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:	THE ASSOCIATION OF CORPORATE TREASURERS	
Disclosure of comments: PUBLIC	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

The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Question".
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇨ 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.
    - 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.

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).

	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**
Question	**Comment**	
General comment	**The Association of Corporate Treasurers (ACT)** is the leading professional body for international treasury providing the widest scope of benchmark qualifications for those working in treasury, risk and corporate finance. Membership is by examination. We define standards, promote best practice and support continuing professional development. We are the professional voice of corporate treasury, representing our members. Our 4,200 members work widely in companies of all sizes through industry, commerce and professional service firms. For further information visit www.treasurers.org Guidelines about our approach to policy and technical matters are available at http://www.treasurers.org/technical/manifesto. **General observations** The proposals on which EIOPA advice is being sought are very much based on the principle that IORPs providing defined benefits schemes operate in the same market as life insurance undertakings and therefore must be regulated in the same manner. The ACT strongly believes that this is not true and that therefore the entire concept of applying Solvency II style provisions on occupational pension schemes is fundamentally flawed. Within the consultation para 8.2.35 says "For sponsor backed IORPs however, the ability to rely on the sponsor for further support represents a key difference from insurance and requires differing treatment." Therefore trying to create a framework via the holistic balance sheet that can apply equally to IORPs and insurance based pensions is not	

	appropriate. We appreciate the intentions of the Commission are to ensure that the risk to pensioners is minimised, but it is not a satisfactory outcome for society if rules to make pensions safer have the result that employees are no longer offered occupational pensions and instead must rely on savings schemes or fall back onto state wefare payments. We believe that imposing onerous requirments on the funding of IORPs would result in the closure of defined benefit schemes in the UK, to the detriment of those who might otherwise be beneficiaries of a company backed pension scheme. It is right that pensioners should have a reasonable level of protection but the fact is that no pension can be made absolutely risk free. It is therefore a matter of finding a reasonable balance such that the sharing of risks and obligations is set fairly between pensioners and scheme sponsors.	
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3.	*Scope of the IORP Directive Which option is preferable?* The IORP directive is focused on IORPs established by an employer and/or where the employer plays an essential role in the funding of the IORP. Trying to extend its application to pension arrangements like DC schemes can not be the correct option since these are merely savings schemes not occupational schemes and have very differenct characteristics.	

	We therefore agree with your option 1 that you leave the scope of the IORP directive unchanged. We agree with your advice that "Introducing an EU prudential regime for pension schemes where there is no such role for the employer would probably be more effective if done outside the IORP directive."	
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12.	*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?* Art 17(1) IORPs do not benefit from sponsor guarantees are are therefore akin to insurance based arrangements. Sponsor backed schemes are substantially different. They ultimately rely on a claim on the the future production of the sponsor and only partially on the pool of financial assets set aside. An insurance based scheme or an IORP without sponsor support relies soley on a pool of finacial assets. We therefore support option 1 to maintain the distinction between these forms of IORPs.	

	In para 8.2.8 you explain that the Commission is seeking to ensure that the level of security offered by all IORPs is similar even though some have sponsor support whilst others do not. We do not accept the neccessity to make these two equivalent. However if this point is not open for discussion then trying to create a holistic balance sheet to recognise the value of the sponsor support would be a possible approach. The difficulty then becomes one of valuing the sponsor support and the danger that definitive present funding requirements may be set based on an inaccurate valuation of that future support.	
13.	*Do stakeholders agree that assets of IORPs should be valued on a market-consistent basis?* Taking asset values at a spot point of time has the potential for introducing huge variations in the holistic balance sheet that could be triggered by abnormal valuations ruling on that day. At times of market turbulence assets may simply not be tradable or be subject to a huge illiquidity premium. Determining funding and capital requirements on that basis would be pro-cyclical and generate inappropriate outcomes. We accept the market consistent basis but with the proviso that there be regualor discretion to make suitable adjustments for non typical market times.	
14.	*What is the stakeholders' view on the two options regarding the starting principle for valuing liabilities? Do stakeholders agree that such a principle for IORPs should contain no reference to transfer value?* Within the Solvency II Directive for insurance companies (Art 75) assets and liabilities have to be valued at the amount for which they could be transferred and this is referred to as a	

	market consistant basis. For an IORP there is not the same necesity to hold assets sufficient to cover a transfer value of the laibilities since the IORP, depending on its type, is able to lower liabilities by reducing benefits or can call on contributions from the sponsor. It would be economically damaging to the sponsor to require funding up to transfer values and in moving to that level of funding it would reduce the value of the sponsor support. Since in our view the ultimate strength of the pension scheme depends on the covenant of the sponsor then funding up to transfer values is not required.	
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18.	*What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77(in Solvency II Directive)?* The discussion on this as presented in the paper is again coming from the objective of likening sponsor supported schemes to an insurance based pension when the two are completely different. The current IORP (art 15) calculates technical provisions based on a prudent actuarial valuation including "if applicable of an appropriate margin for adverse deviation". For an insurance based pension one would expect a greater consideration of risk margins whether explicitly separated out or implicitly included in the technical provision. This fundamental difference once again leads the ACT to support Option 1 (at 9.3.80) "Explicit risk margin in technical provisions calculated according to the IORP Directive". We have no objection to requiring an explicit calculation of the risk margin	

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33.	*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?* The ACT does not accept that IORPs need to be funded up to an insurance comparible level however if regulation is seeking to find a comparable basis then it is right to find some methodology for evaluating that sponsor support, and the holistic balance sheet would be one way of doing that. However much will depend on the the methodologies to ascribe value given that the sponsor support is contingent and is provided over time.	
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38.	*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?* See response to Q 40	
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40.	*What is the stakeholders' view on imposing a minimum capital requirement (MCR) upon IORPs? What adjustments to the Solvency II rules are needed regarding the structure and frequency of the calculation?* We make no comment on the precise assesment of MCR and SCR but note your comment in 10.3.78 that my imposing insurance like capital requirements "For existing members the security of their benefits could rise and be made more transparent. The impact on future employees depends on the reaction of employers, which may include closure of existing schemes for new entrants." We repeat our principal objection that it is of no benefit to produce rules that enhance safety to the extent that there are no company schemes available to employees. Conceptually we do have a problem in applying a requirement to hold excess capital to a pension fund that exists for its beneficiaries. To whom does that capital belong when the pension fund reaches the end of its life	

41.	*What is the stakeholders' view on the analysis regarding pension protection schemes? If included in the holistic balance sheet, should pension protection schemes be taken into account by reducing the sponsor's insolvency risk or by valuing it as a separate asset?* Our response here is similar to Q 33 namely: The ACT does not accept that IORPs need to be funded up to an insurance comparible level however if regulation is seeking to find a comparable basis then it is right to find some methodology for evaluating the pension protection elements, and the holistic balance sheet would be one way of doing that. However much will depend on the the methodologies to ascribe value given that the pension protection benefit is contingent.	
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44.	*What is the stakeholders' view on the analysis regarding the submission of recovery plans and the length of recovery periods as introduced by Articles 138 and 139 of Solvency II? Should the recovery periods – with regard to the SCR and possibly the MCR – for IORPs be flexible, fixed or a combination of both? What would be the reasons – if any – to allow IORPs longer recovery periods than prescribed by Solvency II?* On the assumption that the concepts of MCR and SCR are adopted we support the advice of EIOPA in para 10.3.190 that there be a fairly long period for recovery plans, even out to 15 years. We believe that the adoption of excessively prudent transfer valuations would lead to the closure of UK DB schemes. Allowing a longer recovery period would defer some of the cash flows and at least avoid the immediate insolvency of numerous sponsors. A supervisor should moderate the reasonableness of proposals.	
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52.	*What is the stakeholders' view on the analysis regarding the objective of supervision and the measures to avoid pro-cyclical behaviour?* We believe that it is important that supervisors are able to take clyclical effects into account as too hasty requirements to rebuild IORP funding on sponsors can risk tipping sponsors into crisis to the detriment of the general economy and of the the beneficiaries of the IORP, so judgement is needed to be brought to bear.	
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