by the employer to a pension institution;
- what guarantees the pension institution offers regarding the obligations transferred to it.

	This comment also applies to questions 10 – 12.	
10.		
11.		
12.		
13.	A suitable governance policy is an important component of a pension institution's overall policy: such rules ensure that the pension reserves are managed carefully and professionally with a view to meeting the institution's pension obligations. It is therefore important that there is suitable regulation in this area to ensure that such a governance policy is practised. Assuralia would like to point out that there already exists an extensive set of governance requirements in the field of insurance legislation. To ensure equal protection of all capitalised pension beneficiaries, it is important that the governance requirements within the IORP Directive match those applying to insurers so that there is a level playing field in this area. This comment also applies to questions 14 - 18.	
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16.		
17.		
18.		