A Response by the National Association of Pension Funds (NAPF) to the European Commission Consultation on the Harmonisation of Solvency Rules for IORPs

1. Executive Summary

1.1. We strongly support the Commission's decision to propose a narrow consultation document focussing on only Article 17 and cross-border schemes and not on all Institutions for Occupational Retirement Provision (IORPs). We do not believe that further harmonisation of the prudential regulation of all IORPs is appropriate at this time. This is because:

- The IORP Directive already provides for common minimum standards and, having only been fully implemented since last year, has not been in force long enough for a proper assessment to be made of whether an amendment to the EU regime is required.
- Under the EU Treaty, Member States are allowed discretion over how best to organise their pension system and we believe that this freedom should extend to occupational pension scheme rules[1].

1.2. We also believe that it is premature to propose new regulations on Article 17 schemes. Given that Article 17 is currently used to regulate many different types of pension arrangement around the EU, including schemes which do not rely wholly on the fund to meet obligations, we propose that:

- The Commission should undertake a detailed comparative analysis on the range of IORPs that exist under Article 17 before considering whether any amendments to the EU regime are necessary,

1.3. It is hard to find evidence that would justify further harmonisation of the prudential rules for cross-border providers at present:

- The limited amount of cross-border activity has not provided any evidence that funding regulations or supervisory practice have given rise to regulatory arbitrage. (This was confirmed in the recent CEIOPS survey[2].)
- Much of the interest in cross-border provision relates to defined contribution schemes, not the defined benefit schemes for which the solvency rules discussed in the consultation are relevant.
- The development of cross-border schemes will always remain limited due to the high diversity of social and labour law and historical differences in tax treatment across the EU.

1.4. With regard to the suggestions that Solvency II style regulation should be applied to IORPs, we would like to emphasise that IORPs, including both Article 17 schemes and cross-border schemes, are different to insurance undertakings. These differences include:

[1] IORP Dir., 2003/41, Recital 9.

[2] Initial Review of Key Aspects of the Implementation of the IORP Directive, CEIOPS, 31 March 2008

- Pensions liabilities differ from most insurance liabilities in that the earliest date that liabilities mature is comparatively predictable and hence solvency, as the term is commonly understood, is not an issue (there cannot be a 'run' on a pension scheme).
- Most IORPs are run by fiduciaries on a not-for-profit and non-competitive basis.
- Occupational pension schemes are not products traded in the retail market place. Rather, they are established or contracted by businesses and used as part of the remuneration package.

1.5. In order to ensure that any future rules proposed by the EU in this area are well founded and appropriate, we recommend that:

- The Commission should carry out a more detailed mapping of the overall state of second pillar retirement provision, including both funded and unfunded arrangements.
- We agree with the Commission that any future EU rules should be submitted to a rigorous cost/benefit analysis in line with the Commission's own Better Regulation agenda.

2. Introduction

2.1. The NAPF is the leading voice of workplace pensions in the UK. We speak for 1,200 pension schemes with some 15 million members and assets of around £800 billion. NAPF members also include over 400 businesses providing essential services to the pensions sector.

3. Relevance for UK schemes

3.1. The UK has the largest provision for funded pensions in the EU. Funded workplace pension schemes have just under 20 million members, of which 15 million are in Defined Benefit and over 4.5 million in Defined Contribution schemes.

3.2. No Article 17 schemes have been identified in the UK and there are few cross-border schemes, although there are more in the UK than in other EU countries: of the 70 cross-border schemes reported to CEIOPS in June 2008, the UK was the home state for 32 schemes and the host state (or one of the host states) for a further 23 schemes. Two thirds of these schemes are Anglo-Irish schemes, the majority of which pre-date the IORP Directive's transposition date of 23 September 2005.

3.3. We would add that we have found no interest in cross-border pension provision among our members. There are two main reasons for this:

- the legitimate existence of different tax, social security and labour laws makes cross-border pension provision complicated and unattractive to most employers; and,
- there is little need for it - the number of expatriate workers amount to only 0.3% of the total UK workforce[3].

[3] According to Mercer's 'Benefits Survey for Expatriates and Globally Mobile Employees', the number of expatriate workers is 94,000.

4. General comments

4.1. We welcome the opportunity to respond to the European Commission's consultation on further harmonisation of the solvency regime for IORPs subject to Article 17 of the IORP Directive and for IORPs engaged in cross-border activities.

4.2. We strongly support the Commission's decision not to propose a consultation paper on all IORPs and to instead focus only on Article 17 schemes and cross-border schemes. However, this is not to say that we think changes to the regulation of Article 17 schemes or of cross-border schemes are needed. As is set out below, we believe instead that the Commission must gather more information on such schemes before considering whether new rules are needed.

4.3. We are pleased to see the statement that "possible changes (…) need to be based on a solid business case and a rigorous analysis of the costs and benefits of such changes in line with the Commission's Better Regulation agenda". This position makes much sense in this early stage of implementation and during which the market is still reacting to the new legislative regime.

4.4. The Commission's consultation paper could be interpreted as exploring the scope for further harmonisation of the prudential regulation of IORPs, but it is far from evident that further harmonisation would be either desirable or feasible. This is because:

- The IORP Directive already provides for common minimum standards and, having only been fully implemented in all member states since last year, has not been in force long enough for the EU to make a proper assessment of whether the Directive requires amendment.

- Work place pensions (Pillar II) are increasingly becoming an essential element to secure adequate retirement income, as demographic trends increasingly make generous state pensions (Pillar I) unsustainable. In our view, the Commission should concentrate more on how to sustain workplace pensions rather than applying additional regulations which may harm them.

- Member State governments are currently free to choose a range of vehicles for managing occupational pension schemes as part of Member States' discretion to organise their overall pension system to reflect national circumstances[4]. The resultant diversity limits the scope for meaningful harmonisation, especially through a financial services directive.

- Member States' freedom to determine social and labour law for workplace pensions (Pillar II) can be viewed as being equivalent to the single market principle of the "general good" (often used for "consumer protection") that constrains Member States' discretion in relation to individual (Pillar III) pension provision, which is mainly provided by life-insurers. But social and labour law is by definition not harmonised.

[4] IORP Dir., 2003/41, Recital 9.

4.5. Any consideration of further harmonisation would be a major and complex undertaking. A broad-based consultation on the scope for further harmonisation is not appropriate because:

- While it is true that some differences in the prudential regulation of IORPs exist in different member states, such variation is in conformity with the approach adopted in the Directive and, importantly, as the recent CEIOPs survey found, there is no evidence that this variation is currently causing harmful regulatory arbitrage[5].
- Competition in cross-border occupational pension provision by life-insurers has yet to take off. It seems premature to advocate measures that aim for providers of occupational pensions to establish a level playing field narrowed down to capital requirements.
- The threat of further change to a Directive that has only recently come fully into force could well stifle the developments in building a single market that the Directive was intended to encourage. There is an absolute need for legislative stability to ensure that the market can be responsive to its provisions.
- The need to avoid increased uncertainty is increased by the current serious stresses in financial markets and troubled economic outlook.

4.6. We believe that any legislative process to amend the current IORP Directive should not be exclusively driven by the existing link between Article 17 (2) of the IORP Directive and the life-insurance and non-life Directives or by misconceived level playing field arguments. It should be underpinned by extensive market data at Member States level including not only financial and technical data but a mapping out of the social and labour law aspects that have a major bearing on occupational pension provision.

4.7. We have a number of more specific observations in relation to the two specific issues being considered in this consultation.

Article 17 IORPs

4.8. According to Article 17 of the IORP Directive, an IORP either has a plan sponsor that ultimately bears all risks or the institution itself underwrites the liabilities. This binary distinction provides a rather simplistic presentation of the actual risk distribution across EU occupational pension plans. There are indeed some IORPs that conform to this distinction. Many IORPs, however, employ a risk-sharing model, in which the risks are shared between employers and employees, or indeed at an industry level between social partners[6]. In such cases individual plan sponsors do not fully underwrite pension commitments.

4.9. Article 17, as implemented across the EU therefore has to encompass a range of scenarios unknown in the insurance market, where the insurer always underwrites the full liabilities. This has not surprisingly led to variations in regulatory practice to reflect national circumstances, akin to the variations envisaged in relation to technical provisions referred to above. It is not,

[5] Initial Review of Key Aspects of the Implementation of the IOR Directive, CEIOPS, 31 March 2008

[6] EFRP Paper, Funding and solvency principles for IORPs, May 2008,

- section 2.2. illustrating how there is a wide range of occupational pension schemes in which the sponsor's/employer's support ranges from 100 % to 0 according to the pension scheme/plan;
- section 4.1. explaining how as financial institutions IORPs are different from insurance companies.

however, clear from the CEIOPS survey how significant these variations are. The substantive analysis of the different levels of technical provisions mandated in different Member States does not distinguish between Article 17 and non-Article 17 IORPs.

4.10. We recognise that Article 17 is distinctive in so far as it makes explicit reference to the Insurance Directive[7], which is scheduled to be replaced by the proposed Solvency II Directive. We would like to underline that, despite superficial resemblances, these IORPs are very different from insurance undertakings.

4.11. As well as the existence of sponsor commitment, there are other significant differences between IORPs, including Article 17 IORPs, and insurance undertakings:

- IORPs, unlike insurers, do not operate in retail markets. Decisions on the location of IORPs are made by the sponsoring company(ies) or by the social partners that have to balance the interests of sponsors, plan members and beneficiaries alike. To the limited extent that there is a competitive market place, this is very different from that found for other financial services.
- Pensions liabilities differ from most insurance (or indeed banking) liabilities in that the earliest date that liabilities mature is fairly well known and hence solvency, as the term is commonly understood, is not an issue. (There cannot be a 'run' on a pension scheme). The risks to a pension scheme relate instead to the adequacy of the available resources to meet known liabilities at a known date and uncertainty as to the eventual duration (and hence eventual size) of those known liabilities[8].
- Many IORPs are run by fiduciaries on a not-for-profit and non-competitive basis, especially in Member States with the proportionately largest pension sectors. In such cases there is no incentive to take risks so as to increase market share. Hence, a complex quantitative approach to regulating insurers (as envisaged in the proposed Solvency II Directive) may be over-engineered for IORPs, where a stronger focus on the quality, impartiality, competence, knowledge or understanding of fiduciaries may be more appropriate.

Cross-border IORPs

4.12. Currently there is only a small number of IORPs engaging in cross-border operations, and even fewer with defined benefit schemes. The internal market for occupational pension provision is limited. There are good reasons for this, one of them being that full implementation of the IORP Directive was not complete until June 2007, leaving many interested parties unaware of the details of IORP regulation in each of the Member States. Such a situation has clearly not been conducive to the vigorous development of cross-border activity by IORPs. We support the European Federation for

[7] Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

[8] Early retirement, where an entitlement, complicates this position slightly, but in general the IORP is compensated for the earlier date of payment through an actuarial reduction in the liability.

Retirement Provision (EFRP)'s publicly stated position[9] that the IORP Directive needs more time to deliver its full potential.

4.13. It is hard to find any evidence that would underpin a need for harmonising the prudential rules for cross-border providers. Much of the interest in cross-border provision has related to defined contribution schemes to which such regulation does not apply, reflecting trends in pension provision generally.

4.14. Moreover, there have been some significant potential obstacles such as the diversity and, until recently at least, opacity of social and labour law, historical differences in tax treatment and differing interpretations of other articles in the IORP Directive (documented by CEIOPS[10]). Only once these issues have been addressed would it be possible to tell whether prudential rules have had any bearing.

4.15. The limited amount of actual cross-border activity (fewer than 100 schemes) has not provided evidence that the diversity in funding regulations across Europe or the supervisory practice by itself have given rise to regulatory or supervisory arbitrage that would be harmful for beneficiaries and/or sponsors.

Concluding Remarks

4.16. The IORP Directive provides a comprehensive regulatory framework that gives employers and social partners the possibility of enhancing the efficiency, and hence affordability, of occupational pension provision while keeping in place national social and labour rules to secure pension benefits for plan members. To date, this approach has avoided occupational pension provision being undermined.

4.17. There would need to be a strong, broad-based and well evidenced case for change or greater harmonisation at this time. We agree entirely with the Commission that any modification of the IORP Directive must be based on a solid business case and rigorous analysis of the costs and benefits of such changes, in line with the Better Regulation agenda. We feel that the development of a new regulatory framework should not be rushed – otherwise the very existence (and certainly the development) of workplace pensions could be put in jeopardy.

4.18. Instead, we would like to see the process start with a Green Paper on whether or not there is a need for EU-level action with regard to workplace pensions[11]. If as a result of this consultation the Commission identified a possible need for change, we would then expect it to issue a consultative White Paper sketching out its overall plan of action. Only at that stage, and then only if action is clearly appropriate, would we expect the Commission to propose an amendment to the Directive.

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[9] EFRP, IORP Directive – a catalyst for change, November 2007.

[10] CEIOPS report entitled "Initial Review of Key Aspects of the Implementation of the IORP Directive" of 31 March 2008.

[11] Having regard to market developments, it seems more appropriate to use the term « work place » pensions instead of « occupational pensions ». Work place refers to a broader range of pensions instruments/plans that can be used by employers and social partners to administer pension benefits to their employees.

4.19. However, before any legislative action is taken, we recommend that the Commission should carry out a full analysis of the range of Article 17 and cross-border schemes in existence. Finally, we urge the Commission to also carry out a detailed mapping of the overall state of second pillar retirement provision across the EU, including both funded and unfunded provision, as a necessary precursor to any new proposals.

Answers to specific questions

A. IORPs subject to Article 17 of the IORP Directive

(i) Objectives and Principles

1. Solvency rules for IORPs subject to Article 17 should aim at guaranteeing a high degree of security for future pensioners, at a reasonable cost for the sponsoring undertakings, in the context of sustainable pension systems that are decided by the Member States.

Q [1] Do you agree, or do you consider that the overall objective of solvency rules for these IORPs should be different?

We agree that solvency rules for IORPs should provide a high degree of security at a reasonable cost. As the provision of defined benefit workplace pensions by employers is often a voluntary decision, if the costs are too high such pension provision will not be sustainable over the medium term.

2. Beneficiaries and sponsors seek to secure occupational pensions that maintain standards of living after retirement. Pension schemes, in particular those that provide life-long income such as annuities, are subject to risks related to future mortality rates, financial returns on assets, future inflation, future participation and contribution rates, which affect the overall solvency position of IORPs subject to Article 17. The CEIOPS survey shows that there are wide differences between Member States in their approach to these and other risks.

Q a [2] Do you believe that prevailing solvency rules for IORPs subject to Article 17 provide adequate protection relative to the objective of safeguarding pension beneficiaries' claims at reasonable cost for the sponsoring undertakings?

Yes.

Q b [3] Have there been shortcomings or flaws identified in the prevailing solvency rules for IORPs subject to Article 17? If yes, please specify. What could constitute the main challenges lying ahead?

None that we know of.

Q c [4] Which solvency rules could be viewed as proactively dealing with different risks and improving risk management techniques?

We believe that the diversity of pension provision across Member States makes it impractical and undesirable to develop a "one size fits all" solvency framework for IORPS. On the specific issue of Article 17 schemes,

capital buffers are required in the absence of a risk-bearing plan sponsor, and we believe it is essential that supervisors and plan managers within each Member State are given some scope to determine the absolute levels of additional capital required, taking into account the particular nature of the plan liabilities.

Q d [5] *To what extent do compulsory versus voluntary membership in pension schemes have a different impact on the overall outcome of solvency rules and in which case(s) are problems likely to arise in the future?*

Whether membership is voluntary or compulsory should have no impact on solvency rules; anyone who chooses to join a pension scheme should have the same assurance that their promised benefits are safe whether or not membership is compulsory.

Q e [6] *To what extent do the solvency rules prevailing today in the different Member States need to differ for single-employer or multi-employer IORPs subject to Article 17?*

As Article 17 schemes are not supported by a scheme sponsor with an employer covenant, there is no reason for solvency rules to differ between single or multi-employer schemes.

3. *The CEIOPS survey outlines four common overarching principles, as part of emerging best practices underpinning the supervisory framework which may be relevant to this consultation on IORPs subject to Article 17. First, a forward-looking risk-based approach to pension supervision, that weighs the potential risks faced by an IORP, as well as risk mitigants, and tailors the scope and intensity of supervision to this appraisal. Second, the principle of market-consistency in the valuation of an IORP's assets and liabilities for supervisory purposes. Third, the principle of transparency, which implies that an IORP is open on how its financial position is determined and that reserves (or shortages), as well as prudence embedded in technical provisions and adjustment instruments, are made explicit to the supervisor. Fourth, the principle of proportionality, implying that supervisory requirements are applied in a manner proportionate to the nature, complexity and scale of the IORP's inherent risks.*

Q a [7] *Do you agree with these principles and which principles do you consider particularly relevant or not relevant to underpin the supervisory framework for IORPs subject to Article 17?*

In general, we agree that the principles are appropriate as a basis for supervision. However, it is important that 'market consistency' should not be defined as being compliant with national or international accounting standards – there is a difference between regulatory and accounting requirements. As the Commission is no doubt aware, the current approach to accounting standards for pension schemes – which does not take adequate account of the long term nature of pension scheme liabilities and assets – is under challenge.

Q b [8] *Are there any other overarching principles that you consider relevant for IORPs subject to Article 17?*

No.

Q c [9] *Do you see a case for a different supervisory approach for IORPs subject to Article 17 depending on their size or complexity?*

In principle, 'no' as to the basis for the high level approach to supervision, but the detailed application must necessarily take into account size and complexity.

Q d [10] *To what extent do you consider that the supervisory frameworks existing today for IORPs subject to Article 17 already meet the principles emerging out of international best practice, as described in the CEIOPS survey?*

We believe the supervisory framework meets the principles identified.

(ii) Regulatory own funds and funding rules

4. *In cases where the IORP itself, and not the sponsoring undertaking, underwrites the liability to cover against biometric risk, or guarantees a given investment performance or a given level of benefits, the IORP is required to hold additional assets in the form of regulatory own funds according to the rules currently prevailing for life assurance undertakings (Solvency I). As from 2012, it is expected that new solvency rules will apply to life insurance undertakings (Solvency II). This would mean that from a solvency perspective, different rules will apply to IORPs subject to Article 17 and life insurance undertakings offering similar products.*

Q a [11] *Do you anticipate competitive distortions emanating from the application of different solvency regimes between insurance companies and IORPs subject to Article 17? Please specify.*

No. In general, pension schemes and insurance companies do not compete in the same market. Pension funds and pension products provided by insurers are different arrangements with different features. It should also be noted that most pension funds operate on a not for-profit-basis and do not seek to expand market share. The distinction between IORPS and insurance companies is clear in our view.

Q b [12] *Do you have any evidence of such competitive distortions (as mentioned in the previous sub-question) existing already?*

We have no evidence of competitive distortions. Indeed, we do not believe they exist except, possibly, in some isolated and limited circumstances.

Q c [13] *What would be the likely impact of applying Solvency II (or similar solvency rules) to IORPs subject to Article 17?*

It would undermine the financial viability of occupational pension provision in a number of European countries. As a result many millions of employees might be provided with less generous pensions (or indeed may no longer have access to future pension plan membership). In addition, the switching of assets from equities to bonds and cash which would be a likely consequence of applying a Solvency II approach would have very serious consequences for national equity markets and economies where such pension vehicles are dominant.

Q d [14] *What would be the impact on the future provision of defined benefit schemes and the risk of closing down existing schemes?*

It would have a major impact on all the European countries where such arrangements are prevalent. Employers offering such pensions would be certain to close them to new members, which would result in many millions of employees being poorer in retirement.

Q e [15] *What would be costs and benefits of this? Please provide quantitative information, where available.*

We are unable to provide detail – but the costs are likely to be large in countries with a high proportion of Article 17 schemes. The perceived benefit would be perhaps an extra layer of financial resilience of the plan with corresponding comfort for members, but it would be a high price indeed if the price of this extra layer were a reduction in future access to workplace pensions.

Q f [16] *In case a Solvency II-type regime were to be applied to IORPs subject to Article 17, which elements would need to be adjusted to take account of the specificities of the institutional set-up in which that IORP operates (e.g. recovery plans, additional contributions, flexibility of benefits, etc.)?*

Any regime would need to take into account special features of the institutional arrangements in which the IORP operates, for example whether or not a guarantee fund exists, whether or not "contingent assets" are available, how shortfalls are to be apportioned between employer and employees, and the degree of flexibility in the level of benefits. In all cases, these measures provide flexibility which reduces the ultimate liabilities of the scheme and, therefore, would result in a lower funding requirement.

5. *The IORP Directive requires IORPs subject to Article 17 to hold assets to fund their technical provisions at all times. In the event of underfunding, the IORP is required to establish a recovery plan.*

Q [17] *In case of overfunding can the excess assets be returned to the sponsoring employer or are there restrictions to this (thereby reducing the upside potential for employers)? Does this partly depend on whether occupational pension schemes are closed or open to new members?*

The UK has no Article 17 schemes and therefore we have no specific knowledge or evidence regarding the way that excess assets are dealt with. However it would seem appropriate that excess assets should be able to be returned to the employer in these arrangements (it would be an essential part of the "deal" for employers). We see no need for distinctions to be made based on whether the plan is open or closed – if the plan's assets exceed the calculated liabilities, then excess funds should be available for redistribution, and the employer should have some right to access those funds, depending on the specific plan rules.

B. IORPs operating on a cross-border basis

(i) Technical provisions

6. The CEIOPS survey shows that, in practice, Member States use different methods and assumptions to determine their technical provisions, partly reflecting historical and cultural differences. Current practices vary from applying best estimates to including extra safety margins in the underlying assumptions and incorporating prudence in different components of the technical provisions. Discount rates applied to the valuation of the technical provisions for example vary considerably. Moreover the treatment of mortality tables is rather diverse, as mortality rates, elements of prudence or incorporation of a trend component to reflect improvements in life expectancy are differently applied. This diversity can result in significant variations in the size of technical provisions across countries for comparable defined benefit commitments, and hence to differences in the level of liabilities to be funded.

Q a [18] To what extent do you consider greater harmonisation within the EU in this field or in individual elements of the valuation of technical provisions possible or necessary for IORPs operating on a cross-border basis?

It is unrealistic to expect much progress on harmonisation in the absence of harmonisation of tax and social and labour law (SLL). We anyway do not see this as key – we feel that schemes' main interest at present is in having uninhibited access to investment and administration services on a cross-border basis rather than in being able to provide benefits on a cross-border basis.

Q b [19] Should prudential requirements be considered separately from Social and Labour Law (SLL)? If yes, how could prudential requirements and SLL be distinguished?

Clearly SLL affect the extent of the scheme sponsor's liability, and therefore must necessarily have an impact on the technical provisions required. In consequence, we do not believe that prudential requirements should be considered separately from social and labour law provisions.

7. The CEIOPS survey shows that in practice, Member States differ markedly in their approaches to inflation protection of the benefits promised. In some Member States they are conditional, in which case inflation risk is left with the beneficiaries, while in others they are unconditional.

Q a [20] How should differences in indexation promises (i.e. in nominal, conditionally indexed and real terms) be taken into account or included in a solvency framework for IORPs operating on a cross-border basis?

Prudential requirements must reflect the nature of the pension promise. It is therefore difficult to see how indexation promises can be excluded from a solvency framework for schemes operating on a cross-border basis.

Q b [21] *Do you foresee any difficulties arising from differences in the specific nature of pension promises in case of cross-border activity?*

Yes. As noted above, it would be necessary to ensure that any regime fully took into account all the different arrangements in the different countries from which a cross-border scheme might be hosted.

(ii) Solvency rules

8. The IORP Directive has created opportunities for the provision of cross-border pension services, as a first step towards an internal market for occupational pensions. Take-up so far has been rather slow, as full implementation of the Directive was achieved only in 2007. More time is therefore needed for the full effects of the Directive to unfold.

Q a [22] *To what extent are the differences in solvency rules for IORPs operating on a cross-border basis acting as an obstacle towards cross border activity of occupational pensions?*

It is too early to say. The Directive has only been fully implemented for a year. In any case, it is still unclear as to how much cross-border activity can be expected given that national tax law and national social and labour law continue to be different.

Q b [23] *Do you think that there may be other, and potentially more important, reasons beyond the scope of prudential regulation that complicate the conduct of cross-border activity? Please specify.*

As outlined above, national tax law and national social and labour law are probably all more important considerations than prudential rules. In addition, cultural expectations could also be important. The Commission would be well advised to undertake an assessment of what sort of cross-border arrangements they intend to achieve and whether or not there is any demand for them amongst potential scheme sponsors and other social partners.

9. The IORP Directive lays down only minimum solvency requirements for IORPs. The CEIOPS survey suggests that material variations in regulatory requirements may spur regulatory arbitrage by IORPs operating on a cross-border basis and supervisory competition between Member States.

Q a [24] *Is there any evidence of i) regulatory arbitrage by IORPs operating on a cross-border basis, and/or ii) supervisory competition between Member States? If so, please give examples.*

We have no evidence of either.

Q b [25] *Do you expect regulatory arbitrage by IORPs operating on a cross-border basis, and/or supervisory competition between Member States to occur in the future, and what evidence do you have to support your belief?*

No. Our evidence here is that there is currently little sign of arbitrage and that, given the opportunities for supervisory cooperation provided by CEIOPS, any harm arising from arbitrage could be quickly dealt with.

Q c [26] *Do you think that regulatory arbitrage and/or supervisory competition due to differences in the treatment of IORPs operating on a cross-border basis could ultimately be in the interest of pension beneficiaries or sponsoring undertakings or do you think that this may ultimately be harmful? If so, in what way?*

Regulatory arbitrage has the potential to be harmful to beneficiaries, as it could lead to scheme liabilities being undervalued or poorly protected. We are looking for cooperation rather than competition between pension regulators.

Q d [27] *Do you think that the EU solvency rules for IORPs operating on a cross-border basis should be risk-oriented, and based on a market-consistent valuation of assets and liabilities?*

Clearly solvency requirements should reflect the risks involved, while taking full account of other arrangements to mitigate those risks (strength of the sponsor covenant, existence of pension protection funds etc).

It is important that 'market consistency' should not be defined as being compliant with national or international accounting standards – there is difference between regulatory and accounting requirements. It is also worth emphasising that IORPs are long term vehicles and plan managers and their sponsors should be permitted to manage scheme funding with a view on the long term rather than following the demands of every market fluctuation.

Q e [28] *Do you think that the definition of the right level and method of risk orientation should be determined at EU level or left to individual Member States?*

To the extent that the liabilities reflect tax arrangements and SSL in the host state, it is difficult to see how this can be determined at an EU level.

Q f [29] *Do you think that the solvency requirements should include rules relating to governance and disclosure?*

Although the three Lamfalussy legislative Pillars are related, Pillar II and III requirements must remain separate from Pillar I requirements. Effective Pillar II and Pillar III arrangements should reduce the need for reliance on Pillar I solvency requirements.

We believe that there should be proper balance between the three pillars, so as to mitigate the need for over-reliance on Pillar I requirements.

10. *The CEIOPS survey shows that the existing solvency regimes for IORPs operating on the cross-border basis are very diverse. This is reflected in different valuation methods for technical provisions and in the variety of security mechanisms. But, this does not necessarily imply substantially different security levels provided to beneficiaries between Member States. In practice, the different security mechanisms are linked to one another and may operate simultaneously. By implication, as different approaches can be used to secure pension benefits, national pension supervision frameworks do not necessarily have to be identical. In practice, there may be several degrees of harmonisation, or harmonisation only of some elements.*

Q a [30] *Do you think that a harmonised solvency regime for IORPs operating on a cross-border basis is desirable? Please outline in broad terms how such a regime would look like.*

In view of the different tax and SSL and different cultural expectations, we feel that it is unrealistic at present to look for a fully harmonised solvency regime for IORPs operating on a cross-border basis. Indeed, we would resist the idea of a harmonised solvency regime for cross-border schemes, primarily because we believe it is unnecessary where there is competent supervision by local regulators (which is specific to the culture and format of pension provision in the particular EU state). The present broad rules set out in the IORP directive respect the need for there to be local supervision on the detail of funding etc., and we see no reason why that should be different just because an IORP is cross-border.

Q b [31] *Do you think that in some parts or elements of the solvency regime there is scope for harmonisation? If so, for which parts or elements?*

In view of the different approaches to pensions across the EU, we would oppose detailed harmonisation, which would be inappropriate and counterproductive.

Q c [32] *Is there scope to consider separately different types of IORPs operating on a cross-border basis in this harmonisation? Please explain that view.*

We would not support multiple regimes. Instead we would look for a single regime that takes proper account of the different liabilities incurred by different schemes and the different arrangements in place to mitigate the risks that they take on.

Q d [33] *Do you see any problems relating to a harmonised approach?*

We feel that in view of different tax and SLL, it would be unrealistic to expect a rapid uptake of the cross-border option. Schemes' main concern is at present with access to investment and administration services, where economies of scale and reductions in costs are readily available. We are worried that a harmonisation for which there is no real demand would increase the burden on pension schemes and further undermine pension provision.

Q e [34] *Do you think that the current solvency regimes for IORPs operating on a cross-border basis, which are based on minimum harmonisation, provide a more desirable outcome? Please explain that view.*

We recognise that uptake has been low for the reasons listed above; it is also too early to make an assessment as the IORP Directive was only fully implemented in 2007. A more prescriptive approach would not improve the situation.