<table>
<tr><td colspan="2">Comments Template on EIOPA-CP-11/006
Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</td><td>Deadline
02.01.2012
18:00 CET</td></tr>
<tr><td>Company name:</td><td colspan="2">Tesco PLC</td></tr>
<tr><td>Disclosure of comments:</td><td>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="2">The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:
⇨ <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.
○ 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 <u>CP-006@eiopa.europa.eu</u>, <u>in MSWord Format</u>, (our IT tool does not allow processing of any other formats).</td></tr>
<tr><td>Question</td><td colspan="2">Comment</td></tr>
<tr><td>General comment</td><td>Tesco welcomes the opportunity to respond to EIOPA’s final consultation on the Call for Advice (CfA) on the review of Directive 2003/41/EC for Institutions for Occupational Retirement Provision (IORPs).

Background to Tesco and our pension arrangements</td><td></td></tr>
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Tesco is one of the world's largest retailers, with operations in six EU member states – the UK, Ireland, Poland, Czech Republic, Slovakia and Hungary. We are a major contributor to the EU economy, with over 3,900 stores and over 375,000 employees across our markets.

Our award-winning UK pension scheme is one of the largest private sector defined benefit (DB) schemes that still remain open to new employees. We have around 167,000 employed members and over 280,000 participating members in total. The scheme is open to all Tesco staff, no matter how low their earnings are. Almost 70% of our members are female. Entry is automatic for employees who are over age 25 and have more than one year's service. Over 90% of automatically enrolled staff choose to stay in the scheme and say it is a great way to save for the future.

Our Tesco Ireland Pension Scheme also still remains open to new employees - with around 3,000 employed members in total. Tesco Ireland is one of the few companies in Ireland to continue to offer defined benefit pension to both new and existing employees.

General views

We support the Commission's objective of achieving adequate, sustainable and safe pensions systems in the European Union. We are keen to engage in a constructive debate as to how this is best achieved. However, it is important to stress that we strongly oppose the application of a Solvency II-style funding regime (pillar 1) to occupational pension schemes on principle because as we set out below, such a funding regime would do nothing to help the Commission increase pension security.

A Solvency II-style regime would weaken – not strengthen – EU pension provision

Perversely, Solvency II rules would make occupational pension schemes unaffordable for employers to run, forcing schemes to close. In the UK, the proposals would undermine the security of the 7.7m[1] active members in DB schemes (about 27% of the workforce).

Future pension provision would have to be provided by defined contribution (DC) schemes, where members undertake the risk instead of the employer and typically receive lower benefits than those offered by a DB scheme. The closure of DB schemes would also put a strain on the state at a time of economic uncertainty, as more people are likely to claim benefits from it. This not only undermines the Commission's original objective, but also the Flexicurity agenda, which aims to create *more* security for employees.

Solvency II rules would also be disastrous for the EU economy

Higher funding requirements would force businesses to divert money away from investment in growth, enterprise and job creation, undermining the EU's economic goals at a critical time. In practical terms, this may restrict Tesco's capital for store development, Regeneration Partnership schemes and jobs for the long-term unemployed. This may also lead to a loss of tax revenue for the state in the form of corporation and income taxes, and VAT.

The proposals could also destabilise already volatile financial markets and drive capital out of the EU. Pension funds would be forced to shift to low-return investment strategies, choosing bonds over equities, which could significantly impact companies' share prices and their ability to raise capital in the markets.

The current IORP Directive works well and respects subsidiarity

Given the diversity of member states' pension arrangements, which are tied to national social and labour laws, it would not be sensible to impose a single funding regime. Many member states, such as the UK, have strong security mechanisms in place, which have proven robust during the economic crisis.

A solvency regime for the insurance sector is inappropriate for pension funds

Insurance companies and occupational schemes are not comparable, and we therefore reject the idea that there should be a level playing field. Firstly, unlike insurance companies, pension funds do not operate on a commercial basis - they are part of an employer's benefit package for staff. Secondly, Solvency II was specifically designed to address the short term volatility risks in the insurance sector.

It would be wrong to apply the regime to pension funds as there is a far lower degree of volatility in cash flows, with contributions paid by the sponsoring employer over a much longer time period.

The holistic balance sheet needs further clarification

While we strongly oppose a Solvency II-style regime on principle, the holistic balance sheet does have some merit, as it gives credit to the financial strength of the employer on the balance sheet. However, it is difficult to form a conclusive view as there is little detail in the consultation on how this is valued. EIOPA should clearly define the method for valuing holistic balance sheet components rather than leave this to Level 2 measures, which are subject to minimal political scrutiny.

There are alternatives to a Solvency II-style regime

Non-legislative instruments such as the Open Method of Coordination for sharing best practice and information between member states would not only encourage stronger pension provision across the EU, but would also support the Commission's objective to reduce burdensome regulation and reduce costs for employers. Such an approach would allow the Commission to focus on other areas of the IORP Directive review, namely transparency and governance (pillars 2 and 3), which could usefully be strengthened.

On a final note, we have concerns that the IORP Directive review process is being needlessly rushed and will lead to ill-judged policy decisions on a vitally important policy area for all member states. The short consultation period and EIOPA's tight deadlines for giving advice leave little time for careful analysis of the detail. It is critical that proposed changes to the Directive are accompanied by a rigorous impact assessment, and that more information is given to stakeholders as the review process progresses.

We would be happy to discuss our consultation response with you further. Please do not hesitate to contact us.

	[1] *ONS, Pensions Trends, September 2011. Total UK workforce approx 29m according to ONS Labour Market Statistics, November 2011*	
1.	**Do stakeholders agree with the analysis of the option (including the positive and negative impacts) as laid out in this advice? Are there any other impacts that should be considered?** Across the EU we have many different types of arrangements - built out of differing social and labour laws. So a one-size-fits-all approach will not work given the level of complexity. Therefore we believe the current scope should not be extended unless the Pillar 1 changes as described in this paper are adopted creating significantly different financial burdens across different companies with different types of arrangement. In that situation it would become imperative that all retirement arrangements are considered in scope.	
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5.	**Definition of cross-border activity** **Do stakeholders agree with the analysis of the options as laid out in this advice?** We believe that the EU should find out what the demand is for cross-border schemes before trying to find a solution through making legislative changes. The call for advice already recognises that lack of demand may be due to differences in members states' social and labour laws (including taxation) - which is the most likely reason for low take-up - and altering the definition of cross border activity does nothing to help with this. As noted above, we operate in six EU countries but have no intention to set up a cross-border scheme for exactly those reasons. On the basis that we expect it will have minimal impact and that the existing definition has already allowed 84 schemes to set up then we see little reason to change the definition.	
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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 disagree that Solvency II, or any other single system should be applied across all member states. As intended under the subsidiarity rule – funding related to IORPS should be developed to suit individual member states and to reflect the diversity of retirement income structures across the EU. On that basis we don't support the holistic balance sheet. We understand that over 60% of the EU's IORP liabilities are in the UK where there is a robust system of Regulation, where member security is high priority and funding is on a scheme specific prudent basis that allows for sponsor covenant and Pension protection fund already. This system has been sufficiently robust to get schemes and their sponsors through the last 3 years of recessionary environment – therefore we don't perceive a need to change the current IORP. Having made our fundamental position clear, then looking at the specific structure of the balance sheet as a funding model for IORPS our views are: – We support having an allowance for sponsor covenant and pension protection in principle. We are concerned that this call for advice does not outline how a financial value could be placed on these two items – as it isn't possible to give full comment on whether they are appropriate or workable without that detail. - We are opposed to leaving this detail to level 2 regulation given its fundamental importance to the operation of the holistic balance sheet and call for it to form part of the Directive itself. It is also vitally important that it be included in Impact Assessments. - the move to value technical provisions on a risk free rate will increase liabilities substantially, taking capital away from investment in businesses – reducing taxes and job creation - and risking the	

	closure of scheme to future benefits. Further, the reduction in investment would reduce the covenant strength of the sponsoring employer thereby requiring even more capital to be put aside - requiring specific risk margins discourages investment in equities and would result in a shift to invest in risk-free bonds. Taking such a significant share of the current market for equities in the EU and incentivising them to sell to move to different types of asset would depress share prices and slow down any growth in the economy To do this in the current economic environment would make conditions harder to recover. While putting aside more capital would certainly make pension earned in the past more secure – it does not give any security to today's and tomorrow's employees who are no longer able to earn this type of retirement benefit if it's too expensive to provide. Instead the likelihood is that they would be offered a defined contribution arrangement which potentially offers them less certainty on the adequacy of the benefit they could receive in retirement. In addition, if additional funds are needed to meet the funding for the past service benefits then less money will be available for future benefits – further affecting their adequacy.	
13.	**Do stakeholders agree that the assets of IORPS should be valued on a market consistent basis?** EIOPA should define what 'market consistent' means in the context of the current consultation. It should not equate to the 'mark to market' approach employed in IAS19, which has undermined long-term pension provision. We believe that 'market consistent' is best defined at Member State level by national regulators.	
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 a transfer value is not an appropriate principle for valuing liabilities. The long term nature of pension promises means that IORPS should be able to make long-term assumptions about valuations in order to help them to capture returns over the long term. Also, due to their long term nature IORPS can use future contributions as assets or reduce future benefits.	

	The valuation of liabilities on a mark-to-market basis is inappropriate for IORPs. With these points in mind, we prefer Option 1.	
15.	**Do stakeholders agree that the own credit standing of IORPS should not be taken into account when valuing the liabilities?** We believe the approach to valuing liabilities should be flexible enough to take into account the full range of factors that influence the ability of future liabilities to be met	
16.	**What's the stakeholder's view on inserting a recital in the IORP Directive saying that supervisory valuation standards should, to the extent appropriate, be compatible with accounting standards?** We agree with EIOPA that there should not be a need for consistency in the valuation rules and support option 1, i.e. no change to the current IORP Directive. We believe that option 2 – as already noted by EIOPA – could create confusion by including an ambiguous statement such as making standards consistent "to the extent" possible. Over time its interpretation could change and develop into unintended requirements.	
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18.	**What's the stakeholder's view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?** There concept of a risk margin is designed for insurance and is not suitable for pension schemes – so it should not be included. Unlike insurance products, the cash flows to meet pension payments are relatively predictable and any shocks to these cash flows (such as those anticipated by the risk margin) can be met by the sponsor over a long period of time. The risk margin is therefore an inefficient use of a company's capital – which could otherwise be used to grow the business and generate jobs.	
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 support these conditions and believe it's important to observe the distinction for IORPs where technical provisions are calculated on accrued rights.	

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21.	**What is the stakeholder's view on the two options presented regarding the interest rate used to establish technical provisions (including the positive and negative aspects)?** Both options involve the use of risk free interest rates. The diversity of schemes across the EU means that a wide range of discount rates are currently used to reflect the circumstances of each individual scheme. It is wrong to impose a "two sizes" fits all model. Instead technical provisions should be based on a discount rate that reflects the circumstances of the individual scheme (e.g. types of investments, size of scheme, currency and home country). The use of risk-free rates (e.g. based on Government bonds) would produce volatile liability values from year to year (even though the underlying benefit promises remain the same). This will be difficult to plan for unless the underlying assets are invested directly in these bonds. However the removal of billions of pounds from the stock market would have wide ranging consequences on the economy and increase the cost of providing a DB scheme significantly.	
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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?** No. This would represent a major extension of the Pension Regulator's power to intervene. The UK system is well tested with effective checks and balances. There is no case for disturbing it.	
31.	**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? No. The decisions should have a huge impact on member pensions and corporate finances. They are too important to be left to level 2 measures that are not subject to full political scrutiny.	
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. Pensions remain a Member State competence.	
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 cannot comment on this area without a detailed proposal for how to measure covenant and associated Impact Assessment. We do not support the use of a solvency capital requirement in addition to technical provisions.	
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38.	**What is stakeholders' view on applying the Solvency II rules for calculating the solvency capital requirement to IORPS taking into account their specific security and benefit adjustment mechanisms?** We believe the solvency capital requirement is unnecessary and inappropriate for pension schemes which are fundamentally different to the insurance companies it was designed for. Pension scheme cash flows are relatively stable and easy to predict – so with long term employer support in place any fluctuations in funding levels can be corrected through the use of a recovery plan over a sensible period of time.	

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	The best security for members is to help their scheme remain sustainable over the long term – which means the funding needs to be appropriate to the individual circumstances of the Company providing it.	
39.	**Do the stakeholders believe the IORP should assess the SCR on an annual or three-yearly basis?** We believe that 3-yearly is frequent enough to consider the funding of such long-term savings vehicles and this would also help to manage sponsor expenses in arranging for these reviews to be carried out. However, note that we don't believe the SCR is necessary for IORPS in the first place as in Q38.	
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44.	**What is the stakeholder's view on the analysis regarding the submission of recovery plans and the length of recovery periods? 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?** Flexible – as in the current regime which works well. In the UK we have the Pensions Regulator to review that the length is appropriate to the needs of the members and has the power to intervene if this isn't the case. This allows country specific issues to be factored into the length of the plan – which are relevant to each company's ability to pay off a deficit. We share EIOPA's view that it's appropriate to have a longer recovery period than under Solvency II for IORPS – to take into account different factors than apply to an IORP, in particular the benefit of ongoing support of a sponsoring employer allowing a much longer period of repayment.	
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46.	**Do stakeholders agree that it should be specified in the IORP Directive what constitutes a recovery plan as introduced by Article 142 of Solvency II? How should the contents differ from those of insurance companies?**	

	The recovery period should not be specified in the IORP Directive but instead be left to local Regulation. This will allow country specific economic factors to be factored into the recovery periods agreed with the local Regulator – which may not apply across the EU.	
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55.	**Do stakeholders agree with the recommendation that supervisory authorities should have broadly the same powers to require IORPS to conduct stress tests as it has in respect of insurers?** We don't object to this on principle – but it needs to be used appropriately given the cost of the test to the sponsoring employer. The use of the outcome from these tests will differ from when they're applied to insurance companies as the sponsor has the ability to meet any strains showing in the test over the long term (unlike an insurance company).	
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68.	**What is the view of stakeholders on the proposed principles of the revised IORP directive? How to stakeholders evaluate the positive and negative impact of the proposed risk management principles?** We agree the principles that all IOPRS should have effective risk management systems – but not that DC schemes should reserve for operational risks. The mechanism for measuring how effective a risk management system is and placing a financial value is too complex to apply with any degree of accuracy from a practical perspective.	
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74.	**Do stakeholders agree that the material requirements of internal audit in respect of insurers should also apply to IORPS, subject to proportionality and other changes?** IORPS are already subject to the requirement to have annual audits by an external auditor. Using an external third party for this ensures impartiality in the work carried out and views expressed. The requirement to set up an internal audit would increase the costs of running the scheme and potentially duplicate work carried out already – it also loses the benefits of independence. Therefore we believe that no extra internal audit should be required.	
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