

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:	DHL Trustees Limited	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>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.</i>	Public
<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in column "Question". ⇒ 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>. ⇒ 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. <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 CP-006@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p>		
Question	Comment	
General comment	Introduction DHL Trustees Limited is the trustee of the pension scheme (IORP) of the Deutchepost DHL Group in the United Kingdom. The IORP has over 100,000 members and assets of around £4bn. All employees	

**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**

are eligible for membership of the IORP.

We believe that the current consultation is misguided, this is because EIOPA was asked to provide advice on **how** a solvency regime for pensions might be adopted starting from the Solvency II, rather than being asked to consider **whether** such a solvency regime is appropriate in the first place.

It is our view that applying a insurance based solvency regime to IORPs is wrong in principle. Insurance products are taken out voluntarily by individuals, trustees or companies. IORPs are in the majority of members states, the UK included, used to provide benefits to employees as part of their remuneration package. 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, IORPs on the other hand provide a social benefit to individuals as a consequence of their employment. The case for applying insurance regulation to pensions has not been successfully made. We do recognise that there are a number of member states where IORPs do directly compete with insurance products, and these are in the main countries where IORPs are less developed. We therefore believe that EIOPA should determine those circumstances where IORPS operate commercially and should be subject to similar insurance solvency requirements, rather than applying unnecessary regulation to all IORPs.

We believe that applying a solvency regime to IORPS will not achieve the European Commission's aims for pensions. In its Green Paper for Pensions, the Commission indicated that its goals were adequacy, sustainability and safety. Imposing a solvency regime would certainly increase the security of some IORP promises in the short term, but the cost of such security would be to undermine the sustainability and adequacy of IORPs in many countries, with sponsors responding 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.

We are concerned also that EIOPA intends to provide advice to the Commission in advance of a quantitative impact assessment. We do not see how EIOPA can be sure that it is giving the right advice to the Commission until it has seen the results of that assessment. Applying a solvency regime to pensions is likely to lead to massive additional costs for the sponsors of defined benefit IORPs. We believe that this exercise must be carried out before the European Commission publishes

**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**

	<p>a revised draft of the IORP directive so that their review of the directive can be informed by that evidence.</p> <p>Applying a regime based around a risk-free discount rate and solvency capital requirement would lead to a change in pension schemes' asset allocation. 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. The current European market turmoil also 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.</p> <p>For these reasons, we believe that the review of the IORP directive (and in particular the funding and security proposals contained in EIOPA's draft response) should be deferred a number of years.</p>	
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		

**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**

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?

We are opposed to the concept of the holistic balance sheet, because it starts from a position that Solvency II is the right framework for IORPs. 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. We therefore regard the holistic balance sheet as an unworkable concept.

We believe that the distinction between sponsor-backed and non-sponsor-backed IORPs should be retained. We therefore support policy option 1, by maintaining a clear distinction between Article 17(1) IORPs, 17(3) IORPs and sponsor-backed IORPs.

13.

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 that any valuation of liabilities should contain no reference to a transfer value, as this is a different concept, what may be a fair transfer value, is not necessarily a prudent valuation of the liabilities.

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.

**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**

	<p>We also note that 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 than those holding the sovereign debt of many countries.</p>	
15.		
16.	<p>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?</p> <p>The purposes of supervisory valuation standards and accounting standards are different, and we therefore do not see that there is a fundamental requirement for compatibility. Accounting standards are designed to give the owners of a company a fair value of the liabilities the company has to meet, whereas supervisory valuation standards should be more prudent and should be used to ensure that in majority of cases the beneficiaries receive payment of their benefits.</p>	
17.		
18.	<p>What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?</p> <p>If one of these options has to be selected, then option 1 should be chosen, i.e. 'explicit risk margin in technical provisions calculated according to the current IORP directive'. This is the closest to the current situation, where technical provisions are calculated on a prudent basis. The separate disclosure of the risk margin as an explicit rather than implicit item may provide useful information to trustees and companies; however, this option should not lead to a different overall assessment of technical provisions to that applying at present.</p>	
19.	<p>Do stakeholders agree with the proposed conditions defining in what cases IORPs should take into account future accruals or not in establishing technical provisions?</p>	

**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**

	<p>Future service benefits are a matter between the employer and employee representatives, and are only earned if the employer continues to trade and the employee continues in employment. For this reason, we do not believe that technical provisions should take any account of future accruals.</p>	
20.		
21.	<p>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)?</p> <p>We do not believe that a risk-free interest rate should be used as a solvency measure for IORPs. However, in the circumstances in which it has been determined that a risk-free interest rate is required to be used, then we would prefer option 2 under which there would be two levels of technical provisions, Level A calculated on a risk-free basis and Level B with a discount rate calculated by reference to the expected return on assets. We believe that the Level B technical provisions should be the required level on which funding requirements would be based, with Level A technical provisions existing simply as an item for disclosure both to supervisors and to members.</p> <p>It should not be assumed that Level B technical provisions will converge to Level A technical provisions over a transitional period as stated in the consultation. It would need to be demonstrated that Level B provided inadequate security before this could be considered.</p>	
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		

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
30.	<p>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?</p> <p>No.</p>	
31.	<p>Do stakeholders agree that a new IORP Directive should allow for the Commission to adopt level 2 implementing measures regarding the calculation of technical provisions as introduced by Article 86 of Solvency II?</p> <p>No. We are opposed to this proposal which would give the Commission wide powers to impose additional requirements on IORPS without full scrutiny and accountability.</p>	
32.		
33.	<p>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?</p> <p>There can be no doubt that the existence of sponsor support constitutes one of the most important differences between insurance companies and IORPs, and therefore it should certainly be taken into account as part of the regulatory regime for IORPs.</p> <p>However, we believe that the insistence on the inclusion of sponsor support explicitly in a holistic balance sheet is unworkable, and would lead to considerable costs on the part of schemes (and their sponsors). Our view is that the existence of sponsor support means that a solvency regime for pensions is simply not necessary, and therefore makes Solvency II unnecessary for IORPs</p>	
34.		

**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**

35.		
36.	<p>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?</p> <p>The types of security provided to IORPS across Member States are so varied that it is completely impractical to impose a uniform security level for IORPS across Europe.</p>	
37.		
38.	<p>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?</p> <p>We do not believe that solvency capital requirements should apply to sponsor-backed IORPs in any form. For sponsor-backed IORPs, holding assets to cover technical provisions (with a recovery plan in place where necessary to fill the gap) is sufficient protection.</p>	
39.		
40.		
41.	<p>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?</p> <p>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.</p>	

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
	As we have set out above, we do not agree with the concept of a holistic balance sheet deriving from the Solvency II framework. If, however, this approach were to be pursued, then the pension protection scheme must be given full value, as providing complete security in respect of all benefits covered by that protection scheme.	
42.	<p>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?</p> <p>We do not believe that capital requirements for operational risk should 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.</p> <p>We believe that operational risks are better addressed through governance measures and supervisory measures rather than through a quantitative approach of this kind.</p>	
43.	<p>What is the stakeholders' view on the analysis regarding the duties of IORPs and the powers of supervisors in the case of deteriorating financial conditions as introduced by Article 136 and 141 of Solvency II?</p> <p>Given that deteriorating conditions in the context of IORPs generally arise from market conditions, it seems unnecessary for IORPs to have to inform supervisors when these circumstances occur.</p>	
44.	<p>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?</p>	

**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**

	<p>We do not believe that solvency capital requirements should be applied to IORPs at all and therefore do not think there is a role for a recovery plan in this context.</p> <p>We do think however that there is a role for recovery plans in the context of sponsor-backed schemes that are not yet fully funded on the basis of their technical provisions. Such recovery plans should be set at a level that sponsors can afford. We welcome the recognition by EIOPA that it is reasonable for recovery periods to be longer for IORPs than for insurance companies.</p>	
45.		
46.		
47.		
48.		
49.		
50.		
51.		
52.		
53.		
54.		
55.		
56.		
57.		
58.		
59.		
60.		
61.		

**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**

62.		
63.		
64.		
65.		
66.		
67.		
68.		
69.		
70.		
71.		
72.		
73.		
74.		
75.		
76.		
77.		
78.		
79.		
80.		
81.		
82.		
83.		
84.		
85.		
86.		

**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**

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