

**Comments Template on
Consultation Paper on Further Work on Solvency of IORPs**

**Deadline
13 January 2015
23:59 CET**

Name of Company:	BDA Confederation of German Employers' Associations , Berlin	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Confidential/Public
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Reference	Comment	
General Comment	<p>BDA, Confederation of German Employers' Associations, calls upon the European Commission and EIOPA to refrain from increasing the capital requirements for IORPs and especially from extending the requirements of Solvency II to IORPs. The HBS initiative is highly unlikely to foster more sustainable pension saving and provision. On the contrary, it would lead to a grave loss of efficiency for occupational pension schemes in Germany without any gain in security and stability. Such regulations would jeopardise not only the necessary expansion of occupational pension provision in Germany, but also the institutions that already exist – and all this in the end to the detriment of beneficiaries.</p> <p>Therefore, the continued technical work by EIOPA on the HBS is not the right approach. In</p>	

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contrast to that, we repeat our suggestion of the last consultation in October 2013, that the European Commission should develop with support of EIOPA and in dialogue with the social partners a tailor-made European supervision regime for IORPs primarily oriented on minimum standards and the principle of subsidiarity.

Although EIOPA thinks that the HBS methodology will be required in one or another form, the recent version of the IORP directive proposal actually does not justify any quantitative requirements based on the HBS approach.

It must be noted that the HBS approach does not adequately fit to the social character of IORPs and is therefore not appropriate. In other words, it neglects that the members of IORPs are embedded in the protection of labour, social and co-determination law.

Every move towards a system that places more burdens on IORPs and their sponsoring undertakings contradicts the fact that in times where most European societies undergo demographic change, occupational pension systems should be strengthened rather than weakened. Every increase in the costs of providing occupational pensions decreases the employer's willingness to provide this important social benefit. This is even more the case in Germany, where the provision of occupational pensions is done on a voluntary basis. It should also be kept in mind that any additional regulatory requirement imposed on IORPs will result in costs which will be borne mostly by beneficiaries and members. European employers cannot afford more costs due to the fact that their secondary wage costs are already at such a high level that any further increase will pose a threat to their international competitiveness. As a result, higher costs are likely to lead to a decrease in benefit level and coverage of occupational pension plans.

We generally consider the market value based approach inadequate for liabilities with such long durations. Moreover, there is normally no need for IORPs to liquidate all pension liabilities at one point in time. For insurance contracts the approach might be adequate as hypothetically all contracts could be cancelled at the same time, but for occupational pensions labour law does not allow early cancellations.

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Instead of that we would prefer to see a strengthening of the subsidiarity principle by allowing options which give the Member States the responsibility for defining regulatory details in line with national labour, co-determination and social law. Accordingly, we refuse the idea that European regulatory requirements could be imposed on the labour, co-determination or social law at the national level. Europe should continue with clear borders between these different fields of law and the supervisory regulation should always be subordinated. In Germany pensions are safeguarded already by labour, co-determination and social law.

Additional equity capital requirements for IORPS would not increase the security of pension promises but will make it more unattractive for employers to offer occupational pensions. In this context, we welcome the insight of EIOPA that it may be better for members and beneficiaries if a sponsor invests in his own business to ensure the pension promises in the long run instead of transferring additional funds into its IORP.

Last but not least, the prospect of further revision to the funding regime is creating considerable instability for employers. This climate of uncertainty, now stretching back over years, undermines employers' confidence in their ability to plan for the long-term and leads them to revisit their commitment to continuing to offer workplace pensions of the kind which would be affected. These employers are concerned about the future impact on their investment plans for jobs, growth and capital infrastructure at a time when Europe is asking the same businesses for increasing their level of investment. Furthermore, this continuing uncertainty about the scale of revisions to the supervisory regime may have a significant detrimental impact upon wider economic activity in our sector and trigger changes in employers' behaviour as they could anticipate a significant worsening of the regulatory environment. This is likely to negatively impact upon the provision of occupational pensions.

In summary, the HBS approach is unsuitable for company pensions and should therefore be omitted. Within this unfitting concept only those proposed options, if any, might be applicable where all security / reduction mechanisms are applied. In no case effects on funding are allowed to arise.

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Q1	No. There is a triangle relationship between employer, employee and IORP which is not covered adequately by “contract” between IORP and employee. In addition, between employee and employer there is a special employment relationship.	
Q2	Yes	
Q3		
Q4	From our perspective the concept cannot be applied in a collectively managed pension plan (especially for a DB plan) and should be omitted.	
Q5	No. In addition, the right to reject additional contributions does not stop the liability to pay benefits – so that point in time cannot be used for setting a contract boundary. Whether contributions fully reflect the risk is dependent on the measure. So it could occur a circular reasoning to base the definition of “contract boundaries” and then build up a risk measure on that.	
Q6		
Q7	Yes. Especially, when there are contributions of the members that could not be included in sponsor support. In order to treat member and employer contributions in a consistent way (they are often linked with each other), there should be the described distinction.	
Q8	Yes	
Q9		
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Q11		
Q12		
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Q14		

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Q15		
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Q20	Yes	
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Q25		
Q26		
Q27	No. Pure discretionary benefits shall not be recognised in an HBS, because it is hardly possible to conduct reliable calculations regarding these uncertain benefits.	
Q28		
Q29	Within this HBS-concept sponsor support which is legally enforceable in Germany should always be a balancing item.	
Q30	Yes	
Q31	We support the first option due to its simplicity.	
Q32	Yes	
Q33		
Q34		
Q35	We underline that all kinds of benefit reduction mechanisms should be treated as a last resort item at any time. We agree with the conclusion that if a benefit reduction mechanism is available and not limited, it generates the ultimate mechanism for the IORP's sustainability and <u>should be</u>	

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	<p><u>valued as balancing item.</u></p> <p>But we do not see any dichotomy between a direct approach and the balancing item approach and would not restrict the recognition of a benefit reduction mechanism to cases of unlimited reductions. Applying one or the other approach should be determined by the kind of benefit reduction available. We suggest to use a kind of direct approach that differs from the one provided within the consultation in cases of a “restricted” benefit reduction mechanism. If contract/bylaws or national law and other regulations allow for a benefit reduction but restrict that to a certain amount, this mechanism should be recognised directly up to its legal or regulatory limits. There should be no use of probability or predictability based on past policies within this approach. In case of an unlimited benefit reduction mechanism the balancing item approach should kick in.</p> <p>Additionally, we do not agree with the approach of valuing all other items of a HBS first before recognising any benefit reduction mechanisms as mentioned in 4.91 last sentence. It is an unnecessary and costly exercise to value all mechanisms and “assets” that qualify, as balancing items on the HBSs if IORPs dispose of more than one. In Germany for example all IORPs dispose of two items, but not necessarily the same. Pension funds in form of “Pensionsfonds” and some form of “Pensionskassen” combine legally enforceable sponsor support with a pension protection scheme, another form of Pensionskassen combines legally enforceable sponsor support with an ex-ante benefit reduction mechanism.</p>	
Q36	Yes, the specifics should be set by the Member States.	
Q37	The concept of the HBS should not be applied to IORPs. The reason is that the HBS and the calculation of the SCR fully rest on the Solvency II structure regarding the market consistent valuation of assets and liabilities. Furthermore the measuring and quantifying of risks are unsuitable for IORPs. Generally we reject the notion that assets and liabilities should be valued mark-to-market given the long term nature of pensions and the inadequate short-termism mark-to-market valuation may induce. We want to underline that the proposed balancing item	

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	approach in this sense is consistent in general market.	
Q38	No, a separate and explicit valuation of the sponsor support using expected cash flows is not necessary in general and often not possible with accurate precision and data.	
Q39		
Q40	Legally enforceable sponsor support like in Germany should be treated as a balancing item.	
Q41		
Q42		
Q43	We agree. Pension protection schemes should definitely be considered either via backing up sponsor support as balancing item or directly as balancing item on the HBS. Otherwise this important security mechanism for safeguarding the pension promise from the beneficiaries' perspective would be neglected.	
Q44	In both cases, the existence of a PPS should be considered in the HBS. If the PPS does not guarantee full benefits, then we recommend that Member States should specify appropriate details of the valuation of the PPS. This enables Member States to cover different types of PPS and their specific circumstances.	
Q45	In case of a strong sponsor or a sponsor backed by a pension protection scheme the pension promise is safeguarded. That is just the rationale for treating these security mechanisms like balancing items. Thus, an additional separate minimum level of funding with financial assets should not be required.	
Q46	Within this concept it should be avoided that sponsors support has to be calculated. However, a principle based approach with some additional Member State specifications would be preferable for such valuations. A stochastic modelling should be avoided.	
Q47	No guidance of EIOPA is needed.	

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Q48	A compulsory stochastic modelling should be avoided.	
Q49		
Q50		
Q51		
Q52		
Q53	We want to stress that no stochastic modelling should be compulsory for IORPs as it is (too) complex and it has not yet been proven that stochastic approaches are better in principle.	
Q54		
Q55		
Q56		
Q57		
Q58	Given that the HBS would be applied to IORPs, we agree to a principles-based and IORP specific approach to valuing sponsor support where specifics of the approach are set within Member States instead of an inadequate „one-size-fits-all“-approach for all types of IORPs and sponsors. Therefore, EIOPA should not define parameters to use for maximum sponsor support as this should be done at Member State level and from national supervisory authorities. In general the attempt to precisely calculate the value of (maximum) sponsor support is still questionable as there are no “universally recognised standards” of calculating it (stated by EIOPA in the 2013 Discussion Paper on Sponsor Support) and the calculation gets (too) complex very quickly. We still think that maximum sponsor support could be a useful measure. However, so far, it has not been used sensibly. Thus, an explicit quantitative calculation should not be compulsory.	
Q59		
Q60		
Q61	If any calculation of additional sponsor payments has to be performed, there should be no artificial limitation of when these payments have to be made.	
Q62		

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Q63		
Q64		
Q65		
Q66		
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Q68		
Q69	Pension protection schemes should definitely be considered either via backing up sponsor support or directly as balancing item on the HBS. If a PPS covers 100% of benefits and is sufficiently strong (i.e. large number of sponsors joining) it should be able to cover liabilities as well as SCR due to the loss-absorbing function. Otherwise, this important security mechanism for safeguarding the pension promise from beneficiaries' perspective would be neglected.	
Q70	We think it is important that the effect of a PPS as a balancing item is considered at all in the HBS be it via modelling it indirectly as backing up sponsor support to function as balancing item by reducing sponsor default probability to zero or directly as balancing item. In principle, we prefer pension protection schemes to be a separate component of the HBS. They are a mechanism in their own right, therefore it should be included in their own right in the HBS as well.	
Q71	Yes. Including a strong PPS as balancing item is justified, because it can guarantee that the pension benefits will always be delivered on a sufficient level as defined in the national social and labour law. See also Q77.	
Q72		
Q73		
Q74		
Q75		
Q76		
Q77	We prefer option 1 to include PPS on an IORP's balance sheet. Otherwise this important security	

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	<p>mechanism for safeguarding the pension promise from the beneficiaries' perspective would be neglected.</p> <p>The existence of a PPS contributes to the safety of the pension promise. In a holistic view a PPS should therefore be included in the HBS.</p> <p>We support the arguments for including pension protection schemes in any EU-wide framework as expressed in the Consultation paper.</p>	
Q78		
Q79		
Q80	<p>Within this concept we support the Option 2 which always allows ex-ante benefit reductions, but make allowance for ex-post benefits reduction or reductions in case of sponsor default as specified by the Member States. Since national social and labour law is crucial in this regard, any concept needs to take into account the existing differences in the Member States.</p>	
Q81	Yes	
Q82	Yes	
Q83	Yes	
Q84	Yes	
Q85	<p>The minimum level of technical provisions to be covered by assets should be based on Level B best estimate calculations.</p>	
Q86	<p>Member State options should be possible, as they need to reflect specificities of IORP systems in different Member States. Importantly, this regulation shall not affect national labour or social law. We would also like to point out that Level B as it was defined in the technical specifications for the IORP QIS, does not fit all pension schemes across Europe. Therefore, Level B should be discussed further, or even better, its definition should be left to competent national authorities.</p>	

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Q87	Within this concept it should be based on Level B (see Q85).	
Q88		
Q89		
Q90		
Q91	The arguments that sponsor money is usually best invested in the own business rather than paid as solvency buffer into the IORP have to be highlighted. This supports an extensive period of time for recovery of any underfunding. Due to the long duration of pension entitlements, an underfunding situation usually does not affect the possibility of the IORP to pay its benefits for a very long period. Thus, long recovery periods can help to define an appropriate recovery plan avoiding pro-cyclical behaviour.	
Q92		
Q93	No, there is no need to harmonising recovery periods (see Q90).	
Q94		
Q95		
Q96		
Q97	<p>A possible future European prudential framework for IORPs based on the Solvency II like approach using the HBS methodology is inappropriate and, in addition, will increase the burden for IORPs and sponsors, but not really adds to the safety of pension promises. It will negatively influence the level of benefits to the members and will not support a broader coverage in the workforce with occupational pensions by employers. (See our General remarks)</p> <p>Future entitlements have to be based on the new rules incorporating the higher cost arising from additional prudential requirements. It has to be avoided that a new regime influences labour and social law.</p>	
Q98	If new quantitative elements which are discussed in the paper should be introduced, than these should only apply to new entitlements. The application of such new rules will lead to a completely	

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	new business model for these new entitlements with considerably reduced benefit levels. Additionally we believe that introduction of such new rules will lead to closings of several IORPs.	
Q99	See General remarks above	
Q100	No, Example 1 is not acceptable. We cannot judge the applicability in other EU Member States.	
Q101		
Q102		
Q103		
Q104		
Q105	<p>Within this concept it is appreciated that under example 4 Level B technical provisions are used to be covered by financial assets and that all security and benefit adjustment mechanisms could be used for covering the SCR and technical provisions. This makes example 4 one of the most complete ones, but also the most complex and bureaucratic.</p> <p>We do not understand why the recovery period shall be 1 year but can be extended through national social and labour law. This opening should also be possible within the national regulatory rules. For German IORPs, the prescriptions of example 4 may result in reasonable trigger points, at least in most constellations. However, the administrative burdens would be unjustifiable and not bearable for most IORPs.</p>	
Q106		
Q107		
Q108		
Q109	As a risk management tool the full HBS approach is oversized. But if the HBS became part of any regulation, example 6 could be regarded as one of the less damaging ones. Within this context we reject public disclosure for IORPs. Regarding the complexity of the calculations and problems in communicating the results to members, beneficiaries and especially stakeholders of the	

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	<p>sponsoring companies the requirement for public disclosure is not acceptable.</p> <p>No additional funding requirements occur by staying with the current (Solvency I) rules in pillar 1. However the application of the HBS and SCR calculations in pillar 2 produces a lot of cost. It is appreciated that all security mechanisms can be applied – but then the result of a complete funding at all times could be stated without any calculation in case of a strong sponsor/a pension protection scheme in place and ex-ante benefit reduction mechanisms.</p>	
Q110	<p>For Germany, example 6 would belong to the less damaging examples, but would only be applicable in connection with generous simplifications and transitional measures. Especially for smaller IORPs even this approach would bring additional costs that are unjustified given the limited benefits. We cannot judge the applicability in other EU Member States.</p>	
Q111	<p>We think the HBS approach is unsuitable for company pensions and should therefore be omitted. Within this unfitting concept we welcome the idea to simplify the HBS in cases where additional security mechanisms are in place (see Q109). Best simplification would be to omit the HBS concept completely, follow the subsidiarity principle and continue using the rules that have been established in the Member States.</p>	