

**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:	BP plc	
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"> ⇒ <u>Do not change the numbering</u> 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		
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5.	<p>Legislation on cross-border IORPs should have two aims:</p> <ol style="list-style-type: none"> 1. to facilitate genuine cross-border plans such as a pan-European plan situated in one state with members in several other states, whilst maintaining appropriate safeguards for members, and 2. to avoid situations where a plan which is not truly cross-border is treated as one, e.g. a UK IORP with predominantly UK employees is treated as cross-border because some of its members move to work for a subsidiary employer in another state. <p>In general we consider that consistency between states on when a plan should be considered cross-border would be helpful, and this may be facilitated by a more specific definition in the directive. Option 2 would be one possibility and would resolve some situations such as set out in 2 above. However, as acknowledged in 5.3.27, it could introduce other issues. We suggest that a more detailed analysis of the directive should be undertaken to arrive at a definition which deals with all of the possible scenarios.</p>	
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12.	<p>We consider there is a fundamental distinction between sponsor backed IORPs and those which bear their own risks (and insurance companies). Any attempt to bring them into a common framework (e.g. using the holistic balance sheet) introduces a complexity which is unwarranted and will not of itself improve security for members. We therefore support</p>	

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	<p>option 1 as set out in 8.2.38. We comment below on a major issue in constructing an holistic balance sheet that would be required for option 2. We also do not consider that the positive impacts suggested for option 2 are material:</p> <ul style="list-style-type: none"> • Allows for a harmonised approach across all IORP types – there is no justification given for why this is desirable • Allows for all available security mechanisms within a single approach – again there is no justification given for why this is desirable and it wrongly assumes that all such mechanisms are capable of being dealt with in a single approach • Allows for a high level of comparability across all IORPs – there is no justification given for why this is desirable and who would benefit from it • Avoids that only a few countries are affected by a sub-category, like Article 17(1) – we do not see why this is a material issue; if some countries have different systems then the overall approach should cater for this. <p>The most significant issue in the use of an holistic balance sheet is the need for a quantitative assessment of the sponsor covenant (and pension protection scheme if applicable). This issue is discussed in 9.3.198 to 9.3.203 where the complexity of it, and the need to allow approximations and qualitative assessments, is acknowledged. We agree with these comments but consider there is also a fundamental issue with placing a quantitative assessment on sponsor support. In most cases the question of whether or not a sponsor can meet any shortfall in coverage for an IORPS is a binary one depending on whether or not the sponsor remains solvent. Placing a quantitative value on support based on a probabilistic approach does not capture this effect. In practice the impact of sponsor covenant on funding requirements is a matter of judgement and cannot be quantified.</p>	
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21.	<p>We first note that this section appears to be written on the basis that a Solvency II framework will apply to all types of IORP, and as we note in our response to question 12 we do not support this. Therefore, whilst we accept that option 1 as set out in 9.3.88 is not consistent with the holistic balance sheet approach that does not imply that we consider it is not a viable option, on the contrary it is our preferred approach. We do not consider that the positive impacts set out for option 2 (and which apply to a degree also for option 3) are justified. They consist essentially of arguments for greater consistency between different IORPs and between IORPs and insurance companies without a rationale for why this is desirable. Moreover, the negative impact of these options is understated.</p> <p>A requirement to fund an IORP (i.e. liabilities backed by plan assets) at a risk-free interest rate level would increase very significantly the level of assets required, as is acknowledged in the consultation. An additional significant impact would be that holding of equities and other volatile assets by IORPs would become much less attractive than at present. The governing documents of many IORPs (and in some countries, legislation) do not allow a sponsoring employer to reclaim surplus assets from an IORP at least until the IORP is wound up and in some cases not even then. If an IORP is fully funded at a risk-free interest rate level, there will therefore in many cases be no rationale for the sponsoring employer to support investment in risky assets as it will not benefit from any out-performance over risk-free assets but will have to meet any shortfall if there is under-performance.</p> <p>This option would therefore lead not only to higher levels of funding but a major change in many countries in typical investment allocation within IORPs. The result will be an increase in the expected cost of pension provision, albeit with a reduced risk of higher than expected</p>	

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	<p>costs.</p> <p>It seems likely that this will result in more employers concluding that the cost of pension provision is not commensurate with the value placed on it by employees and therefore closing IORPs to new employees and possibly to future accrual. There may also be adverse economic effects from reduced investment in equities and corporate bonds.</p> <p>Therefore, if a solvency II type framework is applied to IORPs, we suggest it should be on the following basis:</p> <ul style="list-style-type: none"> a) that option 3 as set out in 9.3.90 be used for the calculation of technical provisions b) that only Level B technical provisions need be matched by plan assets (and even that subject to the existing provisions allowing temporary under-funding with a recovery plan), with the difference between Level A and Level B allowed to be covered by other items including sponsor covenant. 	
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