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:	Trades Union Congress (TUC)	
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 Trades Union Congress (TUC) represents 55 trade unions and more than six million members working in a wide range of organisations, sectors and occupations. The TUC is also a member of the European Trades Union Congress (ETUC). The TUC supports high-quality pension schemes and we believe that everyone should retire with an adequate and secure pension. We welcome the opportunity to comment on this consultation. There is a broad consensus among the UK's social partners about the adverse impact the proposals to revise the Institutions for	

Occupational Retirement Provision (IORP) Directive could have on the EU economy and UK's occupational pension schemes. Given the shared views among UK stakeholders this response does not go into technical detail. Rather, we examine issues of particular concern.

We would also like to add that the significant length of such an important consultation should have merited a longer consultation period. Given the circumstances we have submitted a shorter response than we would have liked to have perhaps done so.

The TUC is concerned that there is no full impact assessment attached to this consultation and that the impact assessment will not be published until after this consultation closes. Indeed, we understand that when an impact assessment is published it will not examine all aspects of the consultation. This makes responding to the consultation in an informed manner problematic. Furthermore, without a full impact assessment we query how revisions to the IORP Directive can be proposed in the consultation as they lack full evidence demonstrating the necessity for any changes.

We note that any reforms to the IORP Directive concern the UK and the Netherlands disproportionality, given that they account for 85 per cent of defined benefit liabilities. There must therefore be a consideration of proportionality and flexibility in considering any possible reforms to the EU pensions system.

The TUC is very concerned about the potential impact the review of the IORP Directive could have on occupational pension schemes and its wider economic implications.

We are concerned that the European Commission has asked EIOPA *how* scheme funding requirements should be further harmonised, not *whether* they should be. The application of Solvency II Directive-derived rules could have serious implications for defined benefit pension schemes by significantly increasing scheme liabilities by 20-30 per cent (over £100bn in total). Valuing technical provisions on a risk-free rate basis could place greater pressure on schemes and ultimately lead to a high level of scheme closures, thereby resulting in fewer benefits for scheme members and undermining retirement provision. This would result in people either having no pension provision, or if they are lucky enough to have alternative provision, being far more likely to be a member of a defined contribution scheme where members are exposed to risks and pensions are usually less generous.

	A solvency regime similar to that required by financial service companies providing insurance schemes is not the same as that required by defined benefit pension schemes that have long-term predictable liabilities and are backed by a participating employer. The UK already has a robust system of member protection in place for defined benefit schemes underpinned by the employer covenant, the work of the Pensions Regulator and the Pension Protection Fund, as the safety net of last resort. Given the diversity of pension provision across the EU, we believe the application of a harmonised Solvency II-derived regulatory framework to insurers and funded occupational pension schemes is both undeliverable and undesirable. We are also concerned about the adverse impact a revised IORP Directive could have on the EU economy. Given the current European economic situation the potential impact of a revised IORP Directive could be particularly unwelcome. De-risking of investment portfolios, as pension schemes move from equities to risk-free investments could negatively impact on economic growth, investment and destabilise capital markets. If the Commission truly believes a revised IORP Directive is strictly necessary, EIOPA should advise the Commission to limit its review to only Pillar II and Pillar III issues: to governance and transparency matters only. The TUC supports strong member protection, good scheme governance and disclosure requirements. In relation to our earlier point about the lack of an impact assessment accompanying the consultation, we also believe that EIOPA should press the Commission to provide detailed evidence to demonstrate the case as for why the IORP Directive needs reforming to facilitate cross-border pension schemes. At present there are only 84 cross-border IORPs of around 140,000 IORPs in the EU. The Commission and EIOPA have provided no detailed evidence demonstrating why the legislation should be amended. Our view is that the low number of cross-border schemes is not due to the wording of the Directive needing to be changed. Rather, it is due to lack of demand, and the different pension systems and tax regimes that exist in Member States.	
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3.	**Scope of the IORP Directive** **Which option is preferable?** As EIOPA have identified, defined contribution pension provision has grown considerably since the IORP Directive was passed. We recognise the need to leave Option 1 (leave the IORP Directive unchanged) on the table. We do think there is room to improve the provision of workplace provided DC schemes in Pillars II and III, regarding governance and disclosure requirements, which we return to later in this response.	
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5.	**Definition of cross border activity** **Do stakeholders agree with the analysis of the options (including the positive and negative impacts) as laid out in this advice?** In relation to our earlier point about the lack of an impact assessment accompanying the consultation, we believe that EIOPA should press the Commission to provide detailed evidence to demonstrate the case as for why the IORP Directive needs reforming to facilitate cross-border pension schemes. At present there are only 84 cross-border IORPs of around 140,000 IORPs in the EU. The Commission and EIOPA have provided no detailed evidence demonstrating why the legislation should be amended. Our view is that the low number of cross-border schemes is not due to the wording of the Directive needing to be changed. Rather, it is due to lack of demand, and the different pension systems and tax regimes that exist in Member States.	
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12.	**Quantitative requirements** **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?** The TUC does not support the holistic balance sheet proposal. A common framework for all European Union countries with their wide range of pension systems is not workable or necessary. And adopting an untested approach would be very unwise. The UK already has a tested scheme funding system in place under the regulation of the Pensions Regulator known as 'scheme specific funding requirements'. This is sufficiently flexible to take into account each scheme's specific situation while still highlighting the importance of protecting members' benefits. We are very concerned that any change to the regulatory framework, including the switch to a risk free discount rate to value liabilities in line with Solvency II. This would significantly increase technical provisions in some Member States, including the UK, thereby resulting in pressure on schemes and ultimately, a significant number of scheme closures. Therefore members could have lower accrual rates, no indexation or no pension provision at all. This in turn will have a wider adverse economic impact, as referred to above. Given these concerns, we believe that the rules for setting technical provisions should continue to be set at the Member State level.	
13.	**Valuation of assets, liabilities and technical provisions** **Do stakeholders agree that assets of IORPs should be valued on a market-consistent basis?**	

	The TUC does not agree that assets of IORPs should be valued on a market-consistent basis. One reason for this is that the risk-free rate may not necessarily be the risk-free rate at which risk-free bonds and other assets are purchased. See also question 14.	
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?** The IORP Directive should remain unchanged regarding technical provisions. The TUC disagrees that Article 15 of the IORP Directive should be amended to value liabilities on a market-consistent basis as set out in Article 75 of the Solvency II Directive. IORPs should not be required to have a risk-free discount rate which is central to the market consistent principle. Furthermore, it is worth being mindful that government bonds have particularly seen variations in recent years, for example in the Eurozone, demonstating that bonds may not necessarily be risk-free.	
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17.	**Do stakeholders agree with the EIOPA view to adopt Articles 76(1), (4) and (5) with appropriate amendments into a revised IORP Directive? What is the stakeholders' view on the two proposed options regarding Article 76(3)?** Regarding 76(1), we do not see the need for this as IORPs are already required to provide technical provisions by Article 15(1) of the IORP Directive. We do not regard it as necessary remove the word 'prudent' from the text of Article 76(4) as this text already seems reasonable.	
18.	**What is the stakeholders' view on the three options regarding the inclusion and calculation of a risk margin as introduced by Article 77?** There is no need for a seperate risk margin; the current IORP Directive is correct in its method of calculating the risk margin.	

	A separate best estimate and risk margin is intended to allow insurers to incur 'shocks'. Pensions are unlike insurance and are medium to longterm in nature. Therefore the regulatory framework does does not need to be the same for pension schemes.	
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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)?** We are concerned with the two options presented, both of which are seeking a change from the current situation. Both option A (risk-free interest rates) and option B (a mixture of risk-free and return on assets) could result in lower returns to schemes. Coupled with the likely higher technical provisions concerns set out above, both options could result in scheme sponsors querying whether they can afford to keep schemes open, lower member benefits and it may ultimately result in many scheme closures. Therefore we would like to see an option presented of no change.	
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25.	**Do stakeholders agree that it would be useful to introduce Article 80 of Solvency II with appropriate amendments into a revised IORP Directive regarding appropriate segmentation of risk groups when calculating technical provisions?** We agree with EIOPA that no change is necessary to the IORP Directive and that Article 15 of the Directive is sufficient. The text of Article 80 of Solvency II should not included in the IORP Directive.	
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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?** This is already covered by Article 15 of the IORP Directive. There are already national actuarial standards for pension schemes which must be adhered to.	
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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?** This is already covered by the IORP Directive so we do not regard this as necessary.	
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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?** We would advise that all key issues are resolved and adopted at level 1. This makes policy-making clearer and more accountable.	
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?** As set out above we do not support the harmonisation of the calculation of technical provisions. We therefore reject the deletion of Article 15(5).	

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 recognise that all forms of sponsor support should be valued as an asset. However, EIOPA have presented no practical way to measure sponsor support. As set out above we do not recognise EIOPA's case for the holistic balance sheet. The TUC does not agree that there should be a Solvency Capital Requirement (SCR) on top of technical provisions which would increase scheme funding requirements considerably. This could place intense pressure on defined benefit schemes, resulting in insecurity for scheme members and potential cuts in members' benefits and could ultimately result in scheme closures.	
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38.	**Security mechanisms** **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?** Applying a uniform approach to pension scheme funding is not appropriate. Furthermore, the Solvency Capital Requirement is intended for insurance and reinsurance undertakings as a buffer against market, mortality and operational risks. Pension schemes do not need to be funded on the short-term basis insurance schemes are and are instead funded on a medium to long term basis. In addition, pension schemes do not need to be funded on the same high confidence level of 99.5% over one year associated with the SCR.	

	Scheme specific funding requirements in the UK already require schemes to fund at the prudent technical provisions level. Funding at the SCR level would simply add an extra level of scheme funding that would ultimately lead to scheme closures and other associated adverse consequences previously referred to. In the UK the increase in funding required by the SCR would at least be partly met for defined benefit schemes by the employer covenant for the scheme and the Pension Protection Fund. However, details of how these two elements will be calculated have not been given. We therefore treat the SCR proposal with caution.	
39.	**Do the stakeholders believe that IORPs should assess the SCR on an annual or three-yearly basis?** As set out above, we do not support the SCR proposal. However if it were to be progressed then it should be on a three yearly rather than a yearly basis. Doing so yearly would be particularly administratively intensive for schemes.	
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** The TUC does not see the need for either the MCR or SCR. Technical provisions at the scheme specific funding level provide a sufficient degree of prudency.	
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?** The TUC values the role of pension protection schemes when pension schemes become insolvent through no fault of scheme members. While we do not see the need for the holistic balance sheet, if the Commission decides to take the	

	holistic balance sheet forward then the pension protection scheme should be included in it. In the UK the sponsor covenant overseen by the Pensions Regulator, the Pension Protection Fund and governance arrangements provide additional security for schemes which further ameliorate the need for the SCR.	
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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**? We agree with EIOPA that the IORP Directive should be retained to allow flexibility on recovery plans tailored to the specific circumstances of individual schemes. This would allow recovery plans in the order of 15 years, although they should be longer if appropriate. However they should be as short as possible as is reasonably affordable (para 10.3.190). We recognise that the recovery plan would need to be approved by the national supervisor, the Pensions Regulator in the case of the UK.	
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48.	**Investment rules** **Do stakeholders feel that Member States should have the option to impose limitations on investments in addition to those set out in the IORP Directive? What about host member states?** The TUC believes that Member States should have the option to impose limitations on investments in	

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	addition to those set out in the IORP Directive as appropriate.	
49.	**To what extent do stakeholders believe the investment provisions of the Directive should differ between defined benefit and defined contribution pensions?** We recognise that there are differences between IORPs where members bear the investment risk and those where they do not. In defined contribution schemes the appropriate design of default funds, including lifestyling of funds so that members switch to lower risk funds as they approach retirement, is crucial.	
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53.	**General principles of supervision, scope & transparency & accountability** **Do stakeholders agree with the principle that the material elements of the Solvency II requirements in respect of the general principles of supervision, and in relation to transparency and accountability should also apply to IORPs?** The TUC recognise that it would be reasonable to adopt elements of Articles 29 and 31 of the Solvency II Directive into the IORP Directive. This would mean that the general principles of supervision were explicitly detailed in the Directive as they currently are not. We would, however, like the specific details to be determined by national regulators in order to take account of the variations in pension arrangements between Member States. Hence there would be a need for flexibility in the revised IORP Directive.	
54.	**Has EIOPA identified correctly those issues – need to enhance benefit security, differences between IORP and insurance supervision, and diversity of IORPs - where there should be differences between insurers and IORPs on supervision and transparency and accountability?** We agree that there are key differences between IORPs and insurers. In addition to the points listed, the TUC would cite the crucial role of lay trustees and member nominated trustees (MNTs), including	

	trade union representatives as MNTs in the running of IORPs. The TUC would like to see fifty per cent member nominated trustees made a requirement in the running of trust-based pension schemes. The scheme sponsor also has a key role in the support of IORPs, and unlike insurance-based pension schemes they do so on a not-for-profit basis and do not have to pay returns to shareholders.	
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63.	**General Governance Requirements** **Do stakeholders agree with the principle that the material elements of the Solvency II requirements for governance apply to IORPs, subject to proportionality?** The TUC recognises that that the governance elements of Article 41 of the Solvency II Directive could reasonably be applied to IORPs to form part of a revised IORP Directive. However, it is essential that EIOPA emphasises that Solvency II is not extended to Pillar I. Good scheme governance is vitally important but any new Article on governance should allow Member States flexibility to set governance requirements. We believe that regular, clear and accurate member communications should also be included within the scheme governance framework.	
64.	**Has EIOPA identified correctly the areas such as member participation and remuneration policy where there should be differences between insurers and IORPs on general governance requirements?**	

	We welcome the recognition of the difference between the roles played between insurers and IORPs. We agree that a sound remuneration policy should be part of a good governance system. Any policy on remuneration should recognise the key role lay trustees have in the running of IORPs.	
65.	**Fit and proper** **Do stakeholders agree the introduction of the same fit and proper requirements for IORPs as were introduced for insurance and reinsurance undertakings in article 42 (1) of the Solvency II Framework Directive?** The TUC strongly disagrees with the EIOPA recommendation that the same fit and proper requirements for insurance and reinsurance undertakings set out in Article 42(1) of the Solvency II Directive should be applied to IORPs. We also disagee with the EIOPA recommendation that persons who effectively run IORPs should have professional qualifications at all times. In the UK lay trustees have a major and crucial role in the running of pension schemes. By law trustees must act in the beneficiaries, i.e. scheme members, best interests. The TUC is a strong supporter of member nominated trustees (MNTs) and there is currently a requirement for occupational pension schemes to have one-third MNTs on the trustee board, although we would like this to be increased to fifty per cent. Lay trustees are crucial to maintaining member trust in pension schemes and member interaction with pension schemes.	
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91.	**Information to Members / Beneficiaries** **Do stakeholders believe that additional information requirements - besides the current ones - are not only necessary for DC schemes, but also for DB schemes?** The TUC regards clear, accurate and regular communications to scheme members both on joining and throughout scheme membership, including the annual statement, as crucial. Such information should also be available to potential members prior to joining. We endorse the EIOPA advice that information should be correct, understandable and not misleading. High quality information is required for both defined benefit and defined contribution members, although we recognise that DC scheme members carry a higher degree of risk and therefore are particularly in need of regular good quality, accessible information. The TUC would support the addition of the availability to DC scheme members of personalised	

	pension projections if they are meaningful, true and fair in order to be of real use to members. Access to information in digital and written format is important, whether it is for a DC or DB scheme. If the default form of communication is digital then members should still be able to access written communications. And it essential that safeguards are put in place so that scheme members receive the information they require, for example people with visual impairments have access to information in the appropriate format.	
92.	**Are stakeholders happy with the potential introduction of a KIID-like document for DC schemes and with its contents as envisaged in the draft EIOPA advice? In particular are stakeholders happy with the introduction of a document (KID) that would contain information beyond investment? How important it is that this document facilitates comparisons between IORPs?** We strongly support the availability of clear, ongoing information to members of DC pension schemes throughout their membership. The TUC would particularly welcome the availability of further information on scheme costs and associated charges, including the costs of share turn-over, as we believe that transparency and low charges are vital. We recognise that a KID-like document could act as a helpful guide to DC scheme members. There should be minimum level of harmonisation at the EU level on a KID-type document.	
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94.	**Are stakeholders happy with the introduction of a personalised annual statement to be delivered to each member? Whether and how should it contain information on costs actually levied, and how should it be coordinated with the ex-ante information on costs to be included in the KID?** A personalised annual statement for defined benefit and defined contribution members would be a helpful guide for schemes at a national level where this information is not already be required to be circulated. The details on this should be determined at the national level, and should not be the	

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	subject of harmonisation.	
95.	**What is the view of stakeholders as regards the level of harmonisation of information requirements that can be reasonably achieved with the revised IORP directive? Besides those envisaged by the EIOPA advice, are there other parts of the regulation that should be harmonized?** See question 93.	
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