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Response to the Consultation on the Harmonisation of Solvency Rules Applicable to Institutions for Occupational Retirement Provision (IORPs) Covered by Article 17 of the IORP Directive and IORPs Operating on a Cross-border Basis

The Association of Consulting Actuaries (ACA) is the representative body for UK consulting actuaries, whilst the Faculty and Institute of Actuaries are the professional bodies. The Association is the largest national grouping of consulting actuaries in Europe and the World. The Association draws its membership from individual actuaries working in the consulting sector. Our members are all qualified actuaries – mainly Fellows of the Faculty or Institute of Actuaries.

The Association has over 1650 members working in around 80 firms. Members provide advice to thousands of pension schemes, including most of the country's largest schemes. As well as actuarial services to and the design of pension schemes, consulting actuaries in many firms are also involved in international benefits issues.

This document sets our response to your consultation paper. We have structured our reply to follow the numbering in your document:

A. IORPs subject to Article 17 of the IORP Directive

The UK government have adopted the position that UK schemes are not covered under Article 17, we have therefore not responded to the questions under section A of this consultation document.

B. IORPs operating on a Cross-Border basis

(i) Technical Provisions

We agree that there is wide variety in the individual assumptions used to determine technical provisions across Member States. Some variation can be explained due to different markets and the form of benefit provision, for example in the definition of accrued benefit rights where in the UK there is an allowance for revaluation of benefits between date of calculation and date of retirement as well as a statutory allowance for increases to pensions in payment, these same provisions are not reflected in the definition of accrued rights in other Member States where additional margins may therefore be appropriate.

6(a) We believe that individual country regulators should be able to retain some flexibility in setting the framework for valuing technical provisions. This flexibility should allow the right balance to be drawn between security of pension rights and the sometime competing financial constraints of sponsoring undertakings. However, where Member States are seeking competitive advantage by allowing greater flexibility in assumptions than can reasonably be justified there should be a mechanism for monitoring and encouraging correction.

6(b) The prudential requirements and Social and Labour Law (SLL) should be considered separately. SLL will be determined by the country in which an employee is based, whilst the prudential provisions are the responsibility of the regulator in which the IORP is based. With the increased co-operation between Regulators we think it would be possible to agree a common definition of prudential considerations on solvency.

7(a) They should be reflected in the actuarial basis used to determine technical provisions. However, there needs to be consistent treatment between cross-border plans and those operating on a single Member State basis. The precise implementation at a country level should be left to local regulators.

7(b) There should be no difficulties in reflecting country specific benefit structures, other than treatment of conditional benefits as referred to above.

(ii) Solvency rules

8(a) The different treatment between the solvency requirements for single country and cross-border plans are a significant hurdle and obstacle towards cross-border activity of occupational pensions. The requirement of “fully funded at all times” has seen multinationals remove employees from IORPs to avoid triggering cross-border funding – this is contrary to the objectives of the Directive.

8(b) The difference in tax treatments between Member States in taxation of contributions, investment growth, income and benefit payments significantly complicate cross-border pension activity.

9(a) We have no specific evidence of regulatory arbitrage. However, some Member States have been marketing their IORPs solvency regime as being more flexible than others as a differentiator to encourage IORPs to be based in that jurisdiction.

9(b) Any regulatory arbitrage is likely to be short lived as Member States compete to be a destination of choice. This is an area that should be kept under review to ensure a level playing field and where unfair advantage is being sought corrective action should be encouraged.

9(c) If regulatory arbitrage is pursued at the cost of the principles of adequacy of technical provisions; it could be harmful by resulting in inadequate security of individual pension rights. We would expect regulators and legislators to ensure that this is not the case.

9(d) Yes, they should also be treated in the same way as single country IORPs.

9(e) This should be left to individual States

9(f) Yes

10(a) No. The requirements for cross-border schemes should not be more onerous than single country plans.

10(b) Not in terms of technical provisions.

10(c) No.

10 (d) If harmonisation remains focused only on cross-border plans then such an approach will act as a significant inhibitor to the development of cross-border membership. This is likely to have social implications by making benefit provision more costly and therefore discouraging occupational provision (or encouraging a lower level of provision) in some locations.

10. (e) Yes, we see no justification for further constraints being placed on cross-border activity. Further it is unreasonable and contrary to the objectives of the IORP Directive to consider further regulations around the operation of cross-border schemes which will further restrict sponsors being prepared to operate such schemes in contrast to single country plans.

Kind regards

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