<table>
<tr><td></td><td colspan="2">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</td><td>Deadline
15.08.2011
18:00 CET</td></tr>
<tr><td>Company name:</td><td colspan="3">Bosch-Group
Postbox 10 60 50, 70049 Stuttgart</td></tr>
<tr><td>Disclosure of comments:</td><td colspan="2">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.</td><td>Public</td></tr>
<tr><td></td><td colspan="3">Please follow the instructions for filling in the template:
⇨ Do not change the numbering in column “Reference”.
⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.
o 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.
o If your comment refers to parts of a question, please indicate this in the comment itself.
Please send the completed template to firstconsultationiorpcfa@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).

The question numbers below correspond to Consultation Paper No. 01 (EIOPA-CP-11/01).</td></tr>
<tr><td>Reference</td><td colspan="3">Comment</td></tr>
<tr><td>General Comment</td><td colspan="2">We welcome the opportunity to comment on the EIOPA Draft response to the Commission’s Call for Advice on the review of the IORP Directive.

Any review of this Directive should only happen in view of the special characteristics of</td><td></td></tr>
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	occupational pensions in the EU (see CfA, paragraph 4.4): At its core, occupational pensions are a benefit provided by an employer to his employees; IORPs are generally social institutions of the sponsoring companies. Due to the absence of an intention to make profit, together with their collective character, occupational pensions are the most efficient form to accumulate capital for retirement, and far superior to individualized forms of the third pillar. IORPs are characterized by the absence of an intention to make profit and by the fact that all revenue/surpluses are granted to the beneficiaries (insofar as there are no defined benefit systems); the sponsoring companies bear all or most of the administration costs and are subject to a secondary liability or the obligation of additional contributions in case of underfunding, in many cases combined with an efficient insolvency protection. Surprisingly, this not-for-profit intention of company pension funds or pension funds/ sector pension funds of social partners, their extraordinary cost efficiency and, in particular, the widespread view of occupational pensions in the EU as a social benefit or IORPs as social institutions based on the above mentioned characteristics, has as far as can be seen to date not been expressly mentioned in Commission documents or in former statements from CEIOPS. These key features - and fundamentally different characteristics of IORPs in comparison to life insurances - should be given appropriate consideration in the further development of “IORP II”.	
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9.	We welcome the proposed definition of prudential regulation in the revised Directive. Clearer regulatory guidelines at EU level will help reduce the volume of additional national regulation. However, the list / catalogue should take the following important aspects into account:	

	- The successful development of IORPs in the EU is the core supervisory purpose of "IORP II" To date, supervisory legislation has been predominantly seen as a form of "consumer protection". Supervisory practice has until now concentrated on achieving a balance between the commercial interests of insurance or financial service providers and individual consumer interests. In occupational pension legislation or in the labor legislation of member states, a proper, collective legal and protective framework has developed - in part over decades - which offers a more efficient protection for members/ beneficiaries of the IORPs than the individualized "consumer protection". There is evidence that the existence of this collective protective framework of occupational pension and labor legislation is not given enough consideration in the current supervisory legislation of the EU, with the consequence that it stays also largely unaccounted for when it comes to transfer the EU legislation into national supervisory legislation of the Member States. The result is a lack of efficient harmonization of the different relevant legislative areas and an overburdening of regulation for IORPs. This is leading to unnecessary bureaucracy and thus costs in the IORPs which are directly or indirectly borne by the existing or future members/ beneficiaries. It is increasingly the case that supervisory tasks, from the perspective of an individualized "consumer protection", interfere with the efficiency of collective concepts in the IORPs and thus, at the same time (often unknowingly), endanger the "not-for-profit" IORP instrument particularly beneficial to members/ beneficiaries. With regard to supervisory legislation, the specific requirements of occupational pensions must therefore be appropriately accounted for. It is thus suggested, in contrast to "Solvency II", that the main supervisory goal under "IORP II" is formulated as follows: "…. to achieve the main objective of IORP supervision, namely both <u>to clear the way for a sound development of occupational pension schemes provided by IORPs</u> and to protect members and beneficiaries."	

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| | **- IORP stakeholder group also for Member State supervisory authorities**

In order to provide national supervisory authorities with advice and support regarding specific IORP issues and perspectives, IORP interest groups should be set up at the supervisory authorities of Member States. These interest groups should particularly include experienced practitioners of the sponsoring companies and the supervised IORPs. Such expert committees would help to consistently draw appropriate attention to the specific features of IORPs in the new architecture of supervision for IORPs in the Member States. It would thus be made clear at a national level what is already firmly anchored at a European level for EIOPA.

- Restricting the pure volume of supervisory legislation in the EU and Member States

The currently applicable IORP directive comprises 25 articles on 13 pages (the EU directive "Solvency II" comprises more than 300 articles with over 150 pages!), added to this are supervisory legislation, supervision ordinances and reference documents from member states and their supervisory authorities consisting of several hundred articles and several thousand pages.
The sheer mass of EU and member state regulations is not to be expanded but, instead, must be purposefully restricted.
A large number of IORPs are, at the same time, operated by the personnel from the sponsoring companies; these institutions are generally very well run. The same applies for the sector-wide institutions of the social partners. To overload these sponsoring companies and social partner institutions with supervisory regulations is economically counterproductive. The aim must be to deliberately restrict and concentrate the supervisory regulations according to the principle of proportionality.
Example for unnecessary regulatory practices: no necessity for any custodians
The requirement of a custodian is a good example for unnecessary regulation: it increases complexity and cost without any added value for the beneficiaries – highly developed risk management procedures substitute any practical needs for custodians, especially in the case of corporate IORPs with the secondary liability of the sponsoring undertaking. | |
| 10. | To avoid collisions between prudential regulation and SLL, the new directive should clearly set down the following principle: | |

	Precedence of pension / labour law: measures deemed permissible under pension / labour law - individually or collectively - in member states should not be prevented or blocked by supervisory legislation. Background: The appropriate and legally effective development of collective pension plans in sponsoring companies under the member states national pension and labor law needs often completely separate, complex and extensive implementation procedures under the supervisory legislation applicable to IORPs. Even the implementation of such - under pension and labor law completely lawful - changes in IORPs is at times not possible within the supervisory legislation of Member States. This results in the complex formation of segments and unnecessary group distinctions in the IORPs. So, what is permitted in accordance with the pension or labor legislation of Member States, taking into account the principle of proportionality, may not be prevented or blocked by supervisory legislation or authorities. Regulatory intervention against measures permissible in accordance with pension and labor legislation is not justifiable. If sponsoring companies and labor representative bodies thus agree on collective changes in accordance with pensions and labor legislation with past and future effect, then these collective changes must also be possible in the IORPs of the sponsoring companies and acceptable in accordance with supervisory legislation. The same applies for sector IORPs. If industry-wide, collective lawful changes with past and future effect are agreed, it must then also be possible to implement these changes in the sector IORPs without it being possible for any supervisory authority to block them. The same applies for members group transfers permissible in accordance with labor legislation on the occasion of company mergers, takeovers or other transactions from an IORP of a sponsoring company to another IORP of another sponsoring company. Here, it is not possible for the supervisory authorities to prevent or block, in law or in fact, such permissible measures.	
11.	Yes, with addition of the principle outlined under 10.	
12.		

13.	Any requirements added for a remuneration policy should take into account: Some IORPs do not employ own staff, but use staff of the sponsoring undertaking to fulfil their duties - who don't receive remuneration from the IORP itself - or outsource functions to external service providers. Their remuneration is usually linked to the pay policy of the sponsoring undertaking / the external service provider. Requirements for a remuneration policy must therefore not be extended to staff of sponsoring undertakings or external service providers.	
14.	It is fundamentally the IORP's own responsibility to ensure that the persons who effectively run the IORP and have other key functions are fit and proper. This responsibility cannot be transferred to the Supervisory Authority. The requirement of "fit and proper" - and the involvement of the Supervisory Authority in assessing this - should therefore remain restricted to management board members only. Extending this to other functions would only lead to increased bureaucratic burden and cost for IORPs and its sponsoring companies. This would be especially cumbersome for company IORPs (that do usually not employ own staff / use staff of the sponsoring undertaking to fulfil their duties) with their outstanding cost-effectiveness. Ultimately this is an obstacle for the sponsoring undertaking and thus a burden for the economy as a whole.	
15.	We are opposed to the introduction of a separate compliance function. Compliance is part of the risk management / internal control system of an IORP and should therefore be able to be covered as part of the risk management function. We strongly reject the idea that a compliance officer should have the possibility to inform the supervisory authorities "on its own initiative". As a general principle, staff of an IORP is responsible to the managing board who in turn are responsible to the supervisory authority. See also 9. for comments about the need to limit the volume of supervisory regulation.	
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18.	With regard to the role of the supervisory authority we support option 1.	

| | However, we think that it is sufficient that "Member States must ensure that supervisory authorities have the necessary powers at any time to request information on outsourced functions and activities".
We strongly advise against the introduction of a new member states option where "Member States may decide to provide that IORPs shall, in a timely manner, inform or notify the supervisory authorities on the outsourcing of critical or important function or activities as well as any subsequent changes with respect to those functions or activities". This would unnecessarily increase bureaucracy, complexity and cost for IORPs and the sponsoring undertakings.

See also 9. for comments about the need to limit the volume of supervisory regulation. | |