

Commission stirs up wasps nest

“At present it would be mad to touch the IORPs rules on Europe’s patchwork of capital adequacy provisions for pensions ... leave them alone, please!” summarises one set of views on a possible tightening of the EU’s directive on occupational retirement provisions.

But this opinion faces a strongly contrasting demand on Brussels to give pensioners the “highest level of security”. It reflects the fears of future retirees that they might have to survive on stale bread and dripping.

In other words, with such polarised positions on the Directive’s Article 17 on cross-border sales, the Commission could find that its public consultancy exercise into the matter is like kicking a wasps’ nest.

As the Commission states, in its consultation document, it wants pension plans sold into other countries to be under “a certain level of prudential harmonisation”. It seeks a “qualitative” approach to investment management. Also, there should be “a level playing field” for those offering the pensions.

At present, under Article 17 a pension provider is required to hold permanent buffer assets to cover those risks. The amount is specified in the Consolidated Life Assurance Directive (Solvency I). This is to prevent EU member states treading lightly when interpreting the Directive, in order to gain cross-border business under a “race to the bottom”.

Article 17 refers to those IORPs that underwrite themselves. They guarantee given levels of investment performance or benefits.

The Directive was intended to be implemented by 2005 but some countries put this off until 2006 – or even later.

So far the current version of the Directive has had only one or two years to bed in, and this short bedding in period is being used by the European Federation for Retirement Provision (EFRP) and others to argue for the continuation of the present regime.

The EFRP position that it is passing to the Commission states: “New cross-border activity has had insufficient time to develop significantly since the Directive was fully implemented across the EU in June 2007, with only 70 cross-border IORPs, [some] 39 pre-dating the Directive.”

Backed by member organisations looking after occupational pension plans for 73m EU citizens, the EFRP’s position continues that, being part of employment benefits workplace pensions are fundamentally different from other financial services subject to EU harmonisation.

The Brussels-based organisation, with approximately €3.8trn in investments, considers that a revision of the IORPs Directive would be “a major and complex undertaking”. Therefore, it recommends first “an extensive review of the... data. Each member state should... map out the national social and labour laws relevant to workplace pensions”.

Similar views come from the European Association of Paritarian Institutions, which also calls for “a mapping exercise about the different forms of IORPs existing across Europe”.

It warns that changes in regulation may have “an enormous macro economic impact. If risk profiles have to be changed, this could lead to a shift from equity into bonds. This could have a destabilising effect on financial markets”. At Britain’s National Association of Pension Funds, Nigel People, director of policy, also advocates more research.

On the other side of the fence is the CEA Comité Européen des Assurances, representing the insurance industry, and

with a membership, that extends beyond the EU 27, and a backing of more than €7.2trn. “Future pensioners should be protected,” states the institution.

To the question asking whether “there have been shortcomings or flaws identified in the prevailing solvency rules for IORPs subject to Article 17”, the CEA replies: “Solvency II principles seek to incorporate the latest risk management techniques.

Solvency I rules for Article 17 IORPs at present do not take into account all the risks that these IORPs are exposed to.” It wants the Solvency II framework to apply to those IORPs that are not subject to Article 17.

Supporting this theme – but making no formal submission – is Dutch MEP Ieke van den Burg. She favours tighter rules for cross-border schemes. “Where you get firms competing with each other you should make sure it is on a fair basis,” she says. “The IORP requirements are so flexible that confusion is rampant,” she complains.

On 16 February the Commission will hold a public meeting to hear the two mainstream viewpoints. In the meantime, it might be feeling something like a potential victim of wasp stings cited in Shakespeare’s *A Winter’s Tale*. Here, a “rascal” is threatened with being “flayed, ’nointed over with honey, [and] set on the head of a wasp’s nest”.

Now the Commission has to get the wasps back in the nest, amicably. Not a task to be envied.

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