	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:	**Romanian Pension Funds' Association** **(Asociatia pentru Pensiile Administrate Privat din Romania, APAPR)** Opera Center, Str. Costache Negri nr. 1-5, etaj 1, sector 5, cod postal 050552, Bucuresti Tel.: 0040.372.289.563 , Fax: 0040.21.402.85.82 , www.apapr.ro Contact: Mihai Bobocea (Secretary General), 0040.726.737.725 , mihai.bobocea@gmail.com	
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. o 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. o 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).	
Reference	**Comment**	
General Comment	***I.*** *The APAPR strongly considers that the mandatory private pension schemes (so-called 2nd Pillar under the World Bank taxonomy) in the new member states, referred to in the EIOPA document (paragraphs*	**Public**

6.3.5 to 6.3.7), should remain under the scope of Regulation 883/2004 and should not be transferred under the scope of the reviewed IORP Directive.

Therefore, we support any of the Options 1 to 4, as long as the mandatory private pension schemes in the new member states are not wrongly considered as "occupational", as suggested by the wording detailed under Option 2, for example.
Indeed, some clarifications could be made to the "occupational pension schemes" universe, but this universe does not include the 2nd Pillar systems (mandatory private personal pension plan) in the new member states, for reasons related to design and features, described below.

II. *There are several arguments for our position, with numerous of them being pointed out even in the EIOPA document:*

a) "The following OECD definitions are useful for common understanding of the proposals which are set out in this advice: (...)
Personal pension plans: Access to these plans does not have to be linked to an employment relationship. The plans are established and administered directly by a pension fund or a financial institution acting as pension provider without any intervention of employers. Individuals independently purchase and select material aspects of the arrangements. The employer may nonetheless make contributions to personal pension plans. Some personal plans may have restricted membership."

The mandatory private pension systems in Romania (specifically) and in the other new member states (generally) fit in perfectly with the OECD definition of (mandatory) personal pension plans, and have nothing in common with the occupational / employment-related definition suggested by EIOPA:
in Romania, access to these plans is not linked to an employment relationship. All the self-employed and the freelancing individuals which contribute to social-security are also eligible for the mandatory private pension funds, so access to this 2nd Pillar is regardless of the occupational / employment status, but is linked to social-security;
in Romania, these private pension plans are established and managed directly by financial institutions, without any intervention, role or scope of employers. Contributions to these plans are individual, being directed from the social-security system. Employers are not involved in any way in the creation and administration of these pension funds. Furthermore, employers do not ever pay contributions to these

pension plans on behalf or for the benefit of their employees and are not even allowed to top-up the individual contributions directed via the social-security centralized collection system;
in Romania, individuals independently purchase the arrangements, their design being extremely restricted by law and not subject to any collective bargaining and/or employer consultation. In fact, employers, labor unions and third-parties other than the individual are by no means part of the decision-making process regarding accessing one pension fund or another.

b) "Any extension of the scope of the IORP directive should be based on common principles which can apply to all pensions models."

Given the details provided above, we consider that the occupational principle does not apply in any way to the mandatory private pension system in Romania and the other new member states. Therefore, the extension of the IORP Directive's scope towards these systems would not be fair or based on any "common principles".

We stress out our deepest concern regarding some suggestions in the EIOPA document that all (mandatory) private pension systems in the new member states are somehow employment-linked or employment-related, therefore occupational. This argument is utterly false and we consider it must not be maintained in the final version of the EIOPA response document.

c) (when referring to the mandatory private pension systems in the new member states) „However, some of these elements can also be classified as a personal pension plan. The dividing line between 1st, 2nd and 3rd pillar is not always clear. Amendments to clarify the current exclusions could enhance a consistent application."

Even the EIOPA rightfully considers that "some" (although the correct term would be "most") of the design features of these pension systems point to the OECD definition of personal pension plans. Indeed, some clarifications are in order, but forcing the "occupational" definition on these systems is unfounded and thoroughly unfair.

III. *While the EU constantly invokes the subsidiarity principle when referring to (public) pensions systems in the member states ("pensions are largely the responsibility of member states", "subsidiarity recognized, no change intended"), the changes suggested by this EIOPA document tend to contradict this principle in the field of private pension schemes.*

In Romania, the mandatory private pension funds are regulated by a modern and complex prudential IORP/UCITS-inspired legal framework which gives due consideration to the specific issues that differentiate our system from the occupational ones in the older member states. Should new EU regulation (such as a reviewed IORP Directive with an over-enlarged scope) emerge to include the Romanian mandatory pension system, the effects could contradict initial expectations, driven by good intentions.

More specifically, enforcing supplementary capital/solvency requirements, technical provisions, etc. on these pension systems in the new member states would result in negative financial impacts for both providers and pension funds, making private pension provision significantly less affordable, given the already very restrictive legal framework. In this type of systems, the financial institutions managing the pension funds have extremely limited revenues from this administration activity, because the individual contribution levels (transferred from social-security) are capped by law, and also the asset management fees are capped at very low levels, preventing the possibility of capital accumulations to meet any supplementary EU-established solvency requirements.

Furthermore, we consider that it is not only unrealistic and unfeasible, but merely absurd that the revenues of pension funds and their managers/providers be capped at low levels by austere national regulations while the expenditures / capital / solvency obligations of these providers and funds be increased by new EU-established regulations that do not take into account the differences of these systems from the ones in the older member states. Also in this context, we stress out that the EIOPA assessment of options 2,3,4,5 on the enlargement of the Directive's scope severely understates the negative impact, in terms of financial sustainability, of the proposed measures (i.e. Solvency II related) on the mandatory private pension systems in the new member states.

IV. *Concluding remarks*

From a political and non-technical perspective, we finally stress that having CEE mandatory pension funds under the scope of the future IORP Directive might turn out to be a strong incentive for Governments in the new member states to further shift private pension assets from mandatory funds to PAYG systems to

	avoid "interference" by Brussels-based regulations, as the IORP Directive could not block such a initiatives (see the reform-reversal cases of Hungary and more recently Poland, regarding their mandatory pension systems). We therefore believe that the positive effects of this scope enlargement (e.g. quantitative and geographical investment restrictions may disappear, some erratic and interventionist national regulations might be blocked) are by no means able to counterbalance the potential negative effects on the further development of these systems, given the recent events and the restrictive economic and fiscal environment.	
1.	**Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?** We believe that the negative financial impact in terms of sustainability and affordability of pension plans (in the context described above) is severely understated in the analysis of the options. Subjecting non-occupational pension plans (such as the ones in the new member states) to the same capital/solvency rules as in the older member states, perhaps even topping-up existing prudential provisions in the national regulations, is a negative outcome which we hope will be avoided.	**Public**
2.		
3.	**Which option is preferable?** We support any of the Options 1 to 4, as long as the mandatory private pension schemes in the new member states are not wrongly considered as "occupational", as suggested by the wording detailed under Option 2, for example. Indeed, some clarifications could be made to the "occupational pension schemes" universe, but this universe does not include the 2nd Pillar systems (mandatory private personal pension plan) in the CEE states, for reasons related to design and features described in this document.	**Public**
4.	**How should it be determined whether a compulsory employment-related pension scheme is to be considered as a social-security scheme covered by Regulations (EEC) No 883/2004 and (EEC) No 987/2009 (see Art. 3)?** The "compulsory" feature is perhaps the least relevant of all when assessing which regulation's scope should cover pension schemes. The fact that the mandatory private pension systems (2nd Pillar) in the new member states are individually funded by individual contributions directed via the social-security centralized collection system and that these funds are by no means influenced by any activity or will of the employers is much more important than the compulsory issue. Also, we again point out that the "employment-related" concept is incorrectly used here, for the same	**Public**

	reasons detailed at point II a).	
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