



28 December 2011

Our ref: ICAEW Rep 127/11

Your ref: EIOPA-CP-11-006

By email: CP-006@eiopa.europa.eu

Dear Sirs

Review of Directive 2003/41/EC: second consultation

ICAEW welcomes the opportunity to comment on the Call for Advice on *the review of Directive 2003/41/EC: second consultation* published by EIOPA on 25 October 2011 a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

Our response is set out in the attached Appendix, and reflects consultation with the ICAEW Pensions Subcommittee of the Business Law Committee, which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours faithfully

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APPENDIX

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:	ICAEW	
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"> ⇒ Do not change the numbering 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	We query the need for harmonisation of capital requirements in respect of IORPs, as we believe they are fundamentally different from insurers (due to the sponsor support) and in our view there is no need for a 'level playing field' for IORPs across Member States. We also note that Member States with well developed occupational schemes have existing regulatory funding safeguards tailored for pension funds, and we believe the scheme funding measures proposed are disproportionate and will bring little or no benefit, but	

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	<p>will have a serious negative impact on current high quality occupational pension provision and economic growth in the UK.</p> <p>We also note that the Solvency II regime has not yet had time to ‘bed in’, and we believe that regime should be properly assessed before its provisions are extended to other entities.</p> <p>We are also concerned about the process surrounding the development of these proposals, as we believe there should be a proper impact assessment before the Commission can proceed with making any proposals. Such an impact assessment is not possible unless and until more detail is provided in respect of various fundamental aspects of the proposals, such as valuation of the employer covenant and the length of recovery periods. For example, in respect of the ‘holistic balance sheet’, we believe the principles of measurement for the various components should be set out at Level 1, which should be reflected in the impact assessment in order for respondents to properly consider the proposals. Without an impact assessment, it is not possible to assess the impact of any proposals in any meaningful way and therefore a proper quantitative impact assessment is critical before any further steps are taken.</p> <p>We also note that a 10 week period (which includes the Christmas period) to develop responses to a 500 page document is very challenging and does not allow sufficient time for proper assessment.</p> <p>This response deals only with questions 12, 16, 33 and 38, which deal with scheme funding.</p>	
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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
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12.	<p>What is the view of the stakeholders on the holistic balance sheet proposal? Do stakeholders think that the distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs should be retained or removed?</p> <p>Without prejudice to our view (expressed above) that a harmonised solvency regime for IORPs is neither necessary nor practical, we consider that (if a harmonised regime is to be imposed) we would support the concept of a holistic balance sheet, incorporating all prudential mechanisms in the overall solvency assessment (including, for example, the employer covenant). However, we note that insufficient detail is provided in respect of various fundamental components of the holistic balance sheet, such as valuation of the employer covenant and the length of recovery periods. It is also unclear what the consequences would be if the holistic balance sheet 'does not balance'.</p> <p>A harmonised, centrally prescribed, approach would not be appropriate given that the nature of pensions liabilities are a function of national legislation which differs greatly between Member States. Therefore, we believe there should be an EU framework set out at 'Level 1' (ie in the Directive), setting out the principles of measurement for the various components. This framework should provide sufficient flexibility to allow Member States to make any necessary adjustments in order to implement appropriate mechanisms for assessing / measuring the various components that take account of the different national legislative requirements underpinning the pensions promise.</p> <p>Once this framework has been developed, it should be reflected in a proper impact assessment to enable respondents to properly consider the proposals.</p>	
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16.	<p>What is the stakeholders' view on inserting a recital in the IORP Directive saying that supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards?</p> <p>Supervisory valuation standards have a different purpose than accounting standards (which are developed for financial reporting purposes), and therefore we would oppose such a recital as we believe these regimes should be allowed to develop separately and independently. In particular, if a 'holistic balance sheet' approach is introduced as a regulatory tool, there would be no need for the components to be valued on the same basis as those required in the financial statements.</p>	
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33.	<p>What is the stakeholders' view on the analysis regarding sponsor support? Do stakeholders agree with EIOPA that IORPs should value all forms of sponsor support as an asset and take account of their risk-mitigating effect in the calculation of the solvency capital requirement?</p> <p>It is critical to any prudential system that all forms of support are properly assessed and included. In the UK,</p>	

	<p>the sponsor covenant is a fundamental feature, and it is essential that the high level of security provided by the sponsor covenant, backed by the Pension Protection Fund, is given due recognition. Under a holistic balance sheet approach, the employer covenant must be included in order to avoid increases in capital requirements that would give rise to serious implications, including:</p> <ul style="list-style-type: none"> • reducing the amount of profit available for investment by sponsoring employers, coupled with a reduction in the likelihood of inward investment in those employers; • increased investment in risk-free assets, reducing the availability of capital needed for economic growth; • further closures of DB pension schemes, reducing the coverage of high quality pension provision in the UK, and (for employers with underfunded schemes) an increased risk of insolvency. <p>As we mention at 38 below, for similar reasons we strongly oppose any capital requirements being applied to sponsor-backed IORP schemes.</p>	
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38.	<p>What is the stakeholders' view on applying the Solvency II-rules for calculating the solvency capital requirement (SCR) to IORPs, taking into account their specific security and benefit adjustment mechanisms?</p> <p>As we mention at 33 above, we strongly oppose any Solvency II capital requirements being applied to sponsor-backed IORP schemes. This is because we do not believe there is any need for harmonisation of capital requirements in respect of sponsor-backed IORPs, and in any event the Solvency II rules for calculating the SCR are not appropriate for sponsor-backed IORPs, which are fundamentally different to insurance providers.</p> <p>In our view, to require the IORP to calculate a (notional) solvency capital requirement would not result in increased security for the scheme member. However, the introduction of capital requirements would have a serious negative impact on current high quality occupational pension provision and economic growth in the UK, because it would:</p> <ul style="list-style-type: none"> • reduce the amount of profit available for investment by sponsoring employers (and reduce the 	

	<p>likelihood of inward investment in those employers);</p> <ul style="list-style-type: none"> • increase investment in risk-free assets, thereby reducing the availability of capital needed for economic growth; • lead to further closures of DB pension schemes, reducing the extent of high quality pension provision in the UK, and (for employers with underfunded schemes) increase the incidence of insolvency. <p>We therefore believe that the introduction of capital requirements would create significant additional burdens without bringing any appreciable benefits (we do not believe that the increase in transparency or the imposition of a level playing field with insurance companies would deliver any appreciable benefit), and therefore a proper impact assessment should be carried out before any such proposals are put forward.</p>	
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