	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:	**Bosch-Group** Postbox 10 60 50, 70049 Stuttgart	
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
	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).**	
Question	**Comment**	

General comment	The Bosch-Group has in Europe more than 180.000 employees and runs several IORP. We welcome the opportunity to comment on the EIOPA Response to the Commission's Call for Advice on the review of the IORP Directive: **Remarks on characteristics, efficiency and role of occupational pensions:** Occupational Pensions offer Europe's citizens the most efficient way to accumulate capital for retirement. At its core, a workplace pension is a benefit an employer provides to its employees, not a product sold to consumers. Occupational pension provision in contrast to insurance is not a business. Occupational pensions are per definition directly linked to employers; IORPS are generally social institutions of the sponsoring companies - who typically bear administration costs and provide employer covenants, in many cases combined with an efficient insolvency protection. Due to their collective structure and their not-for-profit character, occupational 2nd pillar pensions are far superior to individualized, more expensive and less efficient 3rd pillar concepts. No individual can buy the same efficiency on the market. There is evidence that the current severe member state (MS) debt crisis in the EU will have a future impact on the social systems in the MS. The MS can no longer afford to support with scarce tax resources or fiscal subsidies inefficient or less efficient concepts of retirement savings. It will be crucial that resources are used in the best interest of EU citizens, with clear priority given to occupational pension vehicles, which achieve the best possible results at the lowest possible cost. **Targets of IORP II and prudential regulation for the European 2nd pillar:** A tailor-made regulatory framework for IORPs should support this overall strategy to establish and develop a highly efficient structure of occupational pensions in Europe in the peoples' best interest. Supervisory legislation for the insurance industry is predominantly seen as a form of "consumer protection" to achieve a balance between the commercial interests of the insurance industry and	

individual consumer interests. For occupational pensions / IORPs, which are per definition sponsored by an employer, whose stakeholders' interests are aligned and whose beneficiaries are protected by a web of interacting security mechanisms in social and labour law, the perspective of prudential regulation must be different.

The CfA states: "The new supervisory system for IORPs should not undermine the supply or the cost-efficiency of occupational retirement provision in the EU." (CfA 1.3).
We should go even one step further: The new supervisory system for IORPs should improve the supply and the cost-efficiency of occupational pensions to employees and encourage employers to establish and expand as many efficient and effective IORPs in the MS - as well as avoiding anything that could damage or endanger these "not-for-profit" IORPs.

So taking inspiration from Recital 7 of the current IORP Directive, it is suggested, that the main supervisory objective under IORP II is formulated as follows:
"…. to achieve the main objective of IORP supervision, namely both to clear the way for a sound development of occupational pension schemes provided by IORPs and to protect members and beneficiaries."
In addition we propose to define the purpose of the IORP II Directive as:
"This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries."

"Sui generis" supervisory system for IORPs

It is the declared aim of the European Commission to develop a "sui generis" supervisory system for IORPs and to use IORP I as a starting point for this. We are very concerned that EIOPA's response follows in large parts a very different methodology: Solvency II provisions are instead used as the starting point. This requires IORPs to first evaluate Solvency II before they are able to assess the suitability of the proposals for their situation. This is too large a task for the amount of time available for this consultation and also means an unacceptable shift of the burden of

	evidence to the IORPs. We therefore strongly re-emphasize that IORP I and the specific circumstances, characteristics and needs of IORPs must be the starting point for the new Directive. **Remark on MS options** The existing Directive contains several MS options. For IORP II further MS options are intended for a number of different issues. MS options should be avoided in IORP II at all cost - they constitute obstacles for cross-border activity, allow "gold plating" through additional national regulation and could give rise to supervisory arbitrage.	
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8.	We are not in favour of making ring fencing mandatory in the case of cross-border activity.	
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10.	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 following important aspects should be taken into account: **Precedence of pension / labour law:** 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 MS 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 MS national pension and labor law needs often completely separate, complex and extensive implementation procedures under the supervisory legislation applicable to IORPs. The implementation of such - under pension and labor law completely lawful - changes in IORPs is at times not possible within the supervisory legislation of MS. 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 MS, 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 to: - sector IORPs for industry-wide, collective lawful changes with past and future effect and - for members group transfers 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. **IORP stakeholder group also for MS 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 MS. 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 occupational pension supervision in the MS. 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 MS:** 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 MS and their supervisory authorities consisting of several hundred articles and several thousand pages. The sheer mass of EU and MS regulation is not to be expanded but, instead, must be purposefully restricted. Also, evidence exists that a considerable amount of "gold plating" by MS has already taken place in the transfer of Solvency II into national law - this must be avoided for IORP II at all cost. Further, a large number of IORPs are operated by the personnel of 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 supervisory regulation according to the principle of proportionality.	
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12.	We do not consider the holistic balance sheet a suitable tool for IORPs. It is a far too complex exercise. Employer covenant and pension protection schemes are essentially important security mechanisms for IORPs. Both together offer sufficient protection / security for an IORP and its	

	beneficiaries. They should therefore be taken into account as part of a qualitative evaluation, making the proposed complex and costly quantitative calculation / requirements obsolete for IORPs. Additional aspect: A distinction should be made between for-profit and not-for-profit IORPs (to be determined according to the statutes of the IORP).	
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14.	We strongly prefer Option 1 - to leave the IORP Directive unchanged with regards to the starting principle for technical provisions: an "adequate amount of liabilities" should be established, "corresponding to the financial commitments which arise out of their portfolio of existing pension contracts". We agree that the concept of transfer value is - for the reasons already stated in EIOPA's response - not a suitable concept for IORPs.	
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17.	See under "General comment": "Sui generis" supervisory system for IORPs.	
18.	See under "General comment": "Sui generis" supervisory system for IORPs.	
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21.	We strongly oppose both options presented by EIOPA. The use of a market-consistent risk-free interest rate leads to results which are too volatile for the management of an institution that covers long-term obligations spanning generations. It would also not make allowance for the specific investment policy of the IORP. The possibility to use only an interest rate based on expected returns on assets to calculate technical provisions must remain.	
22.	See under "General comment": "Sui generis" supervisory system for IORPs.	
23.	See under "General comment": "Sui generis" supervisory system for IORPs.	

24.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
25.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
26.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
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28.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
29.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
30.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
31.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
32.	Yes. MS options should be avoided in IORP II wherever possible - they constitute obstacles for cross-border activity, allow “gold plating” through additional national regulation and could give rise to supervisory arbitrage.	
33.	As stated under 12. and 38. we strongly reject the suitability of holistic balance sheet and SCR-calculation according to Solvency II-rules for IORPs. We also again emphasize the complexity and cost involved in putting a value to employer support for all European IORPs. Employer support is an essentially important security mechanism for IORPs. It should therefore be taken in account - in combination with pension protection schemes - as part of a qualitative evaluation, making the proposed complex and costly quantitative calculation / requirements obsolete for IORPs.	
34.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
35.	Yes, we agree.	
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38.	We reject the proposal of applying the Solvency II-rules for calculating the SCR to IORPs. Pension security is about much more than scheme funding levels alone. A broader approach is required, taking into account the full range of mechanisms that IORPs across different member	

	states now use to ensure that pension incomes are safe and secure. The focus of IORP II is - beside the sound development of occupational pension schemes provided by IORPs in Europe - on security for members / beneficiaries. Therefore, essential security mechanisms like employer support and pension protection schemes have to be taken into account, making the whole concept of SCR dispensable for IORPs and a mere complex and costly exercise. Additional SCR-requirements (and the complex process of calculating them) will raise cost and mean dead capital for employers. This will lead to a decline of their willingness to offer occupational pensions and therefore harm the second pillar within Europe.	
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40.	Our strong recommendation is Option 1: not to impose a uniform MCR for IORPs.	
41.	As stated under 12. and 38. we strongly reject the suitability of holistic balance sheet and SCR-calculation according to Solvency II-rules for IORPs. We also again emphasize the complexity and cost involved in putting a value to pension protection schemes for all European IORPs. Pensions protection schemes are an essentially important security mechanism for IORPs. They should therefore be taken in account - in combination with employer support - as part of a qualitative evaluation, making the proposed complex and costly quantitative calculation / requirements obsolete for IORPs.	
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43.	See under “General comment”: “Sui generis” supervisory system for IORPs.	
44.	We are very much in favour of option 1 - to retain the current flexible position on recovery plans. We believe that Art. 16 of the existing Directive is completely adequate in regulating the role of supervisors in the case of deteriorating financial conditions. Recovery plans should be determined with reference to the specific situation of the IORP and be agreed with the national supervisor on a case by case basis. The length of recovery periods in particular should	

	adequately reflect the long-term character of pension liabilities and certainly be much longer than for insurance companies.	
45.	See under "General comment": "Sui generis" supervisory system for IORPs.	
46.	See under "General comment": "Sui generis" supervisory system for IORPs.	
47.	The prudent person principle must remain the basic principle for the investment of IORPs. It should be reinforced and protected under IORP II and not be undermined by quantitative mechanisms: The prudent person principle in the existing IORP Directive offers IORPs a superb basis for an investment structure that is optimal both according to the retirement objective - based on the nature and duration of future liabilities - and risk management requirements of the IORP. It ensures a qualitatively oriented, "prudent" correlation between obligation and assets. Nevertheless, a trend exists in some MS to evade this reasonable concept through an excess of quantitative regulations. The prudent person principle is thus practically undermined. MS options in Art. 18 (5),(6) and (7) of the existing Directive make this practice in the MS possible. These MS options should be removed for a number of reasons: they prevent investments that are optimal according to the retirement objective and risk management of the IORP, constitute obstacles for cross-border activity, allow "gold plating" through additional national regulation and could give rise to supervisory arbitrage.	
48.	See also answer to question 47. The existing MS options in Art. 18 (5),(6) and (7) of the current Directive should be removed and further MS options avoided. They prevent investments that are optimal according to the retirement objective and risk management of the IORP, constitute obstacles for cross-border activity, allow "gold plating" through additional national regulation and could give rise to supervisory arbitrage.	
49.	There should be no differentiation in investment provisions between defined benefit and defined contribution pensions. In both cases the prudent person principle should be the basic principle.	

	Any deviation from that principle will result in suboptimal investment outcome for the beneficiaries.	
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52.	Supervisory legislation has been predominantly seen as a form of “consumer protection”, achieving a balance between the commercial interests of insurance or financial service providers and individual consumer interests. Supervisory tasks, from the perspective of an individualized “consumer protection”, should not 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 and pensioners. In the current IORP Directive Recital 7 states : "The prudential rules laid down in this Directive are intended both to guarantee a high degree of security for future pensioners ... and to clear the way for the efficient management of occupational pension schemes." So it is suggested, that the main supervisory objective under IORP II is formulated as follows: “… to achieve the main objective of IORP supervision, namely both to clear the way for a sound development of occupational pension schemes provided by IORPs and to protect members and beneficiaries.” In addition we propose to define the purpose of the IORP II Directive as: “This Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries.”	
53.	See answer to question 52 regarding the objective of supervision. Also see under “General comment”: “Sui generis” supervisory system for IORPs.	

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55.	The system of stress-testing applicable to the insurance industry is not suitable and not proportionate for IORPs. They have a longer investment horizon, employer backing and funding targets make allowance for recovery periods. Additionally, insurance style stress tests would promote pro-cyclicality.	
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59.	See under "General comment": "Sui generis" supervisory system for IORPs.	
60.	See under "General comment": "Sui generis" supervisory system for IORPs.	
61.	See under "General comment": "Sui generis" supervisory system for IORPs.	
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63.	See under "General comment": "Sui generis" supervisory system for IORPs.	
64.	Any requirements added for a remuneration policy should take into account: Probably the majority of 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.	
65.	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.	
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68.	Fundamental differences between insurance companies and IORPs and the heterogeneous nature of IORPs must be taken into account when laying down principles for risk management. These should therefore not just be copied from the insurance sector and care should be taken that principles for IORPs are defined and applied in a reasonable and proportionate manner. Risk management should be principle rather than rule based. This provides every IORP with the necessary flexibility to design a risk management system appropriate for them. The proposed non-exhaustive list of risks does not add any value.	
69.	We are strongly in favour of Option 1: do not include ORSA in the IORP Directive. Its aim can for IORPs - with a different risk structure than insurance companies - be more efficiently reached through risk management, rather than piling up several requirements with the same purpose. This would only increase cost and complexity with no added value for IORPs.	
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72.	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 introduction of an additional MS option. MS options should be avoided at all cost - they constitute obstacles for cross-border activity, allow "gold plating" through additional national regulation and could give rise to supervisory arbitrage. We also reject the idea of a whistle blowing obligation of the compliance function. As a general principle, staff of an IORP is responsible to the managing board who in turn are responsible to the supervisory authority.	
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74.	See under "General comment": "Sui generis" supervisory system for IORPs.	
75.	We strongly reject the introduction of an additional MS option. MS options should be avoided at all cost - they constitute obstacles for cross-border activity, allow "gold plating" through additional national regulation and could give rise to supervisory arbitrage. We also reject the idea of a whistle blowing obligation of the internal audit function. As a general principle, staff of an IORP is responsible to the managing board who in turn are responsible to the supervisory authority.	
76.	It is indispensable that the "actuary" referred to in the IORP Directive and the "actuarial function" are considered to be the same, albeit with a more detailed scope of responsibilities. In member states like Germany provisions on the scope, tasks, responsibilities and qualifications of the actuary ("Verantwortlicher Aktuar") are already in place and are very much in line with the description of the actuarial function. It must be avoided that two actuaries become necessary (actuary and actuarial function) which would lead to additional and unnecessary administrative burden without adding value.	
77.	See under "General comment": "Sui generis" supervisory system for IORPs.	
78.	The actuarial function should have operational independence. However it should be possible, that the actuarial function can belong to a provider of other services (e.g. administration,	

	management) if sufficient measures are in place to guarantee his / her independence.	
79.	See answers to questions 76 and 78.	
80.	We strongly advise against the introduction of the proposed new MS options: - that MS may require information / notification by the IORP prior to outsourcing or when changes occur. This would unnecessarily increase bureaucracy, complexity and cost for IORPs and the sponsoring undertakings; - that MS may prohibit outsourcing of certain functions and/or activities. MS options should be avoided in IORP II at all cost - they constitute obstacles for cross-border activity, allow “gold plating” through additional national regulation and could give rise to supervisory arbitrage.	
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89.	We believe that the current Directive lays down an appropriate information provision regime for IORPs and that this does not need to be modified. We therefore favour option 1.	
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91.	We believe that information requirements in the current Directive are sufficient and no additional requirements are needed.	
92.	We believe that information requirements in the current Directive are sufficient and no additional requirements are needed.	
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94.	We believe that information requirements in the current Directive are sufficient and no additional requirements are needed.	
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