

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:	The Society of Pension Consultants	
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	SPC is the representative body in the UK for a wide range of providers of advice and services to work-based pension schemes and to their sponsors. SPC's Members' profile is a key strength and includes accounting firms, solicitors, insurance companies, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. SPC is the only body to focus on the whole range of pension related services across the private pensions sector, and through such a wide spread of providers of advice and	

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	<p>services. We do not represent any particular type of provision or any one interest - body or group.</p> <p>Many thousands of individuals and pension funds use the services of one or more of SPC's Members, including the overwhelming majority of the 500 largest UK pension funds. SPC's growing membership collectively employs some 15,000 people providing pension-related advice and services.</p> <p>The consultation paper has been considered by SPC's European Sub-Committee, which comprises representatives of actuaries and consultants, insurance companies, pension administrators and pension lawyers.</p>	
1.		
2.	<p>We question whether the current exemptions should automatically be assumed to remain appropriate. We consider that EIOPA is already going beyond what the Commission has called for, by considering funded mandatory systems, which are common in Central and Eastern European countries – questioning whether they should be considered exempt as social security schemes. Perhaps a more fundamental view is intellectually more robust and that EIOPA and the Commission should consider whether the scope of the Directive should cover all occupational retirement provision. At least this should form part of the analysis under a detailed Impact Assessment and cost-benefit analysis. Currently unfunded arrangements and those “guaranteed by a public authority” are excluded. In the light of the current concerns about sovereign debt in many European countries, public authority guarantees might not be thought as secure as they were when the first IORP Directive was agreed.</p> <p>Against such a wider consideration of the Directive's scope, in the UK context, we suggest that there are strong reasons why so called group personal pensions should not be within scope.</p> <p>Firstly, since they are already covered under the Life Directive there would be regulatory overlap</p>	

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	and, therefore, scope for confusion and uncertainty, if they came within the scope of the IORP Directive. Secondly, although group personal pensions are established with the support, often financial and/or in other forms, of an employer, they are, in fact, simply a collection of individual legal contracts, to which the employer is not legally party. It would therefore be difficult, through the IORP Directive to impose duties on an employer, in respect of an arrangement, to which it is not party.	
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5.	<p>As the draft response suggests, amongst other things, tax differences between member states make it currently unlikely that cross border schemes will make more than the very limited progress, which they have so far made.</p> <p>We therefore see very limited practical value at present in changing the definition of cross border schemes and a negative impact, in that the changes could undermine the work which member States, including the United Kingdom, have undertaken, to build workable regulatory structures around the current requirements.</p> <p>As a general principle, if there is to be a consistent EU-wide definition, in our view, the social and labour laws of the country, where a member is currently working, should provide the regulatory benchmark.</p> <p>However, the whole question is fundamental to the aim of facilitating the Internal Market through cross-border provision and should therefore be the subject of a separate and more detailed consultation.</p>	
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18.	<p>We suggest that the fundamental principle must be that, provided the IORP takes appropriate safeguards when outsourcing services, any liability for the outsourced services should be transferred to the provider of those services. The type of appropriate steps envisaged would be selecting a suitably qualified provider, conducting due diligence on the selected provider, ensuring adequate contractual protections/obligations and monitoring compliance with them.</p> <p>We agree that the IORP should remain legally responsible for providing the relevant pension benefits but, if particular services have been correctly outsourced, that fact should be a defence against legal liability for the IORP, if the selected provider does not perform to the necessary standard.</p>	