NAPF

Securing the future of pensions

HM Treasury review of the balance of competences: Single Market – financial services and the free movement of capital: a response by the National Association of Pension Funds

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Contents

Executive summary

- The EU has a major impact on workplace pension schemes - both directly and indirectly:
  - directly, through pensions-specific EU legislation such as the Directive on Institutions for Occupational Retirement Provision ('IORP Directive'), through the regulatory activities of EIOPA, and through EU employment law, such as the Equal Treatment Directive; and
  - indirectly, because the costs of complying with the EU's investment markets legislation (such as EMIR, MIFID, the draft Money Market Funds Regulation and the potential Financial Transaction Tax) are passed to pension fund clients by asset managers, brokers and banks.
- Pensions policy is a matter for Member States under the principle of Subsidiarity, but the EU has used the Single Market competence to develop a series of interventions in the pensions area. This requires the EU to argue that a more closely harmonised EU-level regulatory regime would help to create more cross-border pension schemes, thereby strengthening the free movement of services, people and capital.
- The UK has around 60 per cent of the EU's defined benefit pension liabilities. This, together with our unusually large number of individual pension schemes, means that the UK is disproportionately affected by EU pensions regulation.
- It is important to recognise the distinctive nature of workplace pensions, which occupy a position between contractual employment arrangements and financial services. EU policies should acknowledge that workplace pension schemes do not pose the same risks to the financial system as many other financial institutions.
- There are very few cross-border pension schemes at present. EIOPA's latest annual survey shows that the number of such schemes fell to 82 in the last year, and half of these schemes were between the UK and the Republic of Ireland.
- Free access to global markets is vital to pension schemes as purchasers of services. When recruiting administrators, data managers, IT support or fund managers, pension schemes look to secure the best value in the global market place, and it is this free access to services from Europe and beyond that is the key concern of pension schemes when considering international trade.
- The EU-level pensions and insurance regulator, EIOPA, has quickly established itself as a major force in EU pensions policy. EIOPA's leadership has set out an ambitious agenda for further expansion, including the establishment of an independent budget line and the extension of EIOPA's remit to personal pensions.
- In terms of future policy development, it is important to distinguish between the investment

markets, which are genuinely international and merit a high degree of regulatory co-ordination at global level, and individual sectors (such as pensions) where patterns of provision are very specific to individual nations.

- Regarding the investment markets, the NAPF recognises the case for a regulatory framework set out (in high level at least) by global bodies such as the Bank of International Settlements and IOSCO, but implemented in detail by EU-level bodies such as ESMA and national regulators, such as the FCA. The key challenge for policy-makers is to strengthen the accountability of the global-level institutions.

- A different, national-level, approach is required for those sectors, such as workplace pensions, where individual countries have very different traditions of provision.

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About the NAPF

1. The National Association of Pension Funds is the UK's leading voice for workplace pensions. Our members operate almost 1,300 pension schemes. They provide retirement income for nearly 16 million people and have over €1 trillion of assets under management.

2. NAPF members are major investors in the EU economy: the NAPF's *Annual Survey* shows that 8.8% of our members' defined benefit schemes' investments in 2013 were in UK equities, with a further 3.8% in European equities.

3. The NAPF's membership also includes over 400 providers of essential advice and services to the pensions sector. This includes accounting firms, solicitors, fund managers, consultants and actuaries.

4. The NAPF is the largest member of PensionsEurope, the EU-wide federation for workplace pensions organisations. PensionsEurope is chaired by the NAPF's Chief Executive, Joanne Segars.

The EU's impact on workplace pensions in the UK

5. The NAPF's members are directly and indirectly affected by a wide range of EU legislative and regulatory actions:

   - directly, through the requirements of the EU legislation on workplace pensions – the Directive on Institutions for Occupational Retirement Provision or 'IORP' Directive;

   - directly, through the impact of employment legislation, such as the Equal Treatment Directive, which has led the DWP to conclude that that pension schemes should equalise Guaranteed Minimum Pensions between men and women;[1]

   - directly again, through the regulatory activities of EIOPA, which is playing an increasingly prominent role (discussed in more detail in answer to question 1 below); and

   - indirectly, because the costs and opportunities arising from EU-level regulation of the investment markets are passed to pension fund clients by fund managers, brokers, banks and other providers of services to the pensions industry funds.

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[1] The Joint Working Group has estimated that GMP equalisation could increase pension scheme liabilities by £13 billion and increase annual administrative costs by £300 million. See *Draft Occupational Pension Schemes and Pension Protection Fund (Equality (Amendment) Regulations 2012 – a response by the National Association of Pension Funds*, April 2012.

What workplace pension schemes want from the EU

6. Workplace pension schemes in the UK are not generally looking to provide pensions to workers in other Member States. So, in this respect, there is little interest in taking up the opportunities that might - in theory at least – be provided by an effective EU-wide Single Market.

7. However, workplace pension schemes do want ready access to investment opportunities and service providers in EU and across the world, and this is where a strong Single Market has a role to play. Having ready access to the widest possible range of service providers helps schemes to invest their assets and administer their schemes with a minimum of cost in order to provide the best value to their members.

8. It is important to note that the advent of auto-enrolment is already changing the UK pensions market and its place in the wider European and international market. New providers are now entering the UK market in order to provide services to the 5-9 million new savers expected as auto-enrolment is phased in. For example, ATP, the major Danish pension provider, has established itself in the UK under the brand 'Now Pensions'.

The global perspective

9. NAPF recognises that any review of the UK's relationship with the EU in the area of financial markets should also take account of the increasingly important role played by global policy-makers and regulators. Many of the responses to the 2008 global financial crisis have been instigated at global level.

   - For example, the drive towards greater transparency in the derivatives markets stems from an agreement at the 2009 G20 meeting in Pittsburgh, and most of the policy development in this area has been led by the Bank of International Settlements and IOSCO, with EU institutions (in this case, ESMA) having an implementing role.

   - Similarly, the draft Money Market Funds Regulation currently being considered by the European Parliament and Council of Ministers stems from action taken by the another global body – the Financial Stability Board.

10. Particularly in a highly mobile sector such as financial services and investment markets, it makes sense for policies and standards to be developed at global level. This facilitates the free movement of capital and trade in financial services around the world, making it easier, for example, for UK pension providers to take up the most attractive investment opportunities wherever they might be or to contract with the service providers who can offer the most competitive deal.

11. The global approach to regulation must inevitably be relatively high-level, and there must, of course, be flexibility to take account of the circumstances in particular markets. It is an interesting question as to whether this flexibility is best achieved at national or EU level.

12. In the pensions sector, where each Member State has its own distinctive tradition and system of provision, there is a strong case for allowing decision-making and implementation at national level wherever possible. This would also be consistent with the principle of Subsidiarity, as set out in the current EU Treaty. Not only are there many different approaches to workplace pension provision across the EU, the balance between state pensions ('pillar I'), workplace pensions ('pillar II') and personal pensions ('pillar III') varies widely between Member States.

Answers to consultation questions

1. **How have EU rules on financial services affected you or your organisation? Are they proportionate in their focus and application? Do they respect the principle of subsidiarity? Do they go too far or not far enough?**

Workplace pension schemes are affected in a number of ways by EU rules on financial services:

- directly, through the requirements of the EU legislation on workplace pensions – the Directive on Institutions for Occupational Retirement Provision or 'IORP' Directive;

- directly, through the impact of employment legislation. For example, the Equal Treatment Directive is the basis of the requirement, with which the DWP is currently wrestling, that pension schemes should equalise Guaranteed Minimum Pensions between men and women;[2]

- directly again, through the regulatory activities of EIOPA, which is playing an increasingly prominent role; and

- indirectly, because the costs and opportunities arising from EU-level regulation of the investment markets are passed to pension fund clients by fund managers, brokers, banks and other providers of services to the pensions industry funds.

EU pensions legislation – the IORP Directive and cross-border schemes

In the absence of an EU competence over pensions policy (which remains a matter for Member States), the EU has used the Single Market competence as the legal basis of the IORP Directive,

[2] The Joint Working Group has estimated that GMP equalisation could increase pension scheme liabilities by £13 billion and increase annual administrative costs by £300 million. See *Draft Occupational Pension Schemes and Pension Protection Fund (Equality (Amendment) Regulations 2012 – a response by the National Association of Pension Funds*, April 2012.

which establishes high-level requirements for the funding, governance and transparency of workplace pension schemes.

In its current form the IORP Directive largely respects the principle of Subsidiarity. Its requirements (eg, for schemes to be registered, to have properly constituted rules, to be legally separated from the sponsoring employer and to prepare a statement of investment principles (to be revised at least every three years) are set out in broad terms. In the vast majority of cases, it is domestic legislation and regulation that builds on this framework by setting detailed requirements with which pension schemes must comply.

The EU's use of its Single Market competence in the pensions area rests on the argument that a more closely harmonised EU-level regulatory regime would help to facilitate the creation of more cross-border pension schemes, thereby strengthening the free movement of services, people and capital.

This argument has yet to be borne out. In fact, the latest annual survey by EIOPA[3] shows there are just 82 cross-border schemes. Almost half of these - 39 - are between the UK and the Republic of Ireland, reflecting historic business links.

The EC is now arguing that the relatively low number of cross-border pension schemes created since the IORP Directive was introduced proves that a second, more far-reaching, edition of the Directive is required, and a text is potentially scheduled for publication in the first half of 2014.

It would be equally possible, of course, to draw a quite different conclusion – namely that there is little demand to establish cross-border schemes. The NAPF does not detect demand from its own members, although it is, of course, possible that some multinational sponsoring companies would find the cross-border pension scheme model attractive if barriers such as differences in tax and social and employment law were removed.

Fully-funded cross-border schemes

Article 16.3 of the IORP Directive requires such schemes to be fully funded at all times. This is a high regulatory hurdle, which acts as a significant barrier to the creation of cross-border schemes. The European Commission is indicating that it will address this point in the new version of the IORP Directive which is now in preparation.

Portability Directive

NAPF members could soon find themselves subject to a further piece of EU legislation, in the form of the draft Directive on acquisition and preservation of supplementary pension rights. Agreement on this legislation, originally tabled as the 'Portability Directive' as long ago as 2007, was reached in trilogue on 26 November 2013, was approved by EMPL Committee 9 December 2013 and is expected to be voted on in plenary early in 2014. Certainly, it now appears likely that the Directive will be fully approved before the elections to the European Parliament in May 2014.

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[3] *2013 Report on market developments in cross-border IORPS*, EIOPA, 24 July 2013, p.2

The 'Acquisition and Preservation' Directive is not expected to require any change to UK statutes, as the UK already meets the minimum standards set out in the draft legislation. Nevertheless, it is significant to note that this will become a second piece of pensions-specific EU legislation that restricts the scope for the UK setting its own rules.

The role of EIOPA

EIOPA has quickly established itself as a key player in EU pensions policy since its inception in 2011. In the last few months, EIOPA's leadership has set out an ambitious agenda for extending the organisation's remit and resources.

- EIOPA's Chair, Gabriel Bernardino, has repeatedly proposed that EIOPA's remit should be extended to include regulation of personal pensions.

- Mr Bernardino has argued that EIOPA should have its own 'independent budget line that ensures EIOPA's financing from the overall EU budget'.[4] The proposal has support in the form of a draft report from the European Parliament's ECON Committee.[5]

- EIOPA's Chair has also proposed enhanced powers to conduct inquiries and to obtain information from individual companies and providers. This intervention has been made without any reference to support from the heads of national regulators. Indeed, organisations such as the UK's Pensions Regulator risk being eclipsed if EIOPA continues to develop in the manner proposed.

- EIOPA is also showing itself to be an instigator of policy work in support of its own agenda, rather than simply providing advice in response to requests from the European Commission. Pressed to justify EIOPA's decision to press ahead with policy development work on the 'Holistic Balance Sheet' for pension schemes at a time when the proposal has been 'parked' by the European Commission, Mr Bernardino has argued that EIOPA is able to decide its own work programme, and has decided to make this project a key element of it.

EU regulation of financial markets

Almost any regulatory proposal that affects the cost of investing will have an impact on pension schemes, usually through increased costs passed back to pension scheme clients by asset managers.

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[4] Speech by Gabriel Bernardino, EIOPA Annual Conference, Frankfurt, 20 November 2013

[5] *Draft report with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review*, Sven Giegold MEP, 11 October 2013, p.11. The ECON Committee is to vote on the report on 23 January 2014.

With over €1 trillion of assets under management,[6] NAPF members are significant players in the global financial markets and even fractional increases in investment costs can have a significant cost impact across UK pension schemes' holdings.

The issue is not solely about costs. New regulatory interventions can also lead to changes in asset allocation, investment strategies and market liquidity.

This response is not the place for a detailed rehearsal of the NAPF's position on each EU financial services dossier, but recent or proposed investment legislation EU legislation that has an impact on pension schemes' investment activities includes:

- European Market Infrastructure Regulation (EMIR)
- Financial Transaction Tax
- Money Market Funds Regulation
- Solvency II
- Capital Requirements Directive
- Market in Financial Instruments Directive / Regulation (MIFID / MIFIR)

Many of these legislative initiatives can readily be justified in terms of strengthening European and global financial systems against a repeat of the 2008 crisis. The NAPF acknowledges that some areas, such as the trade in OTC derivatives, will benefit from greater transparency and disclosure. However, it is important to balance the benefits of new regulations in their own right with the cumulative impact of EU financial regulations as a whole.

This point was helpfully acknowledged in the recent EC Green Paper on long-term finance:

> *"When taking stock of all enacted and planned future changes to prudential regulations addressing the various financial actors (banks, insurers, pension providers etc.), an important question is whether their cumulative impact on long-term macroeconomic capital formation could be greater than the simple sum of effects of each reform taken in isolation."*[7]

Pensions, tax and social and labour law

There is a huge amount of interaction across the EU between the laws on pensions, taxation and social and employment law. Particularly in the social and labour law area, there are huge disparities between Member States. This factor alone makes it impossible to harmonise pensions regulation across the EU.

2. **How might the UK benefit from more or less EU action? Should more legislation be made at the national or EU level? Should there be more non-legislative action, for example, competition enquiries?**

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[6] See http://www.napf.co.uk/AboutNAPF.aspx

[7] *Green Paper on long-term financing of the European economy, European Commission, 25 March 2013, p.11*

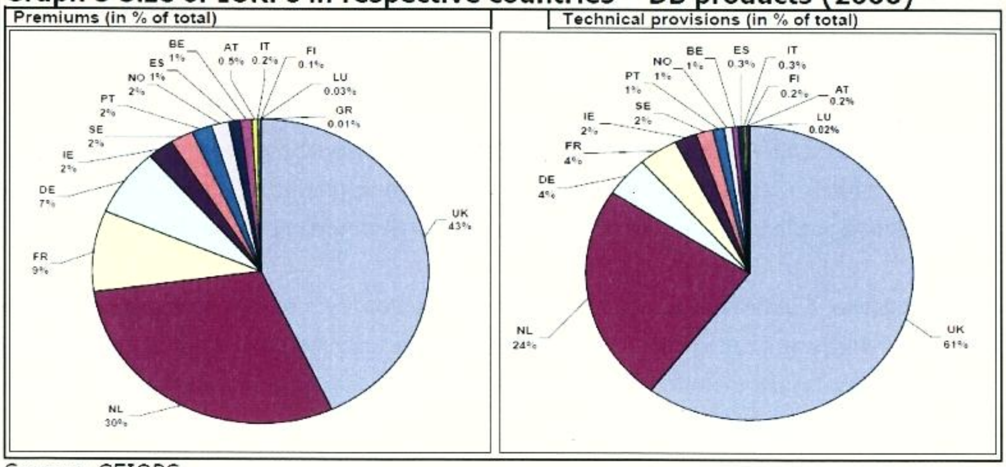
It is important to distinguish between the investment markets, which are genuinely international and merit a high degree of regulatory co-ordination at global level, and specific sectors (such as pensions), where patterns of provision are very specific to individual nations.

Policy-makers should also recognise that workplace pension schemes do not pose the same risks to the financial system as some other financial institutions. Generally, workplace pension schemes in the UK are not-for-profit institutions designed to be sustainable over the long-term, although it should be acknowledged that this will change over time as provision shifts from Defined Benefit to Defined Contribution – with many DC schemes being operated by operators in the for-profit sector.

When Defined Benefit schemes find themselves with a deficit between assets and liabilities, they are – in most cases - able to put in place a recovery plan to bring the fund back to balance over the medium term. Many recent EU initiatives (such as EMIR, reform of the IORP Directive and the Financial Transaction Tax) have sought to apply to pension schemes the same solutions than have been developed for hedge funds, banks and insurance companies, even though the risks posed by pension schemes are quite different.

The overwhelming concentration of DB pension liabilities in the UK should be a key factor in determining where pensions regulation is made. As the chart below demonstrates, around 61 per cent of the EU's DB liabilities are found in the UK. [8] It seems wholly inappropriate that the 20-plus Member States with less than 1% of DB liabilities should (collectively) have a greater say in relation to the supervision and funding requirements for those liabilities than the UK (61%) and Netherlands (24%); even Germany and Ireland have only 4% and 2% respectively.

Graph 3 Size of IORPs in respective countries – DB products (2006)

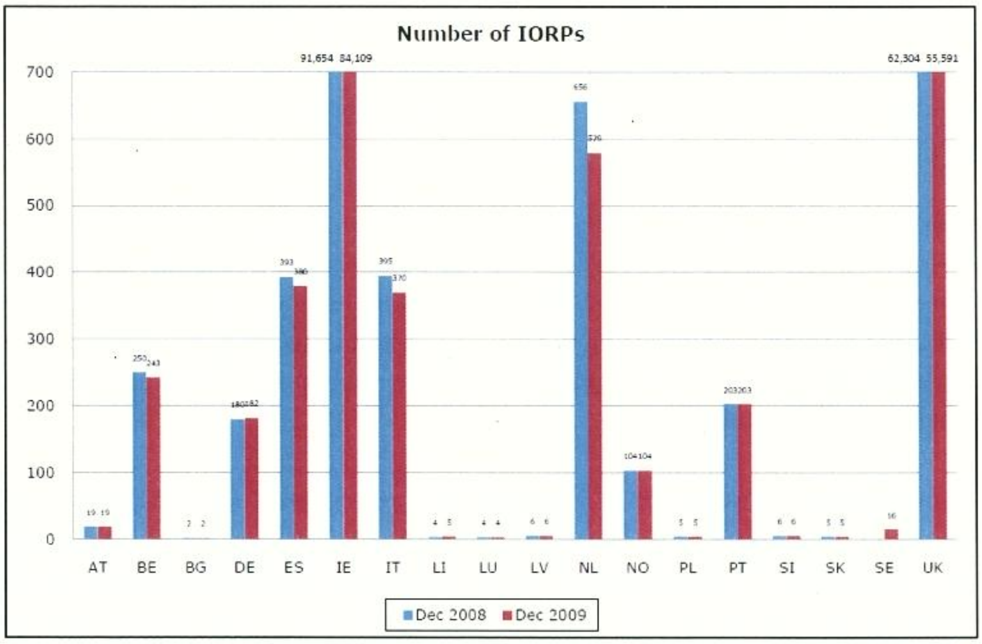


Source: CEIOPS

Note: DK: Data not available.

[8] *Survey on fully funded, technical provisions and security mechanisms in the European occupational pension sector*, Committee of European Insurance and Occupational Pension Supervisors, 31 March 2008, p.12. NB CEIOPS was replaced by EIOPA in 2011.

The UK (along with the Republic of Ireland) is also highly distinctive in having very large numbers of pension schemes – many of them very small. As the EIOPA chart[9] below shows, the UK has over 50,000 IORPs, compared with just over 500 in the Netherlands, for example. This means that EU requirements, particularly on pension scheme governance, have a disproportionate effect in the UK.



Global investment markets. As far as global investment markets are concerned, the NAPF recognises that regulation and standard setting should be co-ordinated at global level. If necessary, this could be achieved by national or EU-level regulators working closely with their counterparts from other parts of the world.

The challenge for policy-makers, which has not been adequately addressed hitherto, is to ensure a sufficient degree of accountability and democratic control in relation to bodies such as the Bank of International Settlements, IOSCO and the International Accounting Standards Board.

National sectors. A different approach is required for sectors, such as workplace pensions, where provision is largely at a national level. Even in the EU alone, each Member State has very different traditions of workplace pension provision (not to mention very different tax regimes). In these cases, a national-level approach is required.

[9] *Report on reporting requirements to supervisory authorities*, EIOPA, 20 April 2011, p.10

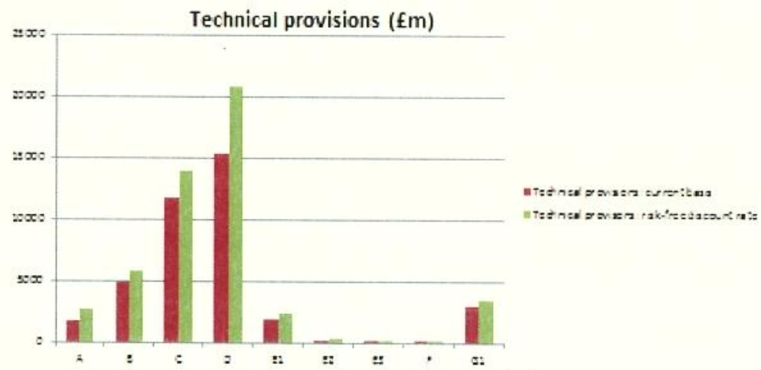
A good example can be found in the EC's own project, led by DG EMPL, to develop an EU-wide code of good practice for workplace pension schemes. A set of high-level principles, supported by best practice case studies from different Member States, should make a far more practical contribution to improving pension provision than harmonised EU-wide legislation.

The current debate about reform of the IORP Directive provides a good example of the dangers of a one-size-fits-all EU-wide approach to regulations. EIOPA is developing a new approach to pension scheme valuation – the 'Holistic Balance Sheet', which would include elements for the value of sponsor support and pension protection schemes. EIOPA's own Quantitative Impact Study (June 2013) found that this would increase the deficits of UK defined benefit schemes from £300bn on the current basis to £450bn on a benchmark scenario under the 'Holistic Balance Sheet' system (€349.9bn to €526.bn).

This EIOPA analysis substantiated the results of the NAPF's own, initial research into the 'Holistic Balance Sheet' proposal, reproduced below. Figures obtained from a number of NAPF member pension schemes on the impact of just one key element of the Holistic Balance Sheet – the use of a risk-free discount rate for valuation of pension scheme liabilities – showed that these would increase by an average of 27 per cent per scheme.

Impact of risk-free discount rate on pension scheme funding

Summary: *schemes A-G combined*



- Increases in technical provisions range from **14% to 50%**.
- Overall increase = **27.1%**.

The Holistic Balance Sheet approach would significantly increase funding requirements for DB schemes, leading to more scheme closures and sponsor bankruptcies; and undermine economic growth by diverting capital that would otherwise be used for investment and business expansion. A study commissioned by the CBI from Oxford Economics[10] found that, in the UK:

- GDP would be 2.5% lower in the mid-to-late 2020s than in the absence of any regime change, and would still be 0.6% lower than otherwise in 2040.

- Business investment would be 5.2% lower than otherwise in the mid-2020s, with a shortfall of 1.4% still being felt in 2040

- Employment would fall short of where it would otherwise have been by 0.5%, or 180,000, in the mid-2020s, with subsequent revival dependent on an additional squeeze on real wages.

3. How have EU rules helped or made it harder to achieve objectives such as financial stability, growth, competitiveness and consumer protection?

Pension funds are major investors in the EU economy and have a role to play in helping to support sustainable growth.

Pension funds are looking for long-term assets that match their liabilities, deliver reasonably reliable and predictable income streams, and provide manageable and acceptable levels of risk.

The NAPF is concerned that a number of recent EU initiatives have frustrated long-term investment.

- For example, the light risk weights that Solvency II puts on short-dated bonds and the heavier weights it puts on equity, property and private equity could impede productive investment in the long-term.

- The EMIR legislation on the trade in OTC derivatives, while including a number of welcome initiatives to boost market transparency, also risks undermining the liquidity of the international bond markets by tying up large volumes of bonds as collateral under the new requirement to post initial margin on non-centrally cleared trades.

- The Money Market Funds Regulation, currently under consideration by the European Parliament, could force many pension funds to turn to the repo market or short-term bank deposits to place their short term cash. This would *increase* pension funds' exposure to banks – the opposite of what international regulators are aiming to achieve.

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[10] *The economic impact for the EU of a Solvency II-inspired funding regime for pension funds*, Oxford Economics / CBI, December 2012

There is a further concern that the common approach being taken to capital requirements across banking, insurance, derivatives, money market funds and now pension schemes could actually increase systemic risk. For example, the EMIR requirements for central clearing of OTC derivatives will effectively concentrate risk in central counterparties.[11] A more diverse set of risk mitigation mechanisms could make for a more secure and resilient financial system.

4. Is the volume and detail of EU rule-making in financial services pitched at the right level? Has the use of Regulations or Directives and maximum or minimum harmonisation presented obstacles to national objectives in any cases?

In terms of pensions-specific legislation, the current IORP Directive follows the minimum harmonisation approach. It is relatively high-level and leaves sufficient room for implementation in a way that suits national circumstances. The NAPF is concerned that the next version of the Directive risks being far more detailed and prescriptive.

For example, it appears likely that the Directive will require pension funds to compile an Own Risks and Solvency Assessment – a concept copied across from the insurance Industry's Solvency II Directive – or some other kind of risk evaluation closely based on the ORSA.. This would impose significant extra risk-assessment requirements, which for all but the largest IORPs might have a cost disproportionate to the benefits. In some cases this is likely to lead to them having to commission a separate report from an external consultant – at significant cost.

5. How has the EU's approach to Third Country access affected the ability of UK firms and markets to trade internationally?

Although the EC argues that the low numbers of cross-border schemes represents a barrier to free movement of labour, there is little evidence that this is actually the case. As long as it is possible for workers to claim their pensions relatively easily at the end of their working lives, there is no reason why building up separate pension rights in different Member States should be a barrier to moving across the EU during a working life.

As discussed above in answer to question 1, the small numbers of cross-border schemes are required by Article 16.3 of the IORP Directive to be fully funded at all times, and this is a high regulatory hurdle. The European Commission is indicating that it will address this point in the new version of the IORP Directive which is now in preparation.

A different perspective applies when we consider the role of pension schemes as purchasers of services. When recruiting administrators, data managers, IT support or fund managers, pension schemes look to secure the best value in the global market place, and it is this free access to

[11] Note that pension funds are exempt from the new central clearing requirements until 2015 – with potential extension until 2018.

services from Europe and beyond that is the key concern of pension schemes when considering international trade. It follows that NAPF members want to see policy-makers strengthening opportunities for trade in services, not just with other EU Member States, but across the entire global market. The Balance of Competences Review should have this wider global perspective at its heart.

6. Do you think that more or less EU-level regulation in the area of retail financial services would bring benefits to consumers?

NAPF member pension schemes do not operate in the retail environment, as they are provided solely within the workplace.

Group Personal pensions. There is one area where EU initiatives to strengthen protection for retail customers could have an impact on NAPF members – the regulation of Group Personal Pensions (GPPs).

GPPs are contract-based pension schemes established by the employer but which take the form of a contract between the individual saver and a pension provider. The NAPF is concerned that recent consultations from the European Commission and EIOPA[12] would see GPPs treated as 'third pillar' or personal retirement products. We have argued that, like other forms of pension provision that are instigated by the employer, GPPs should be treated as 'second pillar' or workplace pensions – albeit outside the remit of the IORP Directive.

29th regime. The point of interest for the Balance of Competences Review is that personal pensions is one of the areas in which the European Commission has floated the idea of a '29th regime' – an EU-level regulatory system that financial services providers could opt to use as an alternative to national-level regulation. The EC's argument is that this could make it easier to provide services across Member States. (The EC also posits the idea of a regulatory 'passport' – so providers approved in one country would automatically be able to operate in other EU countries on a mutual recognition basis. The EC acknowledges, however, that differing national prudential and taxation regimes could make' passporting' difficult.)

It seems likely that the EC will continue to advance the '29th regime' concept in financial services in general, and the NAPF recognises that there are arguments for it, as long as it remains optional.

7. What has been the impact of the shift towards regulation and supervision at the EU level, for instance with the creation of the European Supervisory Authorities? Should the balance of supervisory powers and responsibilities be different?

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[12] *Consumer protection in third-pillar retirement products*, DG SANCO, 11 April 2013. *Discussion paper on a possible EU single market for personal pension products*, EIOPA, 16 May 2013

The single most significant development for NAPF members has been the creation of EIOPA. As discussed in answer to Question 1 above, EIOPA has quickly established itself as a major player in EU pensions policy since its inception in 2011. In the last few months, EIOPA's leadership has set out an ambitious agenda for extending the organisation's remit and resources.

- EIOPA's Chair, Gabriel Bernardino, has repeatedly proposed that EIOPA's remit should be extended to include regulation of personal pensions.

- Mr Bernardino has argued that EIOPA should have its own 'independent budget line that ensures EIOPA's financing from the overall EU budget'.[13] The proposal has support in the form of a draft report from the European Parliament's ECON Committee.[14]

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- EIOPA is also showing itself to be an instigator of policy work in support of its own agenda, rather than simply providing advice in response to requests from the European Commission. Pressed to justify EIOPA's decision to press ahead with policy development work on the 'Holistic Balance Sheet' for pension schemes at a time when the proposal has been 'parked' by the European Commission, Mr Bernardino has argued that EIOPA is able to decide its own work programme, and has decided to make this project a key element of it.

EIOPA is proving adept at using its role as the EC's leading provider of technical pensions advice and as a developer of regulatory technical standards to set much of the agenda for the EU pensions debate.

8. Does the UK have an appropriate level of influence on EU legislation in financial services? How different would rules be if the UK was solely responsible for them?

The UK can claim a major impact on EU financial services legislation. For example:

- Proposals for a new, Solvency II-based funding regime for workplace pension schemes were postponed by Internal market Commissioner Barnier in May 2013 as a result of lobbying by a coalition of Member States, pension schemes and social partners in which the UK played a leading role. The interventions of the UK Minister for pensions, Steve Webb MP, were particularly effective.

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[13] Speech by Gabriel Bernardino, EIOPA Annual Conference, Frankfurt*, 20 November 2013*

[14] *Draft report with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review*, Sven Giegold MEP, 11 October 2013, p.11. The ECON Committee is to vote on the report on 23 January 2014.

- The proposal for a Financial Transaction Tax across all 27 Member States were vetoed by the UK. Although the proposal is now being taken forward by 11 Member States under the 'Enhanced Co-operation' procedure, the UK Government's challenge in the European Court of Justice is proving effective in helping to delay progress.

- British MEPs have a strong reputation for playing a leading role in the European Parliament's work on financial dossiers. Both the ECON and IMCO Committees are chaired by British MEPs (although both are stepping down at the next election in May 2014).

However – and it is an important caveat – these examples of influence are all at the legislative stage. The UK has a weaker record in terms of influencing the EU's agenda and the proposals tabled by the European Commission. This is why the UK so often finds itself fighting a rearguard action to block or mitigate the EC's proposals.

Considering the UK's disproportionate share of the EU's pensions liabilities and pension schemes (as outlined in answer to question 2 above), we should aim to have much greater influence on the EU pensions agenda.

A key concern is that too much EU policy is developed as an internal exercise within the EU institutions, rather than in collaboration with practitioners and experts in the field. Greater involvement of those with practical experience at the formative stages of policy development would pay dividends.

9. How effective and accountable is the EU policy-making process on financial services legislation, for example how effective are EU consultations and impact assessments? Are you satisfied that democratic due process is properly respected?

Pensions policy is a complex area, and the NAPF has been very concerned about several aspects of the process for developing a new edition of the IORP Directive over the last two to three years.

The key concern is that the European Commission should take more time to get its policies right. The Solvency II Directive took over six years to develop (from publication of a proposal to final approval of the Omnibus II implementing legislation), and there are still technical standards to be developed. So the Commission's plan to draw up a new IORP Directive, taking Solvency II as a starting point but incorporating a completely new concept in the shape of the Holistic Balance Sheet, in less than four years (from requesting advice from EIOPA in April 2011 to European Parliament elections in May 2015), was always wildly optimistic. At one point, just six weeks were allowed for stakeholders to respond to an EIOPA consultation on 162 pages of draft technical specifications for a QIS on their advice to the EC.[15]

[15] Draft technical specifications QIS of EIOPA's advice on the review of the IORP Directive, EIOPA, 15 June 2012. Deadline for responses – 31 July 2012.

The fact that EIOPA is now proposing consultations in 2014 on five aspects of the Holistic Balance Sheet only serves to prove the point that the original process was being rushed. This will include a reassessment of the sponsor support valuation approach.

It is particularly disappointing that EIOPA is carrying this work forward, given that its own report on its Quantitative Impact Study on the Holistic Balance Sheet found that UK DB deficits would rise from £300bn on the current basis to £450bn on a 'benchmark scenario' under the proposed new system (€349.9bn to €526.bn).[16]

Commissioner Barnier has now announced that the new IORP Directive will be taken forward without proposals on pension funding, which will be passed to the next Commission.[17] The new Directive will instead focus on governance, communications and cross-border schemes. It has been informally reported that the EC''s impact assessment on this proposal has now twice been rejected by the EC's own Impact Assessment Board. While this suggests that the IAB process has some 'teeth', it is worrying that EC Directorates are still trying to get inadequately developed proposals approved.

The experience of Solvency II provides a further example of inadequate impact assessment work. The EC's assessment indicated that the 'the additional administrative costs (initial €2-3 billion and on-going €0.3-05 billion) will be offset by direct benefits arising, for example, from a lower cost-of-capital for insurance undertakings, as transparency and confidence in the insurance sector will increase'. The EC estimated these benefits at 'around €300 billion a year'.[18]

In contrast, the FSA 'previously estimated the average annual cost to the industry of Solvency II implementation to be around £400 million between 2008 and 2013, and the ongoing cost thereafter - to maintain compliance once the directive is applied - to be around £200 million per annum.'[19]

There is an instructive comparison to be made with the approach taken in the USA, where the Administrative Procedures Act and other measures required proportionate rulemaking. Further guidance on rule-making, drawn up by the Securities and Exchange Commission in March 2012, ensures that alternatives are considered, including no action, and that capital formation impacts are explicitly considered.[20] Failure on the part of a US regulatory agency to meet the requirements can – and frequently does – lead to legal challenge – and legal rulings are often swift.

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[16] *Report on QIS on IORPs*, EIOPA, 4 July 2013, pp.138-9
[17] Press release, European Commission, 23 May 2013
[18] *Impact Assessment Report*, SEC (2007) 871, European Commission, 10 July 2007, p.50
[19] Letter from Andrew Bailey (Prudential Regulation Authority) to Andrew Tyrie MP, 19 April 2013
[20] See http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.

10. What has been the effect of restrictions placed on Member States' ability to influence capital flows into and out of their economy, for example to achieve national public policy or tax objectives?

No further comments.

11. What may be the impact of future challenges and opportunities for the UK, for example related to non-membership of the euro area or development of the banking union?

No further comments

12. Do you have any further comments about issues in addition to those mentioned above?

No further comments.