`	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:	BT Group plc	
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	British Telecommunications plc is the sponsor of the BT Pension Scheme, which is the UK's largest corporate pension scheme. As at 31 December 2010 the Scheme held assets of around £37 billion and was responsible for around 330,000 beneficiaries under a defined benefit structure. This includes around	

50,000 employees currently earning defined benefits.

We strongly believe that there is no need for amendment to the current IORP directive. The European Commission should state explicitly what it wishes to achieve from this review, supporting its assertions with evidence of how the current regime fails to meet those objectives

The reasons not to amend the IORP include:

- The current IORP Directive already provides a high degree of security to pension scheme members and the prudent funding regime in the UK has proved robust throughout the recent economic turbulence.

- The UK already has a very well governed, prudent and transparent regime for IORP's including a strong Pension Regulator and a Pension Protection Fund. Additionally, they are establishes in a trust based structure (with separate Trustees who have their own legal obligations to protect members).

- There are key fifferences between IORPs and insurance products. Insurance policies are products taken out voluntarily by individuals or companies. IORPs are provided to employees as part of their remuneration package and employees cannot generally choose to join an IORP other than one provided by or on behalf of their employer. Insurance companies act in a commercial environment to deliver commercial products to the public, whereas IORPs provide an social benefit to individuals as a consequence of their employment. We therefore do not believe that the case has been made for insurance regulation to be applied to pensions.
- EIOPA's draft response to the European Commission accepts that there are 'important differences between IORPS ... and insurers' (2.6.4), but nevertheless assumes that it is appropriate for a framework designed for insurers to be imposed on IORPS, provided that certain adjustments are made to allow for the security provided to IORPS by sponsor covenant and protection schemes. However, we believe that IORPs should be regulated by regulation designed specifically for IORPs and not by regulation designed for another financial vehicle altogether.   This is a key differentiator between the two regimes which justifies different

regulation.

- Because of the long-term nature of pension liabilities and the fact that most schemes are strongly embedded in national social and labour law not only are pension funds soundly regulated, but a review would violate the EU's subsidiarity principle

- Introduction of increased solvency requirements would reduce investment in growth and job creation. The CBI has estimated that the impact of the changes could add €500m to pension liabilities in the EU. Any increases in pension liabilities will have a significant economic impact as companies need to divert their cash away from investing in growth and jobs creation.

- Higher solvency requirements will reduce the overall adequacy of benefits provided to employees. An increase in the cost of benefits would jeopardise the sustainability of existing provision and will lead to lower provision overall.

- Changes to existing rules are likely to destabilise already volatile financial markets. Under a Solvency II approach schemes would effectively be forced to move into assets traditionally viewed as 'safer', which would increase volatility and damage the ability of firms to finance in capital markets. Instead of investing in a wide range of assets including equities, corporate debt, derivatives and gilts, schemes would be likely to switch to 'risk-free' investment in gilts. This could lead to a substantial disincentive for long-term investment in corporate debt and equity, which could have permanent impacts on the willingness of pension schemes to invest in the wider corporate economy.

- Applying a solvency regime to IORPS is unlikely to achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainabilty and safety. Imposing a solvency regime would increase the security of some IORP promises in the short term, in many cases providing a level of security far beyond what is necessary. The cost of such security would, however, be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors likely to respond to the increased funding costs by closing their defined benefit pension schemes, reducing the level of future accrual and/or replacing defined benefit schemes with often less well-resourced defined contribution schemes, under which members bear all the risks. Future generations of IORP members may pay the price in terms of lower pensions for the excessive security being provided to current members of defined benefit IORPs.

- A solvency II regime for IORPs is unlikely to meet the objectives set out in the current review of the IORP directive. Harmonising the funding regime for pensions would not be likely to increase the take-up of cross-border schemes. If anything, increasing the funding requirements would make such schemes even less likely. The obstacles to cross-border schemes are rather to be found in the complex legislative framework attaching to such schemes, to the stringent funding standards already applying to defined benefit cross-border schemes (which are required to be fully funded at all times), and possibly to a genuine lack of demand for such schemes. The second reason for the review of the IORP directive is to 'allow IORPS to benefit from risk-mitigation mechanisms'. However, IORPs already have a number of risk-mitigation mechanisms in place that are precisely designed for the needs of pension schemes in specific Member States. Imposing inappropriate risk-mitigation strategies in the context of funding will lead to increased risks in other areas, in particular in terms of the longer term provision of IORPS to employees.
- A thorough and detailed impact assessment is critical before the Commission considers the options. This should include assessments on both pension schemes and the wider economy, e.g. the impact on economic growth, jobs, provision of pension benefits and how the capital requirements might affect equity, bond and other markets. Applying a solvency regime to pensions is likely to lead to massive additional costs for the sponsors of defined benefit IORPs. Research carried out by Punter Southall in December 2007 suggested that increasing technical provisions for the UK FTSE350 to Solvency II levels (including a switch to a risk-free discount rate and the application of a solvency capital requirement) could lead to an increase in funding of 85-90% compared to technical provisions on the funding basis used for the scheme's formal triennial valuation. Whilst market conditions and the precise composition of Solvency II have developed since that date, we think this still remains a useful indicative figure showing that the impact of a solvency regime being applied to pensions would be very substantial and would have a devastating impact on sponsors funding defined benefit IORPs.

	• In addition to the funding costs, we also stress that imposing additional regulatory requirements, including the need to calcuate solvency capital or place a value on the employer's covenant, would add considerably to the advice costs faced by IORPs and their sponsors. These could easily run into tens of thousands of pounds per annum for each of the around 7,000 UK defined benefit pension schemes. The quantitative impact assessment should also address these costs. • Now is not the right time to consider this issue. The proposal to apply Solvency II to pensions with minimum alterations is premature in any case, since Solvency II remains untested for insurance companies. We believe that the regime should be tested in practice for a period of years before there is even any consideration of applying the same regime to pensions. • Also, the current European market turmoil strongly suggests that now is not the time for Europe to be considering any major changes which could destabilise investment markets through changes to asset allocation by pension schemes. The current crisis has also challenged the very notion of 'risk-free' investment and it will be necessary to form a revised understanding of what risk-free means in practice before such concepts can be applied to pension schemes. • It is also our firm view that it is fundamentally inequitable that unfunded arrangements are not being reviewed in conjunction with IORPs, when these arrangements are inherently less secure than funded plans. Our response focuses on the sections relating to funding and solvency.	
1.		
2.		
3.		
4.		
5.		
6.		
7.		

8.		
9.		
10.		
11.		
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?* There are a number of practical difficulties with the holistic balance sheet. The method of construction appears to be artificially trying to fit pension schemes into a framework that is neither suitable or appropriate. As such, It is simply the wrong starting point. It is not clear that many of the security elements identified can easily be valued in monetary terms – or that, even if a number can be arrived at for the value of the sponsor covenant or pension protection scheme, that number actually encapsulate the role being played by that security mechanism. The distinction between sponsor-backed and non-sponsor-backed IORPs should be retained.	
13.	The insistence on market-consistent valuation approaches is not necessary. Pension schemes adopt equity investment strategies that match expected cash inflow with benefit outgo. From the perspective of the pension scheme, the appropriate valuation method should reflect the discounted value of future cash flows as well as the current market value of any particular stock.	
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?* We agree with EIOPA that there should be no reference to transfer values within the IORP Directive. A discontinuance valuation is inappropriate for IORPS that have solvent employers providing ongoing support. In addition, we do not believe that 'market-consistent' in the context of liabilities should be interpreted to mean 'risk-free'. The discount rates should be selected to suit the requirements of the	

	fund and discussed with actuaries and auditors, who are best placed to assess the specific risk profile of the scheme. We therefore prefer Option 1, which is to leave the IORP directive unchanged. Importantly, the term 'risk-free' is undefined, with the selection of a risk-free rate having recently become much harder, as the assumption that sovereign debt represents the lowest risk may no longer be true in many countries. It may be that schemes invested in corporate bonds are exposed to lower risk that those holding the sovereign debt of many countries.	
15.	*Do stakeholders agree that the own credit standing of IORPs should not be taken into account when valuing liabilities?* We agree that the credit standing of IORPs should not be taken into account.	
16.	*What is the stakeholders' view on inserting a recital in the IORP Directive saying that supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards?* The purpose of accounting standards differs significantly from that of funding. There is no benefit from introducing compatibility and any efficiency savings would be immaterial. For example, accounting valuations are often carried out at different dates and more regularly than ongoing funding calculations. Consistency is also unlikely to provide any benefits to member security or cross border harmonisation.	
17.		
18.	*What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?* The current IORP directive requires prudent reserves to be held to back liabilities. There is no clear justification provided of any reason to amend this approach. Introducing extra margins would be adding prudence on an already prudent approach .	
19.	*Do stakeholders agree with the proposed conditions defining in what cases IORPs should take into account future accruals or not when establishing technical provisions?* We do not believe that future accruals should be taken into account.	
20.		
21.	*What is the stakeholders' view on the two options presented regarding the interest rate used to*	

	establish technical provisions (including the positive and negative impacts)? The question as to whether a risk-free rate is appropriate has not been considered and we believe evidence needs to be provided to explain why it is appropriate and more suitable than the use of a prudent assessment of the returns available on the assets held. There is also a huge practical issue over determining what a risk free discount rate is.	
22.	*Do stakeholders agree that expenses incurred by the IORP in servicing accrued pension right should be taken into account in technical provisions as introduced by Article 78 of Solvency II?* No. A different treatment between IORPS and insurers is justified where an IORP has sponsor support that is available to meet ongoing costs as they arise.	
23.	*Do the stakeholders agree with the analysis regarding the inclusion of unconditional, conditional and discretionary benefits in technical provisions as introduced by Article 78 of Solvency II? Do stakeholders find that discretionary benefits should be included in the best estimate of technical provisions? Is the Solvency II article on surplus funds useful for IORPs in this respect?* It is highly illogical to include non-guaranteed benefits, if there is a discretion as to whether to award these benefits. Discretionary benefits should only be included once they have been granted.	
24.	We have no objection to the inclusion of allowances for options exercised by members (such as the commutation of pension into cash).	
25.		
26.		
27.	*Do stakeholders agree that it would be useful to introduce Article 82 of Solvency II with appropriate amendments into a revised IORP Directive regarding the availability of data and the use of approximations in the calculation of technical provisions?* We see no issues with introducing this approach.	
28.	*Do stakeholders believe that it would be useful to introduce Article 83 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for assumptions to calculate technical provisions to be regularly compared against experience and adjustments made when appropriate?* We see no issues with introducing this approach.	

29.	*Do stakeholders agree that it would be useful to introduce Article 84 of Solvency II with appropriate amendments into a revised IORP Directive regarding the need for IORPs to demonstrate to the supervisor on request the appropriateness of the level of technical provisions?* We see no issues with introducing this approach.	
30.	*Do stakeholders agree that it would be useful to introduce Article 85 of Solvency II with appropriate amendments into a revised IORP Directive regarding powers of the supervisor to require IORPs to raise the amount of technical provisions corresponding to supervisory law?* We do not see any reason to amend this Article. The Pensions Regulator already has extensive powers in the UK and there has been no evidence of market failure arising from a lack of power.	
31.	This proposal which would seem to give the Commission wide powers to impose additional requirements on IORPS without full scrutiny and accountability is inappropriate.	
32.	*Do stakeholders agree that individual Member States should not be permitted to set additional rules in relation to the calculation of technical provisions as currently allowed under Article 15(5) of the IORP Directive?* No. This would be a direct contravention of the principle of subsidiarity. The differences between Member States individual social and labour laws is too great for a simple "one size fits all" approach. Pensions remain a Member State competence and EU policy should be restricted to matters connected with Internal Market policy.	
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?* We do not agree with the need for a margin above Technical Provisions but allowance for sponsor covenant is clearly a critical part of any framework regulating IORPs. However, we do not believe that a convincing argument has been put forward for allowing for covenant as an asset (rather than by adjusting the liabilities). There are huge practical difficulties in calculating a point estimate for covenant, which is likely to be a dramatic under or overstatement unless a complex and expensive	

	valuation exercise is required. If an asset valuation methodology is introduced, it is clear that any methodology used for covenant valuation needs to be thoroughly debated. The approach should also be thoroughly tested under the impact assessment before any conclusions are drawn.	
34.		
35.		
36.	*What is the stakeholders' view on the analysis whether to introduce or not a uniform security level for IORPs across Europe? Do the stakeholders agree with EIOPA's decision not to recommend a specific probability? If not, what specific probability should be imposed upon IORPs?* We can see no convincing need for a uniform security level, particularly given the differing approaches to benefit provision in different member states. We believe that there is no need for an SCR, but if EIOPA is to recommend this approach it is imperative that the quantitative impact assessment considers closely the confidence interval to be used and this should not be set until after the impact assessment. It also needs to reflect the fundamental differences between the nature of the promise from IORPS and insurers	
37.	*Do the stakeholders agree that the confidence level should apply to a one-year time horizon?* We do not believe an SCR is needed but if applied we agree with the time horizon.	
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?* We do not think there is any justification for additional prudence to be added to an already prudent regime. EIOPA note that a disadvantage of the approach is additional cost to employers and potential reductions in benefits and in efficiency. We agree with this assessment of the disadvantages and this must feature heavily in the impact assessment carried out. In reviewing the IORPS Directive a sensible balance must be struck between security and adequacy of provision. We do not believe that employees will welcome an overly prudent and secure structure that provides them with lower benefits.	

39.	*Do the stakeholders believe that IORPs should assess the SCR on an annual or three-yearly basis?* As stated previously, we do not believe there is a need for SCR but our view is that current approach of three yearly with approximate assessment yearly is appropriate	
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 are not clear how the MCR is relevant for IORPs and this appears to have more rationale in an insurance context.	
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?* As with sponsor support, pension protection schemes represent one of the key differences between insurance companies and IORPs and therefore it is essential that they should be taken into account as part of the security provided to pension schemes. In the context of the holistic balance sheet it is not clear whether this should be be included on the asset or liability side. If it is not included as an asset, it should be included in the liability measure – for example, this might allow the removal of the SCR or adjusting the confidence interval to a significantly lower level	
42.	*Do stakeholders agree that capital requirements for operational risk should be applied to DC schemes where investment risk is borne by plan members? Should these capital requirements be uniform or tailored to the actual risk profile? Do stakeholders find it sensible to distinguish between DC and other schemes in the area of operational risk?* No. This appears to be an excessively prudent approach. Capital requirements for operational risk should not be applied to DC schemes. Any such requirements would have to be funded either directly by the member, or by the sponsoring employer who would be almost certain to reduce the contributions it pays to the scheme on behalf of the member. Either way, the member would receive lower retirement income in consequence. We believe that operational risks are better addressed through governance and supervisory measures rather than through a quantitative approach of this kind.	
43.	-	

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?* The solvency capital requirements should not be applied to IORPs at all and therefore do not think there is a role for a recovery plan in this context. We believe that there is a need for Recovery Plans to meet the Technical Provisions. The framework should be flexible and the UK framework that means companies should not pay more than is reasonably affordable is sound. Paying contributions at a faster rate would put undue and unnecessary strain on companies leading to less funds being available for investment in growth and jobs creation. This is another area that should be considered further in the quantitative impact assessment.	
45.		
46.		
47.		
48.		
49.		
50.		
51.		
52.		
53.		
54.		
55.		
56.		
57.		
58.		
59.		
60.		

`	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
61.		
62.		
63.		
64.		
65.		
66.		
67.		
68.		
69.		
70.		
71.		
72.		
73.		
74.		
75.		
76.		
77.		
78.		
79.		
80.		
81.		
82.		
83.		
84.		
85.		

`	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
86.		
87.		
88.		
89.		
90.		
91.		
92.		
93.		
94.		
95.		
96.		