

<b>Comments Template on EIOPA-CP-11/006</b> <b>Response to Call for Advice on the review of Directive 2003/41/EC: second consultation</b>		<b>Deadline</b> <b>02.01.2012</b> <b>18:00 CET</b>
Company name:	NEST Corporation	
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 <b>Public</b> in the column to the left and by inserting the word <b>Confidential</b>.</i>	Public
<p>The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).</p> <p><b>Please follow the instructions for filling in the template:</b></p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in column "Question".</li> <li>⇒ 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>.</li> <li>⇒ 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.</li> <li>⇒ 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"> <li>○ 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.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:CP-006@eiopa.europa.eu">CP-006@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p>		
<b>Question</b>	<b>Comment</b>	
General comment	Please find attached the response from the NEST Corporation (National Employment Savings Trust) to your consultation on Response to Call for Advice on the review of Directive 2003/41/EC: second consultation.	

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	<p>NEST Corporation is a non-departmental public body sponsored by the Department for Work and Pensions (DWP) in the UK. It was created on 6 July 2010 as part of the DWP Enabling Retirement Savings Programme, and has been appointed as Trustee of the NEST scheme. This has been set up under statute to be run as if set up under trust.</p> <p>NEST Corporation has a public service obligation to admit to participation any employer who, as part of new employer duties being introduced in the UK from October 2012, chooses to use NEST to provide workplace saving for their workers. We already have a number of employers using the scheme on a voluntary basis before the onset of their legal duties. The NEST Scheme must also accept self employed people who wish to enrol. Our target market is moderate to low earners who have no current pension.</p> <p>NEST is run as a trust based occupational defined contribution pension scheme on a not-for-profit basis. NEST Corporation, as Trustee, sets the strategic direction for NEST and our funds under management are governed by the Trustee in accordance with the NEST order and NEST rules. NEST and NEST Corporation are regulated by the Pensions Regulator.</p> <p>NEST would like to note that in view of the short timescale for this consultation given by EIOPA it was not possible to conduct a comprehensive assessment of the impact of the measures proposed within the timescales given.</p> <p>If you have any further questions about our response or NEST's structure please contact us.</p>	
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5.	<p>NEST was created to address a recognised gap in the supply side of occupational retirement provision in the UK before the demand side change created by the onset of new duties requiring employers to make pension arrangements for all UK-based workers who meet certain statutory conditions.</p> <p>The definition of a worker in the UK in the new employer duties is not entirely the same as the</p>	

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	<p>definition of a Qualifying Person within the terms of the UK's implementation of 'cross-border activity'.</p> <p>This could have led to significant costs being incurred by a large number of UK-based institutions for occupational retirement provision (IORPs). Most of this cost would have come from the confusion identified in paragraph 5.3.5. Having identified this issue, the UK Government has taken an enabling power to allow it to introduce a domestic legislative solution to distinguish between a UK worker for the purposes of the new employer duties, and a Qualifying Person for the purposes of the UK implementation of cross-border activity, should this become necessary. We agree that any simplification of the cross-border regime should reduce the costs of a scheme wishing to operate on a cross-border basis. However, these simplifications should be framed in such a way as to facilitate, not force, an expansion of an internal market. Defining what constitutes 'social and labour law' and what constitutes 'applicable prudential regulation' would represent real progress in simplifying this area.</p> <p>Of the possible solutions, we feel that the solution proposed in this paper – to create cross-border activity where the sponsor is located in a different European economic area (EEA) jurisdiction to the IORP – is the most workable. However, the revised definition of Sponsoring Undertaking is a potential problem where a subsidiary and parent located in different jurisdictions both have responsibilities for funding.</p>	
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12.	<p>While we can see some conceptual merit in the 'holistic balance sheet' approach, the special nature of NEST means that technically it might not be straightforward for us to construct. Legally, we are simultaneously both:</p> <ul style="list-style-type: none"> <li>a. NEST Corporation, a public body, established by statute, charged with reporting to the UK parliament on the costs of running the NEST scheme through a set of accounts based on UK</li> </ul>	

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	<p>public sector accounting rules</p> <p>b. the scheme itself, an IORP, created by statute and run as a trust based scheme and required to report to members on the basis of UK occupational pension scheme disclosure provisions.</p> <p>We would, therefore, be very interested in contributing to subsequent thinking on the details of how this approach could be applied as it is far from obvious that the benefits would outweigh the costs.</p>	
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42.	<p>We can understand the interest there would be in providing assurance to members and other stakeholders that a defined contribution (DC) scheme such as NEST has properly addressed operational risk. Currently NEST is financed by a loan from the UK Government and operational risk is effectively mitigated through this.</p> <p>However, once the loan finance is repaid, the question of how large a capital buffer would be required to offset operational risk , and the form of that capital (e.g. actual or contingent) would need to be addressed. The Fiduciary Duty of the Trustee to act in Members' interest would point us to a settlement where using members' pension contributions to create a capital buffer, rather than applying the contributions directly towards their pensions, would need to be justified. In the interest of our members we would want to be clear on the size of the buffer, the risk it is managing, the rationale for its size, ownership of the buffer, and how it would actually be operated.</p> <p>We would be keen to contribute to any further work on this issue and more generally fully consider whether capital is the only mitigant of operational risk and how a capital buffer would work with other measures to mitigate operational risk. Any attempt to introduce such a buffer needs to be carefully considered, with the full impact measured. The necessity of such a buffer in a trust based scheme, given the prudent person principle, should also be assessed.</p>	
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47.	With respect to the prudent person principle we would support a more defined requirement for IORPs to understand the risks borne by the beneficiaries of their plan, as outlined in Option 3. An approach similar to that found in Solvency II seems appropriate. IORPs should be able to outsource delivery of services, but should not be able to outsource liability or responsibility.	
48.	We agree that special restrictions on investment in sponsoring undertakings are not required. The prudent person principle is a sufficient guide. In addition we believe that greater clarity needs to be provided in article 18(1)(f), second paragraph. Undertakings such as NEST are likely to provide occupational pensions for millions of workers and have over a million sponsoring employers due to our public service obligation. This could cause difficulties in investing prudently because of the 5 per cent limitations. Where a sponsoring undertaking has no influence with an IORP and the connection is tenuous and limited merely to providing contributions (rather than taking liability), we believe the sensible beneficiary protection as set out in article 18(1)(f) is not applicable. It is our understanding that article 18(1)(f) second paragraph seeks to provide a pragmatic solution to managing this issue. However, we do not believe that the current wording is clear enough and we would welcome this issue being revisited at a European level during the revision of the IORP Directive.	
49.	Investments in both DB and DC schemes should recognise both the risk appetite and the risk capacity of those bearing the investment risk. We certainly believe it is good practice for DC schemes, or schemes where individuals bear the investment risk, to be made aware of the potential downside risks of investing, rather than just focusing on potential returns. In addition, our extensive research into our target market suggests that many savers do not understand the impact of inflation on their long-term savings. Therefore NEST believes that investment best practice should also include the need to consider inflation risk when setting objectives.	
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59.	NEST does not consider that this would be an appropriate measure for DC schemes as it fails to recognise the differences between IORPS and insurance companies. Supervision by a competent regulatory authority should focus on local risks and local needs.	
60.	We do not believe that these will be appropriate in the supervision of IORPs providing benefits purely on a DC basis. We further believe that in the UK, the regulator has sufficient equivalent powers.	
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63.	We strongly support good governance arrangements for IORPS. The principle of proportionality is essential. Similar principles to those in Solvency II should apply to IORPS, as indeed should other sources of good governance advice (such as that from the Financial Reporting Council in the UK). We do not believe that the implementation mechanisms of Solvency II are proportionate.	
64.	We agree that Member participation is a matter for individual IORPS, within a national framework. We agree that Remuneration policy is a matter for the governing body of the IORP, and that specific attention should be given to addressing areas of remuneration practice which have proven problematic in other sectors (such as the basis for performance related pay, conflict of interest, agency risk etc).	
65.	We agree with the principle, but would recommend that implementation should be risk based and less bureaucratic than that applying to insurance companies.	
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68.	We welcome proposals that strengthen the ability of IORPs to monitor and manage risk, but only where they address the specific risks that apply to providing retirement benefits. The holistic approach to risk management suggested in the draft advice to Cfa15 is closely aligned to the best practice approach that NEST has already adopted. We would find it difficult to identify any disadvantages to this suggestion that are not significantly outweighed by the positive effects of adopting a comprehensive risk management approach. We would be happy to share further	

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	<p>information on our own risk management process with EIOPA at a later stage if this would be helpful. We note that a number of risks rehearsed in the Solvency II directive do not have the same saliency in a DC IORP; however we strongly support the suggestion that risks borne by Members are analysed from the Members' perspective. On a detailed point the use of the word "control" in respect of market risk is inappropriate.</p>	
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80.	<p>While the existing provisions in the current IORP directive provide a useful base line, we believe that there could be considerable governance gains to be made by carrying across the requirements on insurers under article 49 of the Solvency II directive. This would require the outsourcing IORP to retain responsibility for the function and to ensure that they have sufficient governance and monitoring procedures, with the arrangement governed by a legally enforceable contract. This would help IORPs to provide better outcomes for members by taking advantage of external expertise while retaining overall control.</p> <p>This is especially relevant in jurisdictions where retirement provision is split between insurance products and IORPs. In these jurisdictions it makes sense for both groups to adhere to the same, or fundamentally similar, sets of requirements.</p>	
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83.	<p>If NEST falls within the definition of an IORP without legal personality in a trust based system, then it would need to appoint a depository under Options 2 and 3 as outlined. Our main concern would be the costs associated with having to appoint a depository, which will ultimately be borne by members. In addition, in the UK there is already a requirement to appoint a custodian to safeguard scheme assets, and most well run organisations will already have the oversight activities of the proposed depositories embedded in their systems.</p>	
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87.	<p>If IORPs are required to appoint depositories, then the list of activities to be carried out is sensible. As some of the activities are already carried out by the custodian such as the oversight functions. As a well-run scheme, NEST carries out much of the proposed oversight already. NEST believes that serious consideration should be given to how these activities are executed. A future IORP Directive should not preclude the option for certain activities to be dealt with 'in house' rather than appointing a depository, which could result in extra cost for members, without additional protections. This should especially be considered in the case of large trust-based schemes.</p>	
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91.	<p>We believe that all members of IORPs should have sufficient information to make informed decisions. This includes sufficient information to enable them to compare different IORPs and contract-based schemes that they are, have been, or may become members of. As such, we believe that it is highly desirable that equivalent information disclosure requirements apply to all IORPs, whether they operate on a DB or DC basis and are contract or trust based.</p> <p>Our one concern is that as the types of pension provision between member states vary to such a degree, the revised information requirement should not be overly prescriptive. We would prefer decisions on information requirements rest with individual member states, but be common across all types of pension provision within that jurisdiction. We strongly support the principles that information should be correct, understandable and not misleading; however, given both general levels of financial literacy and the tension between standardisation (enabling cross IORP comparison)</p>	

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	and personalisation (facilitating relevance), the challenge of effective implementation is immense.	
92.	<p>UK Pension legislation already requires that most of the information described in the draft advice be provided to a member as of right, and the slight extension in scope should not create significant problems for UK providers.</p> <p>While re-iterating our preference that the actual information requirements be decided by member states based on the characteristics of their individual pension environments, we recommend that the KID requirements closely mirror the provisions of the KIID document under the UCITS directive. It is imperative that an individual is also able to compare an IORP to an insurance product designed for non-occupational retirement provision, such as the UK 'personal pension' product.</p> <p>The disclosure of risk should have equal prominence with the disclosure of returns. An effective way of disclosing risk to a lay member of the public is yet to be discovered.</p> <p>NEST's fund factsheets already provide a risk comparator that utilises UCITS methodology but personal annual statements are still under development. As an occupational scheme, NEST needs only to provide information as set out in UK legislation implementing the IORP Directive. However, we felt that as many future members are likely to have a mixture of contract based and trust based pension provision, it would be helpful to provide information that is similar to the requirements for both legislative regimes.</p> <p>NEST would be happy to share information on our communications to members with EIOPA.</p>	
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94.	<p>It has long been a requirement that members of defined contribution UK pension arrangements are supplied with an annual statement detailing contribution and valuation information, together with a standardised illustration of potential future growth based on set assumptions on investment return. Whilst we see value in adding information on costs levied to this information, it is difficult to perceive how a similar requirement could be extended to IORPs operating on a defined benefit basis whilst retaining the ability of a member to compare retained holdings in IORPs operating on different benefit bases.</p>	
95.	<p>We believe that the benefits for members in a harmonized set of information requirements are significant. However, the differing styles of IORP across the member states suggests that harmonization between states may not be reasonable. Harmonization of information requirements across all methods of pension provision (whether or not under an IORP) in a single member state, however, should be achievable and the benefits of such an approach will be almost as great. We</p>	

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	<p>would suggest that information requirements, therefore, remain at a member state level. We retain doubts, however, as to the ability of any prescriptive measures applying to both defined benefit and defined contribution bases to provide information which will enable accurate comparison between IORPs.</p>	
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