

<b>Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b>		<b>Deadline 02.01.2012 18:00 CET</b>
Company name:	Railways Pension Trustee Company Limited ("RPTCL")	
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 <b>Public</b> in the column to the left and by inserting the word <b>Confidential</b>.</i>	Public
<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in column "Question".</li> <li>⇒ 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>.</li> <li>⇒ 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.</li> <li>⇒ 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"> <li>○ 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.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-006@eiopa.europa.eu">CP-006@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p>		
<b>Question</b>	<b>Comment</b>	
General comment	As background information to our response, Railways Pension Trustee Company Limited (RPTCL) is the Trustee of four private sector pension schemes serving employees, pensioners and employers involved in the UK railways industry. In total, these schemes have around 350,000 members,	

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	<p>including around 85,000 active members who are accruing defined benefits. Over 150 private sector employers, including a number with non-UK parent companies based elsewhere in Europe, are involved in sponsoring RPTCL's schemes, as are also the UK's Department for Transport and the British Transport Police Authority.</p> <p>The majority of RPTCL's pension schemes are shared cost arrangements with 40% of total contributions, including those required to meet any shortfall of assets relative to technical provisions, being met by contributing members to the schemes. There are around 85,000 such members and RPTCL has concerns that amendments to technical provisions or recovery periods may have a very significant and adverse financial impact on these people.</p> <p>As well as the concerns relating to the questions where responses have been provided below, RPTCL is concerned that the consultation period to respond to this Call for Advice has been too short for pension schemes affected by the proposals to properly consider and formulate a considered reply to the 96 questions. It is expected that the proposals would have a significant impact on pension provision and require a full impact assessment by the EU and each Member State. Therefore, they proposals warrant considerable further analysis and consultation, preferably taking into account the experience of the implementation of Solvency II for insurers.</p>	
1.	We have not considered this question.	
2.	We have not considered this question.	
3.	We have not considered this question.	
4.	We have not considered this question.	
5.	We have not considered this question.	
6.	We have not considered this question.	
7.	We have not considered this question.	
8.	We have not considered this question.	
9.	We have not considered this question.	
10.	We have not considered this question.	
11.	We have not considered this question.	

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12.	RPTCL has concerns about implementing a holistic balance sheet approach and we suggest that this item is given further consideration. Although it is recognised that items such as the strength of the supporting employer covenant and the existence of pension protection schemes are important considerations for trustees and managers of pension schemes, calculating a value for these items would be a complex and expensive task. RPTCL would support the retention of the existing approach whereby account is taken of the items such as the strength of the supporting employer covenant when calculating technical provisions without carrying out a complex calculation to quantify a value of the employer covenant.	
13.	It is important to assess assets and liabilities consistently. However, due to inconsistencies of approach, adopting a market-consistent basis for assets can have serious implications for prudent investment strategies adopted to fund liabilities for pension schemes, which are normally paid out over several decades or more. Rather than assess assets on a basis which may be influenced by volatile market values, it would be preferable for the related liabilities to be valued on an assessed basis via a discounted cash flow model and adopt an approach to valuing assets on a basis consistent with this.	
14.	RPTCL considers that liabilities should be measured as the value of the expected cash flows, on the basis that most IORPs are managed in the expectation of meeting their liabilities to pay retirement benefits as they fall due. Such an approach avoids the need to estimate what a market-based transfer value might be.	
15.	We have not considered this question.	
16.	<p>RPTCL opposes the insertion of such a recital. Supervisory valuation standards and accounting standards have different objectives, so aligning them increases the risk of failings in one or both of them.</p> <p>As an example of the risks of this, changes made to domestic and international accounting standards in the last decade have led to many pension scheme sponsors focusing on short-term volatility in pension scheme assets and liabilities under accounting standards, rather than focusing on the long-term nature of pension scheme liabilities. This has played a significant role in the decline of private-sector defined benefit pension provision in the UK and in other parts of the European Community.</p>	

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	RPTCL expects that making supervisory valuation standards compatible with international accounting standards would result in even more focus being given to short-term volatility and even less focus given to long-term strategies. We therefore expect it would be of detriment to private-sector defined benefit pension provision in Europe and oppose such a measure.	
17.	We have not considered this question.	
18.	RPTCL does not consider it appropriate to introduce a separate risk margin.  We consider that the concept of a separate risk margin, which may be suitable for insurance companies, is not appropriate for many UK and other defined benefit pension schemes due to the inherent differences between insurance companies and defined benefit pension schemes, such as, to give one UK example, the regulatory attention given to the covenant of scheme sponsors and the compensation regime of the Pension Protection Fund.	
19.	RPTCL believes that no account should be taken of future accrual of benefit when calculating technical provisions.	
20.	We have not considered this question.	
21.	RPTCL would object to the use of risk-free interest rates in the calculation of technical provisions for the purposes of calculating contribution rates. We estimate that the use of risk-free interest rates for the schemes to which RPTCL is a trustee would increase the technical provisions by 13 billion euros. Of this increase, the shared cost nature of the schemes to which RPTCL is a trustee would mean that 40% of this increase in technical provisions (i.e. more than 5 billion euros) would fall on the active members of these schemes, of which there are around 85,000. This equates to around 60,000 euros for each active member.  In addition, RPTCL is concerned about the potential impact on investment strategies of European pension schemes as a consequence of any requirement to use a risk-free interest rate within the technical provisions. Using our own schemes as an example, the schemes hold around 18 billion euros of return seeking assets but there may be disadvantages from holding this type of asset if technical provisions are measured using risk-free rates. The sale of our return seeking assets, together with the sale of return seeking assets by other European pension schemes, could be expected to have a large impact on both European stock markets and the European economy as a	

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	whole. In addition, changes in pension schemes' investment strategies would lead to a huge increase in demand for gilt-edged securities, causing even more distortion to market yields used as a basis for discounting.	
22.	Yes. Such expenses are already are allowed for within our current technical provisions.	
23.	Where discretions have been exercised in the past, some allowance for these does tend to be made within the technical provisions already. However it would not be appropriate to make it a requirement for discretionary benefits to be included within the technical provisions.	
24.	We have not considered this question.	
25.	RPTCL does not agree that it would be useful to introduce article 80 into a revised IORP. Under the existing IORP, there is already the ability to segment risk groups when calculating technical provisions. RPTCL does this by considering six groups of employer covenant strength when calculating technical provisions. As an example of how the different risk groups are dealt with when calculating technical provisions, the group with the very strongest covenants have technical provisions calculated using discount rate close to a best-estimate of expected asset returns based on the assets held whereas the group with the very weakest covenants have technical provisions calculated using close to a risk-free discount rate.  Therefore, we consider that the introduction of article 80 into a revised IORP would lead to extra cost with no added value.	
26.	We have not considered this question.	
27.	We have not considered this question.	
28.	We have not considered this question.	
29.	RPTCL does not agree with this proposal. The UK's regulatory system, involving the Pensions Regulator, is a well tested system with appropriate mechanisms already in place to monitor the appropriateness of technical provisions. We do not consider it necessary or appropriate for the Pensions Regulator's powers to be extended in the way suggested.	
30.	RPTCL does not agree with this proposal. The UK's regulatory system, involving the Pensions Regulator, is a well tested system with appropriate mechanisms already in place to test the adequacy of technical provisions and, if necessary, strengthen them. We do not consider it necessary or appropriate for the Pensions Regulator's powers to be extended in the way suggested.	

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31.	<p>RPTCL does not agree with this. The introduction of measures such as these will not only have a huge impact on people's accrued pensions but they will also have a huge impact on the sustainability of those European defined benefit pension schemes which currently offer benefits in respect of future service.</p> <p>Furthermore, the Solvency II Directive for insurers is not fully operational until January 2013 and any consideration as to whether pension schemes should be subject to a regime based on the capital requirements of the Solvency II Directive should, as a minimum, await several years of practical experience of operating that new regime in the insurance industry.</p>	
32.	<p>RPTCL does not agree with this. Pension provision in the EU varies considerably from one Member State to another. Member States should retain flexibility to set additional rules in relation to the calculation of technical provisions in a manner that best aligns with social and employment legislation in the Member State.</p>	
33.	<p>RPTCL agrees with the principle of placing a value on the forms of sponsor support. However, from a practical perspective, it will be difficult for some pension scheme trustees to place an accurate estimated value on what is, effectively, a subjective matter. We consider that the current approach used by RPTCL (and other UK pension scheme trustees) of adapting the level of prudence within the discount rate used to assess liabilities, in order to reflect the trustees' objective assessment of the uncertainty of the employer covenant, to be a more workable approach.</p> <p>If a value were to be placed on sponsor support, RPTCL considers that this should be treated as an intangible asset. RPTCL would not agree with its use as a solvency capital requirement in addition to technical provisions.</p>	
34.	<p>We have not considered this question.</p>	
35.	<p>We have not considered this question.</p>	
36.	<p>RPTCL believes that Member States should be able to choose the level of security that best aligns with social and employment legislation within that Member State.</p>	
37.	<p>We have not considered this question.</p>	
38.	<p>RPTCL opposes the application of Solvency II-rules to pension schemes. Pension benefits in the UK,</p>	

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	<p>for example, are already well protected.</p> <p>Overall retirement incomes of around 85,000 active members of RPTCL's pension schemes depend not only on the security of benefits built up to date, but also on both state provision and, just as importantly, the ability for pension schemes to provide future service benefits on sustainable basis. The EIOPA proposals will have significant impacts on overall retirement incomes of most, if not all, of these 85,000 members. We are very concerned that the application of Solvency II-rules would be detrimental to the ability for future service benefits to be provided.</p> <p>In the event that Solvency II requirements were to be extended to pension schemes, RPTCL would reject the SCR on the basis that there is no parallel to the regulatory action that applies to a breach of the SCR by an insurer.</p>	
39.	<p>Although RPTCL opposes the proposed measures for calculating the SCR, we believe that any requirements for reassessment of technical provisions or security mechanisms should only be for them to be carried out on a three-yearly basis.</p>	
40.	<p>If it were decided to go ahead with applying the Solvency II requirements to pension schemes, RPTCL would reject the MCR on the basis that there is no parallel to the regulatory action that applies to a breach of the MCR by an insurer.</p> <p>Imposing an MCR would eat into sponsors' already limited or stretched budgets. The inevitable impacts will be closure of pension schemes in many cases.</p>	
41.	<p>If it were decided to go ahead with applying the Solvency II requirements to pension schemes, RPTCL would consider it appropriate to take account of the pension protection schemes such as the UK's Pension Protection Fund.</p>	
42.	<p>RPTCL rejects this proposal, pending further analysis. RPTCL is the trustee of one of the largest UK DC schemes (BRASS) and we would be very concerned about unintended consequences of the application of capital requirements.</p>	
43.	<p>We have not considered this question.</p>	
44.	<p>RPTCL does not consider it appropriate to make any changes to the existing recovery period regime,</p>	

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	<p>which, in the UK, is based on affordability of contributions and approval by the Pensions Regulator and generally works well.</p> <p>Due to the shared cost nature of the majority of RPTCL's pension schemes, 40% of any shortfall of assets relative to technical provisions is met by contributing members to the schemes. There are around 85,000 such members. RPTCL is therefore very concerned that any amendments to the recovery period regime, in particular any amendments which take away flexibility, would have a very significant and adverse financial impact on these 85,000 contributing members of RPTCL's schemes.</p>	
45.	We have not considered this question.	
46.	We have not considered this question.	
47.	We have not considered this question.	
48.	We have not considered this question.	
49.	We have not considered this question.	
50.	We have not considered this question.	
51.	We have not considered this question.	
52.	We have not considered this question.	
53.	<p>RPTCL has concerns that the significant number of detailed rules that would arise from Solvency II would impose high costs on IORPs. A principles-based rules-based system with lots of flexibility for local supervisors would be more appropriate.</p> <p>Our comments here also apply to Q61.</p>	
54.	We have not considered this question.	
55.	Stress tests can be expensive to carry out, so any stress tests would need to be proportionate to the size of the IORP.	
56.	RPTCL does not agree with this proposal. If sanctions were imposed against IORPs, this may penalise members and reduce the amounts available to meet retirement benefits.	
57.	We have not considered this question.	
58.	We have not considered this question.	

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59.	If such a process were to be applied to IORPs, it would be important for a proportionate approach to be adopted so that the checks carried out are proportionate to the risk to member benefits.	
60.	We have not considered this question.	
61.	Please see our response to Q53.	
62.	We have not considered this question.	
63.	If such proposals were implemented, it is important that they are implemented on a proportionate basis.	
64.	We have not considered this question.	
65.	RPTCL is made up of a Board of 16 Trustee Directors and we consider that any 'fit and proper' requirement should be measured collectively, rather than individually.	
66.	RPTCL would consider it appropriate for a period of time to be available to enable new Trustee Directors to complete an appropriate training after their appointment.	
67.	We have not considered this question.	
68.	We have not considered this question.	
69.	RPTCL doubts that ORSA could be applied in a proportionate way to IORPs. However, we support the use of appropriate risk management tools such as a regularly maintained risk register.	
70.	We do not consider ORSA to be appropriate for IORPs where members bear all the risk. Consequently, where members bear a significant proportion of the risk, we consider the ORSA requirements should be reduced on a proportionate basis.	
71.	We have not considered this question.	
72.	We have not considered this question.	
73.	We have not considered this question.	
74.	We have not considered this question.	
75.	We have not considered this question.	
76.	Further considerations needs to be given to the operation of the 'actuarial function' for IORPs. In the context of the pension schemes operated by RPTCL, our subsidiary RPMI carries out some of the roles covered by the definition of 'actuarial function' within the Solvency II Framework Directive, although they do not carry out the statutory role of Scheme Actuary. The Scheme Actuary is an appointed	

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	individual from an independent firm.	
77.	Please see our response to Q76 above.	
78.	We have not considered this question.	
79.	We have not considered this question.	
80.	We have not considered this question.	
81.	We have not considered this question.	
82.	We have not considered this question.	
83.	We have not considered this question.	
84.	We have not considered this question.	
85.	We have not considered this question.	
86.	We have not considered this question.	
87.	We have not considered this question.	
88.	We have not considered this question.	
89.	We have not considered this question.	
90.	We have not considered this question.	
91.	RPTCL do not consider it appropriate to extend the information requirements for DB schemes.	
92.	In many cases, members are not making a choice of IORP as they are enrolled in the IORP sponsored by their employer. Therefore, this proposal may need some further consideration.	
93.	It is important that information provided is clear and understandable and hence useful to members of IORPs. It may be appropriate for there to be separate consultation to cover communications to members and beneficiaries once other aspects of the review of the IORP Directive have been progressed.	
94.	We are happy with the concept of a personalised annual statement but further consideration will need to be given to its contents. As with our response to Q93, we consider it appropriate for there to be separate consultation to cover the contents of a personalised annual statement once other aspects of the review of the IORP Directive have been progressed.	
95.	We have not considered this question.	

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96.

RPTCL considers that the limited impact assessments in the consultation paper have not been sufficient for us to be able to understand the impact of many of the proposals which are discussed. Given the importance of the review of the IORP Directive to pension provision within the EU, we suggest that a thorough impact assessment is carried out for each Member State before the proposals are developed further.