

Comments Template on EIOPA-CP-11/001 Draft response to Call for Advice on the review of Directive 2003/41/EC Scope, cross-border activity, prudential regulation and governance		Deadline 15.08.2011 18:00 CET
Company name:	BT Pension Scheme Management Ltd	
Disclosure of comments:	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
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in column "Reference". ⇒ 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>. ⇒ 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 firstconsultationiorpcf@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The question numbers below correspond to Consultation Paper No. 01 (EIOPA-CP-11/01).</p>		
Reference	Comment	
General Comment	BTPS Management welcomes this opportunity to comment on EIOPA's draft response to the Commission's call for advice. By way of background, the BT Pension Scheme is the UK's largest corporate pension scheme, managing assets worth around £35 billion and responsible for some 340,000 beneficiaries under a defined benefit (DB) structure. The governance of the BT Pension Scheme is typical of UK corporate pension schemes, operating under the oversight of a corporate trustee. The trustee board is made up of half representatives of beneficiaries and half representatives of the corporate sponsor, and with an independent chair. The trustee directors feel directly the	

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	<p>fiduciary duties of the trustee and note the trustee's duty to act in beneficiaries' best interests. We believe that these obligations set the best framework for responsible pension scheme decision-making. We commend this fiduciary framework to EIOPA, particularly in the context of certain of the questions below.</p> <p>We note that the starting point for EIOPA's consideration of many of the issues raised in the Commission's request is the Solvency II directive. As outlined below we generally believe that the proposed analogies here are right and that Solvency II asserts appropriate standards for the governance of institutional investors. However, we take this opportunity to note that we believe that Solvency II should not be applied in its entirety to pension schemes. In particular, the investment requirements of Solvency II would not reflect the long-term nature of the liabilities of pension funds and their duty to generate long-term returns for their beneficiaries. Instead they would be actively damaging to the financial viability of many pension funds, and so be damaging to the well-being of their beneficiaries. This analysis is particularly true for UK occupational schemes, which enjoy significant funding and the backing of a corporate sponsor, reinforced by the work of the Pension Protection Fund and the Pensions Regulator.</p>	
1.	We would favour the simplicity and consistency which would arise from all pension schemes being covered by the same regulatory regime. We therefore are supportive of Option 2. We believe that the EIOPA analysis is appropriate and comprehensive.	
2.	We believe the options considered are the appropriate ones.	
3.	We support Option 2.	
4.		
5.	We agree with the analysis of the options and support Option 2 as the most straightforward way to simplify cross-border situations. We believe it will be hard for the Directive to detail procedures for settling any disputes between member states that persist under Option 2, given the likely heterogeneity and complexity of such situations, and therefore suggest that it would not be worth attempting to include such procedures in the directive.	
6.	We believe the options considered are the appropriate ones.	
7.	Yes we support Option 2.	
8.	We do not believe that it would be possible to develop a regime which could provide resolution to all	

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	possible areas of dispute, and therefore suggest that it would not be worth attempting to include such procedures in the directive.	
9.	We believe that there is not a concrete need for a change here, and so would favour Option 1. As is indicated in the discussion of Option 2, this approach would not solve every issue in this respect, and indeed we are not clear that Option 2 would make any substantive improvement to the current situation. We therefore would favour Option 1 because we believe that the disruption involved in Option 2 would not achieve any notable benefit.	
10.	We believe the options considered are the appropriate ones.	
11.	No. As indicated in our response to question 9, we believe that Option 1 is preferable to Option 2.	
12.	We do not believe that it would be possible to develop a regime which could provide resolution to all possible areas of dispute, and therefore would suggest that attempting to do so would be futile and perhaps even directly unhelpful.	
13.	We believe that the proposed approach is appropriate: that there should be an expectation of effective governance, but that it must be clear that this requirement is proportionate to the nature, scale and complexity of the pension scheme. We believe that there should be an additional requirement added to the proposed governance standards: that the governance needs to reflect the fiduciary nature of the responsibilities of those who take decisions on behalf of pension schemes. EIOPA is undoubtedly right that it would not be appropriate to impose member-nominated trustee structures on all pension schemes from across the EU regardless of the legal and governance structures which underlie them, but whatever those governance structures are, the fundamental obligation of any party responsible for taking decisions in relation to a pension scheme is a fiduciary one. We believe that this should be made this explicit in the governance requirements.	
14.	We again believe that the proposed fit and proper standard is sensible and sets out appropriate minimum standards for those taking decisions on behalf of pension schemes.	
15.	We welcome a requirement that pension schemes have some internal control system, but we would welcome a proportionality clause being included in this respect: any internal control system needs to be proportionate to the nature, scale and complexity of the IORP.	
16.	We believe that considerations of proportionality must come into play in respect of internal audit. We believe that it is wholly appropriate for larger IORPs to have internal audit functions, but we do not believe that this would be an appropriate and proportionate approach in respect of many smaller	

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	IORPs.	
17.	We agree that the proposed powers for supervisors are necessary in order to ensure that outsourced functions can be overseen appropriately in the interests of the beneficiaries of IORPs.	
18.	We believe that it is a significant step forward to apply standards to outsourcing that go beyond merely requiring IORPs to be willing to outsource services to other member states, as the current directive requires. We believe that the structure of the proposed principles is appropriate – and on the whole would favour the flexibility of Option 2 in responding to specific circumstances – but we would argue for the introduction of one clarification in the key standards for any outsourcing contract. Subparagraph (a) currently states that “the quality of the system of governance remain[s] intact”. Any outsourcing contract introduces a new agency relationship into the running of an IORP, and therefore introduces risks that actions may be taken more in the interests of the agent than of the principal (the IORP and its beneficiaries). We would therefore suggest that (a) be extended to say that “the quality of the system of governance remains intact, and that fiduciary duties are applied contractually of the provider of the outsourced services”.	