

EIOPA Occupational Pensions Stakeholder Group (OPSG)

ACTIVITY REPORT FOR THE PERIOD SEPTEMBER 2013 TO MARCH 2016

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April 2016



Contents

1. Foreword by the Chair	3
2. OPSG Membership.....	5
3. Overview of OPSG meetings and main issues discussed	7
4. OPSG Subgroups on technical issues	8
5. Overview of OPSG work completion with links to outputs	9
6. Overview of work undertaken	10
6.1. Solvency	10
a) Solvency issues.....	10
b) EMIR.....	10
c) Quantitative Easing.....	11
6.2. IORP II.....	12
6.3. Defined Contribution	13
6.4. Consumer Protection	13
6.5. Personal Pensions	15
6.6. Other issues	16
Legal Entity Identifier	16
Cross-Border	16
Automation in Financial Advice	16
Investment in infrastructure	16
7. Joint Stakeholder Groups position on the Commission's Report on the operation of the ESAs and the ESFS, in relation to Stakeholder Groups.....	17
7.1. Comments on the Report.....	17
7.2. Recommendations to further enhance the visibility and impact of the SGs.....	19
8. Suggestions for the future	20

1. Foreword by the Chair

A new European System of Financial Supervision (ESFS) came into being at the start of 2011, and three new Supervisory Authorities (ESAs) were set up, with responsibility for the supervision of insurance and occupational pensions given to the European Insurance and Occupational Pensions Authority (EIOPA), which was established by Regulation 1094/2010/EU.

Article 37 provided for the establishment of two Stakeholder Groups (SGs), the Insurance and Reinsurance Stakeholder Group (IRSG) and the Occupational Pensions Stakeholder Group (OPSG) which must be consulted by EIOPA on regulatory and implementing technical standards, guidelines and recommendations. The composition of the SGs, each of which comprises 30 members, is also specified in this Article and for the OPSG a balance is required between institutions for occupational retirement provision (IORPs) which must have 10 representatives, representatives of employees, representatives of beneficiaries, representatives of SMEs and representatives of relevant professional associations, as well as at least 5 top-ranking academics. In addition, there should be, to the extent possible, an appropriate geographical and gender balance and representation of stakeholders across the EU.

The first OPSG took office in March 2011, and completed its mandate in September 2013. A report on its activity is [here](#). The second OPSG commenced its term of office in September 2013, with 15 of the members of the first OPSG being appointed for a second term. This provided a good balance between continuity and fresh ideas, and Benne van Popta, who had been Vice-Chair of the first OPSG, was elected by the members as Chair, with Matti Leppälä being elected as Vice-Chair. A list of the membership of the Group is given in Section 2.

It was agreed that three subgroups would be formed to consider particular issues in detail and to draft statements or opinions on these topics for approval by the full OPSG. These subgroups were Solvency (led by Philip Shier), Defined Contribution (Matti Leppälä) and Consumer Protection (Ruth Goldman and Doug Taylor) and the membership of each Sub-Group is shown in Section 2. In practice, some of the topics considered over the term of the mandate did not fit neatly into one of these categories, and in some cases specific work streams or working parties were established to consider particular issues.

Benne van Popta resigned as Chair in March 2015, and Philip Shier was elected Chair at the March 2015 meeting of the Group and as a consequence, Niels Kortleve took on the role of leading the Solvency Sub-Group. The Group is very grateful to Benne for his leadership and wisdom over the period of his Chairmanship.

The Group held eleven formal meetings over the period of its mandate, and participated in three annual joint meetings with the IRSG and the Board of Supervisors of EIOPA. A summary of the meetings is shown in Section 3 and minutes of the meetings and the related papers are available on the website. The membership of the subgroups and work streams/working parties is shown in Section 4 and the outputs of the Group are listed in Section 5. More detail on specific topics is provided in Section 6.

The meetings of the Group generally followed a standard structure – updates from EIOPA, the European Commission and the OPSG Chair, followed by presentation and/or discussion on relevant topics. The agenda for each meeting was primarily driven by the need to react to formal consultations, or to provide EIOPA with input or feedback on specific issues, with some additional items being "own

initiative" work. Members of the Group generally felt that the meetings worked well, and were appreciative of the support provided by EIOPA, with the Chairperson and/or Executive Director attending the meeting, as well as other members of Senior Management and experts. It was disappointing that a representative of the European Commission was unable to join the meetings on a regular basis, as the Group felt that this would be beneficial to all parties. The participation of members in the discussion and preparation of documents was good, although inevitably some members contributed more than others. This is always likely to be the case with such a diverse group, particularly given the heterogeneity of pension systems around Europe. We recommend that future OPSG members are provided with some introductory information or training to enable them to understand more readily issues with which they may not initially be familiar.

In addition to the formal meetings, much work was done between meetings by teleconference and emails, as well as occasional meetings of sub-groups to progress specific issues. The Group acknowledges the support of the EIOPA staff, and in particular Giulia Conforti, in organising and facilitating meetings and activities between meetings.

As can be seen from the meeting documents and the list of outputs, the OPSG considered a number of important and challenging issues during its mandate. These included responding to the EIOPA consultation on Solvency in January 2015, reacting to the first IORP stress test in March 2016, considering the proposals to revise the IORP Directive and inputting to the various consultations on personal pensions arising from the Capital Markets Union paper. Although the focus of the OPSG is on occupational pensions, the OPSG agreed that it was appropriate that it should also consider issues relevant to third pillar or personal pensions as these do, and will, play an important role in retirement provision in some Member States.

The OPSG noted that the Commission report on the ESAs suggested that, like the other ESAs, EIOPA should have a single Stakeholder Group. OPSG and IRSG have prepared a joint opinion on the report (included as Section 7) which strongly supports the existence of two EIOPA Stakeholder Groups to ensure that there is sufficient expertise to provide input to EIOPA on its two areas of competence, insurance/reinsurance and occupational pensions. It is good to know that EIOPA itself shares this view.

The joint report also makes a number of recommendations about the role of the Stakeholder Groups, with the primary objective of maximising the benefit which the European institutions (and European citizens) obtain from the work done by the SGs. In particular, the report recommends more interaction with the EIOPA Board of Supervisors, the European Commission and the European Parliament, as well as greater public exposure by means of press releases and direct email access for the public to the SG.

The final Section of this report, entitled "Suggestions for the future", sets out views expressed by members in relation to the operation of the OPSG and identifies some changes which we consider would be beneficial. It is, of course, up to future OPSGs and EIOPA to determine how they organise their activities but I hope that the suggestions which we have made provide some insights. I wish the incoming OPSG success in their endeavours over the coming mandate.

Philip Shier

OPSG Chair

2. OPSG Membership

Chair:

From October 2013 to March 2015: **Benne van Popta** (NL), Royal Dutch Association of SME's (MKB-Nederland), member; Chairman of Association of Industry Wide pension funds, Pension Fund Retail sector and Pension fund Metal working and Mechanical engineering; representing IORPs

Since March 2015: **Philip Shier** (IE), AonHewitt: Adviser to trustees and sponsors of Irish occupational pension schemes; Chairperson of the Actuarial Association of Europe (AAE), representing Professional Associations

Vice-Chair: **Matti Leppälä** (FI), Secretary General/CEO at PensionsEurope; representing IORPs

Representatives of Institutions for occupational retirement provision (IORPs)

Lukasz Budzynski (PL), Member of the Cross-Border User Group XBUG (discussion group for multinational companies who have operational or near-operational cross-border pension plans)

Fritz Janda, AT, Managing Director at the Association of Austrian Occupational Pension Funds

Michaela Koller, DE, Director General at Insurance Europe, the European insurance and reinsurance federation

Niels Kortleve, NL, Senior Manager at PGGM Pension Fund; Coordinator and Researcher at Pensions Innovator Lab of Netspar

Joachim Schwind (DE), Chairman of the Management board at Höchster Pensionskasse VVaG; Hessen Chemie, Pensions-Sicherungs-Verein (PSVaG), aba and several other pension related positions

Martine Van Peer (BE), Representative of Luxembourg Association of Pension Funds (ALFP), Managing director of ESOFAC Luxembourg S.A.

Janwillem Bouma (NL), Director at the pension's office of Shell Netherlands; in 2014 Chairman of the Supervisory Board of the ANWB Pension Fund and since end 2015 Chair of PensionsEurope.

Petar Vlaić (HR), President of the Board at Erste Pension Fund Management Company

Allan Whalley (UK), Pensions Manager and European region Benefits Director at Kraft Foods, UK; member CBI Pensions Panel

Representative of SMEs

Thomas Keller (DE), Managing Director at Prime Renewables GmbH; CFO at Prime Capital AG

Representatives of Professional Associations

Charlotta Carlberg (SE), Director at KPMG; former CEO Swedish intermediary association (Sfm);

Laure Delahousse (FR), Director of Pensions and specialized investments (private equity, real estate, responsible investment) at the French professional association of Asset Management (AFG)

Ruth Goldman (UK), Linklaters international law firm, Global Head of Pension Funds Adviser; UK Association of Pension Lawyers and National Association of Pension Funds

Employees' representatives

Bruno Gabellieri (FR), Groupe Humanis, Director of Communication & External Relations; Secretary General of the European Association of Paritarian Institutions (AEIP)

Hristina Mitreva (BU), Advisor to the President of the biggest Confederation of the Independent Trade Unions in Bulgaria (CITUB)

Douglas Taylor (UK), Employed by Which? the consumer organisation until September 2013 he has been a representative on a number of financial services groups in pensions and other issues; includes being a member of the NEST member panel

Chris Verhaegen (BE), European Trade Union Confederation (ETUC), former Secretary General PensionsEurope, Chairperson at Institute for the Equality between Women and Men (IGVM/IEFH).

Neil Walsh (IE), Pension Officer at 'Prospect' trade union

Representatives of beneficiaries

Marianne Moscoso-Osterkorn (AT), Member of the Board of the European Energy Efficiency Council, member of the Advisory Council of the Executive Academy of the University of Economy in Vienna, member of the Board of PEKABE (Austrian pensioners organisation)

Ellen Nygren (SE), Advisor on social protection issues for the European Trade Union Confederation (ETUC)

Klaus Struwe (DK), Representative of the Danish Shareholders Association (organisation representing Danish consumers investing or saving) and Better Finance

Guillaume Prache (FR), Managing Director of Better Finance, the European Federation of Financial Services Users

Marius Serban (RO), Conso Media Group SRL (publisher of financial guides/websites for consumers) and member of Association of Romanian Financial Services Users (AURSF)

Academics

Alberto Floreani (IT), Associate professor in risk management and insurance economics at Catholic University of Milan

Pierpaolo Marano (IT), Professor of Insurance law at the Faculty of Banking, Finance and Insurance at the Università Cattolica del Sacro Cuore - Milan

Manuel Peraita (ES), Associate Professor on Pensions and Actuarial Science at the Universities Alcalá de Henares and Complutense in Madrid

Ján Šebo (SK), Researcher and associate professor of public finance, pension economics and pension finance at Matej Bel University, Banská Bystrica; member of the Financial Services User Group (FSUG)

Federica Seganti (IT), Programme Director Master in Insurance & Risk Management at the MIB School of Management in Trieste

3. Overview of OPSG meetings and main issues discussed

2013 meeting dates:

- **24 October 2013** – Inaugural meeting and election of Chair/ Vice-Chair (Benne van Popta/Matti Leppala)
- **26 November 2013** – Joint meeting with BoS and IRSG. Topic: EIOPA webpage “Consumer lounge”; Break-out sessions: “The way forward to Consumer Protection –a great opportunity” (complexity, proportionality principle, conflicts of interest in the distribution of insurance and pensions)

2014 meeting dates:

- **10 March 2014** – Agreement on subgroups (Solvency issues, Occupational DC and Consumer Protection issues); topics: Personal Pensions, Holistic Balance Sheet (HBS) and impact of low interest rates
- **19 May 2014** –Topics: Commission proposal on IORP II, Decumulation, European Market Infrastructure Regulation (EMIR) and EIOPA Consumer Trends Report
- **7 July 2014** – Approval of the OPSG Work Plan 2014-2015; Topics: Stress Test on Pensions; review IORP II, Guidelines on the use of Legal Entity Identifier (LEI) and EIOPA Peer Review on SIPPs (Statement of Investment Policy Principles).
- **15 October 2014** – Topics: ESFS review in relation to the ESA Stakeholder Groups, Consultation on EIOPA’s solvency work and the use of the holistic balance sheet, COM’s Call for Advice on Personal Pension Products and regarding transferability of supplementary pension rights.
- **26 November 2014**– Joint meeting with BoS and IRSG. Break-out sessions: Personal Pensions, Information to pension scheme members, Risk outlook and Product oversight and governance (POG)

2015 meeting dates:

- **10 March 2015** – Election of the new Chair (Philip Shier); Topics: EIOPA Consultation Paper on Further Work on Solvency of IORPs, EIOPA Pensions stress test, COM Call for Advice on Personal Pensions and EIOPA Consultation Paper on its Draft Good Practices Report on transfers of Acquired Pension Rights
- **8 May 2015** – Review of OPSG 2015/2016 work programme. Topics: Consumer Trends, consultation on transferability, Quantitative assessment (QA) and pensions stress test (ST), Review of the IORP Directive, COM Call for Advice on Personal Pensions,
- **8 July 2015** – Topics: European Market Infrastructure Regulation (EMIR), Quantitative assessment and pensions stress test, EIOPA work on Peer Review of IORPs (SIPP), Personal Pensions, Quantitative Easing, Cross-border IORPs, EIOPA report on tools and channels for communicating to occupational pension scheme members
- **20 October 2015**– Topics: Quantitative assessment and pensions stress test, IORP II, Cross-border IORPs, EIOPA Consultation Paper on the creation of a standardised Pan-European Personal Pension product (PEPP), own initiative work on Consumer protection (Advice and education, Governance and conflict of interest and Information/terminology) and Quantitative Easing
- **1st December 2015**–Joint meeting with BoS and IRSG; Topic: Insurance and Pensions in the low interest rate environment; Break-out sessions: Internal market for Personal Pensions Products (PPP), Solvency II (Implementation) and Review of the ESFS – the role of the Stakeholder Groups

2016 meeting date:

- **24 February 2016** – Topics: Addendum to the revision of the IORP II Directive, EIOPA pensions stress test results, decumulation, Future operation of Stakeholder Groups and position paper on the ESFS and ESAs review, Personal Pensions own initiative on Investments cost and charges for occupational pensions DC schemes

The EIOPA premises in Frankfurt have been the meeting location of all OPSG meetings. Minutes are public and can be found under this [link](#)

4. OPSG Subgroups on technical issues

The OPSG formed three subgroups to organise its workload and prepare the working papers prior to their discussion with the entire group. The activities are coordinated by the subgroup leader and defined by its mandate. In addition, the OPSG formed a number of work-stream and ad hoc working parties to deal with specific topics.

Member	Subgroup on Solvency issues	Subgroup on Occupational DC	Subgroup on Consumer Protection issues	Work-streams and ad hoc working parties
Bouma, Janwillem *	✓			
Budzynski, Lukasz	✓			Cross-border IORPs
Janda, Fritz		✓		
Koller, Michaela	✓	✓	✓	IORP II; Personal Pensions Lead; Automation fin. advice
Kortleve, Niels	Lead	✓		IORP II
Leppälä, Matti, Vice Chairperson		Lead		IORP II Lead
Schwind, Joachim	✓	✓		
Van Peer, Martine	✓			
Van Popta, Benne*, Chairperson (Sep. 2013-March 2015)	✓			
Vlaić, Petar		✓		
Whalley, Allan	✓			
Carlberg, Charlotta		✓	✓	Personal Pensions; Automation fin. advice
Delahousse, Laure		✓	✓	Personal Pensions
Goldman, Ruth	✓		Co-lead	Individual transfers
Shier, Philip, Chairperson (March 2015-April 2016)	✓			IORP II Addendum; Review ESAs Lead
Keller, Thomas	✓			Infrastructure
Gabellieri, Bruno		✓	✓	
Mitreva, Hristina		✓		
Taylor, Doug		✓	Co-lead	Personal Pensions
Verhaegen, Chris		✓		Personal Pensions; Review ESAs; Proportionality
Walsh, Neil	✓	✓		
Moscato-Osterkorn, Marianne		✓	✓	Personal Pensions
Nygren, Ellen		✓		IORP II
Prache, Guillaume			✓	IORP II; Personal Pensions
Serban, Marius		✓	✓	Personal Pensions
Struwe, Klaus		✓	✓	Personal Pensions
Floreani, Alberto	✓	✓		
Peraita, Manuel		✓	✓	
Marano, Pierpaolo		✓	✓	Personal Pensions
Šebo, Ján		✓	✓	
Seganti, Federica		✓		

*Mr Bouma membership started in March 2015, following the resignation of Mr Benne Van Popta

5. Overview of OPSG work completion with links to outputs

No.	Topic	Product	Published
1.	Draft regulatory technical standards on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP under Article 11(15) of EMIR Regulation (EU) No 648/2012	Combined IRSG/OPSG Response	2014, July
2.	Proposal for Guidelines on the use of the Legal Entity Identifier (LEI)	Response	2014, August
3.	Proportionality principle in the context of the new Proposal for a Directive on IORPs	Feedback Statement	2014, November
4.	Further Work on Solvency of IORPs	Opinion – Input to EIOPA CP	2015, January
5.	EIOPA Consumer Trends Report	Response to questionnaire	2015, March
6.	Report on Good Practices on individual transfers of supplementary occupational pension rights	Response	2015, April
7.	Public consultation on Building a Capital Markets Union	Response	2015, May
8.	Position Paper on the European Commission's proposal for an IORP II Directive	Position Paper	2015, July
9.	Monitoring of EMIR exemption for IORPs	EMIR	2015, July and October
10.	Monitoring on Infrastructure for IORPs	below	2015, July and October
11.	Response to EIOPA Consultation Paper on the creation of a standardised Pan-European Personal Pension product (PEPP)	Response	2015, October
12.	Own initiative work on Low interest rate environment and quantitative easing	Position Paper	2015, November
13.	2015 EIOPA Report on Occupational Pensions and Cross Border IORPs	Feedback Statement	2015, November
14.	Own initiative Report on advice and education	Position Paper	2015, November
15.	Own initiative Report on Governance and conflict of interest	Position Paper	2015, November
16.	Own initiative Report on Information/terminology and transparency	Position Paper	2015, November
17.	Survey on the attractiveness of a Pan-European Personal Pension Product	Response to survey	2015, November
18.	Own initiative Report on investments cost and charges for OP DC schemes	Feedback Statement	2015, February
19.	Addendum to the OPSG Position Paper on the European Commission's proposal for an IORP II Directive - following the Council and European Parliament proposal	Position Paper	2016, March
20.	Response to EIOPA Good Practices on Communication Tools and Channels for communicating to occupational pension scheme members	Response	2016, March
21.	Joint Committee Discussion Paper on automation in financial advice	Opinion	2016, March
22.	IORPs Stress Test Report 2015	Feedback statement	2016, March
23.	Feedback to EIOPA Report on fact finding in respect of practices at the decumulation phase for occupational pensions	Feedback Statement	2016, April

6. Overview of work undertaken

6.1. Solvency

a) Solvency issues

At the beginning of its mandate, the OPSG issued an opinion as input to EIOPA's consultation paper on further work on solvency of IORPs. The OPSG considered that the most important section is that dealing with the possible uses of the HBS. The key points which the OPSG made in response to these questions were:

- The HBS cannot be used in Pillar 1 to set capital requirements or technical provisions or to determine the length of recovery periods in cases of "underfunding"
- The HBS could be a useful tool for risk management under Pillar 2
- The HBS could provide useful information for members and beneficiaries on the security of the pension promise but this would have to be presented in a meaningful way.

The OPSG was also strongly of the view that the proportionality principle must be applied where possible, especially given the high number of small and medium sized IORPs in the EU, for whom lengthy and complex calculations would impose an excessive burden.

At the end of its mandate, the OPSG issued a feedback statement on EIOPA's IORPs stress test report 2015. The OPSG underlined the importance of stress testing as a risk management tool for IORPs. The OPSG agreed that the economic and financial market impacts need to be investigated further as the importance of 2nd pillar occupational pensions in the total retirement income increases.

The OPSG recognised that in order to be able to compare Defined Benefit (DB) schemes in a consistent manner, a harmonised method (Common Methodology, i.e. the Holistic Balance Sheet (HBS) approach) would need to be adopted, but also raised concerns with the concept. The OPSG doubted whether the shortcomings as mentioned in the feedback statement can be overcome in the Common Methodology.

The OPSG stated that future IORP stress tests, especially for DB, should be easier and cheaper if they should be applied by medium and small sized IORPs as well. A simpler, more principle based approach, relying first and foremost on national frameworks and leaving more freedom to NSAs, could be a more appropriate alternative instead of the HBS.

The OPSG appreciated that the IORP stress test considered both DB and DC schemes. However, the aim and the methodology used in the two exercises are very different and this makes it difficult to analyse and compare the results. In OPSG's view, a stress test on DB IORPs could be more useful if it assessed the impact of stress scenarios on the contributions of members, the pensionable income of beneficiaries and the contributions of sponsoring companies. As such it would provide information on the more macroeconomic consequences of financial shocks through IORPs. The stress test for DC IORPs is better suited in this respect. The shift from DB toward DC schemes highlights the need for more comparable information.

b) EMIR

In July 2014, the OPSG, jointly with the IRSG, delivered a response on draft regulatory technical standards of EMIR Regulation. The stakeholder groups addressed that EMIR may potentially have a severe negative impact on IORPs and insurers, as well as the banks who serve as swap counterparties to both the IORPs and insurers. Both stakeholder groups believed that the practical implications of EMIR

implementation will be opposite to the main goal of what EMIR tries to achieve. Both stakeholder groups stated they endorsed the overall objectives of EMIR.

The unintended consequence of EMIR could be increased risks for IORPs. The implementation of EMIR could lead to substantially higher execution costs for IORPs. The main reasons are the fees to counterparties, higher costs in execution and managing the IORP (also administration and communication) and loss of return on (cash) collateral, which will yield less than other assets as well as the negative impact on the liquidity management of the IORP as a whole (i.e. the need to hold more cash than economically needed, including a reduced ability to match assets and liabilities).

This could be resolved by recognising of special position of IORPs translated via exemption from the clearing obligation of OTC derivatives and by considering special features for IORPs when adopting risk-mitigation techniques for non-centrally cleared OTC derivatives.

The OPSG strongly encouraged the European Commission, together with EIOPA, EBA and ESMA to find solutions for the following issues:

1. The European Commission should prevent the negative spill-over of regulations.
2. The European Commission should solve the issue of conflicting regulation.
3. European Commission, ESMA, EBA and EIOPA should recognise the position of IORPs and the adverse effect of EMIR on IORPs.

Since that joint paper, EMIR has been tabled on a regular basis in the OPSG, with updates by EIOPA on developments and the progress.

c) Quantitative Easing

In November 2015, the OPSG, on its own initiative, issued a position paper on Quantitative Easing. The OPSG tabled the possible negative consequences of Quantitative Easing (QE) in its July meeting of that year. QE is intended to improve the growth prospects of the European Union and pension funds profited from QE via positive returns on bonds and via higher expected returns. At the same time, QE has also led to lower funding ratios for Defined Benefit schemes (DB). As a consequence, sponsors and active members could feel the burden of higher contributions and lower pension accrual (for DB and Defined Contribution (DC)). Members and beneficiaries could not only be confronted with higher contributions, but also with lower pensions and more risks. QE could also lead to increased risks in the financial policy of IORPs via distorted risk measuring, could lead to risk-seeking behaviour of IORPs due to the 'search for yield' and there is tension between economics and risk management.

So members and beneficiaries could feel the consequences of QE in the form of higher contributions, lower pensions and more risk and sponsoring companies in the form of higher contributions.

The OPSG invited EIOPA to investigate the consequences of QE and the impact on IORPs, their policy and their behaviour, also by looking at the consequences for members, beneficiaries and companies.

The OPSG saw four possible routes in coping with the negative consequences of QE:

1. Adjust the discount rates (DB)
2. Change the benefits or accrual (DB and DC)
3. Relax the rules for annuitisation (DB and DC)
4. Relaxation of capital requirements by supervisors (DB)

6.2. IORP II

Following the publication of the Commission's proposal for a revision of the IORP Directive (IORP II) in March 2014, the OPSG agreed to prepare a position paper on the proposed amendments. In addition, a Feedback Statement, prepared by Chris Verhaegen, on the application of proportionality in the IORP Directive was approved by the OPSG in November 2014. After discussion at a number of meetings, a working group presented a draft position paper on the Commission's proposed amendments to the Directive to the meeting in May 2015 and this was subsequently approved. The OPSG expressed its support for the Commission's objectives, particularly in relation to governance and disclosure of information to members and beneficiaries, but the paper also highlighted a number of areas of concern to OPSG, including

- The need for a proper balance between internal market and Member States i.e. subsidiarity
- The need to recognise the role of social partners
- The "fit and proper" requirements should not apply on an individual basis as this could exclude many member trustees
- The retention of some obstacles to cross border activity
- There should not be a one-size-fits-all approach to disclosure of information
- There should not be powers given to the Commission to make Delegated Acts in relation to remuneration policy, risk evaluation and pension benefit statement but these issues should be set out in sufficient detail in the Level 1 text.

The paper did not consider the amendments proposed in the Council agreed position, which had been published in November 2014, and it was agreed that an Addendum be prepared when the Parliament compromise was available, commenting on amendments proposed by the two bodies. This Addendum was approved in March 2016. In this Addendum, the OPSG noted that a number of the concerns highlighted in the initial report had been addressed in one or both of the proposed sets of amendments. The Addendum identified four areas where agreement would need to be reached:

- a) Cross border activity
 - OPSG agrees that unnecessary obstacles to cross border activity should be removed provided members and beneficiaries are fully protected. In this context, the "fully funded at all times" requirement, the proposed requirement for consent of members and beneficiaries to a cross-border transfer and the proposal from ECON that a "duty of care" provision be introduced, with a possible role for EIOPA in approving cross border transfers, all need to be considered carefully.
- b) Calculation of technical provisions
 - Given the then Commissioner's assurance that there would be no changes to the quantitative requirements, amendments proposed to Article 14, which might lead to a fundamental change in approach in some Member States, should not be approved
- c) Risk assessment/evaluation
 - The detail of this process should be left to IORPs in conjunction with their national supervisors

d) Disclosure to members and beneficiaries

- OPSG is strongly supportive of the layered approach to the provision of information, and agrees that information should be provided to members on the risks they bear, the nature of the pension promise, costs and charges incurred and (where members bear some or all of the financial risk) investment performance and risk ratings.

OPSG also took the opportunity to comment on two further aspects of the proposals to amend the Directive

- Environmental, social and governance risks (ESG)
 - OPSG recognises that this is an important issue and that because of their long term horizons, IORPS need to consider scenarios which may be unlikely in the short term , but could have a material effect on investment returns, as well as social issues, in the longer term
- Intergenerational balance
 - This would only arise in schemes where individual members do not bear their own risks, and will be interlinked with social and labour issues, and tax legislation in individual Member States, so it may be more appropriate to address this at a national level

Both the position paper and the Addendum were circulated to the co-legislators and other interested parties.

6.3. Defined Contribution

Decumulation i.e. the pay-out phase of DC pensions is becoming an increasingly important issue. The DC subgroup looked first at the various studies and work done by different organisations, such as the European Commission, OECD and EIOPA. EIOPA published in the autumn of 2014 a detailed study on DC decumulation and the DC subgroup prepared an OPSG opinion on it in 2016.

It is clear that the decumulation will continue to be a topical issue as many Member States and pension schemes will struggle to find the best possible options in the continuing low interest rate environment which has in many cases made the traditional annuities unattractive.

6.4. Consumer Protection

The OPSG established a consumer protection sub group and it was recognised in doing so that there would be inevitable overlap with both the work of other sub groups and the general activities of the OPSG.

The consumer protection sub group prepared the following documents:

- OPSG opinions on consumer protection issues in relation to the following, including any current identified detriments and where appropriate proposals for mitigation:
 - a. Information/terminology/transparency
 - b. Governance and conflicts of interest
 - c. Investment returns/costs/charges
 - d. Transferability
 - e. Advice and education
- OPSG Feedback on EIOPA Questionnaire on gathering input for the EIOPA Consumer Trends Report

- OPSG response to EIOPA Consultation Paper on a Report on Good Practices on individual transfers of supplementary occupational pension rights
- OPSG response to EIOPA Good Practices on Communication Tools and Channels for communicating to occupational pension scheme members

The OPSG should always start from an understanding of the financial capability of the end consumer. Consumer protection arises invariably as a consequence of the imbalance of understandings between consumer and provider, the need to protect against conflicts of interest and the robustness of governance in place.

Principles are a good way to help create and evaluate a framework for judging how a system should be devised and operate, and where one is in place to determine whether it is fit for purpose. The principles below are intended to act as a guide which the incoming OPSG members might wish to consider.

In such discussions it is important to recognise firstly the differences between Member States specifically in terms of legal arrangements, tax arrangements and the interrelationship between the State pension in place and the other pillars of pension provision.

Secondly, alternative savings products and their treatment by European regulation and Member State regulation and law are significant raising the question of how important to consumers are the questions of symmetry.

Individual pension scheme Principles

All pension schemes should be set up and be operated to include being in the best interests of their members and beneficiaries:

1. Effective Governance is in place to protect the member or beneficiary from conflicts of interest, poor value for money, poor administration, and scheme insecurity.
2. Transparency works to ensure accurate information is available to members on personal savings at any time, and offers a reasonable estimation of future savings using fair predictive means.
3. Information provided to members, while meeting the regulatory requirements, should also be reviewed to consider whether it can meet the specific needs of the scheme members.
4. Risk should be managed to limit systemic problems, but also options for the individual investments of members should be translated to include clear risk warnings.
5. Access to a scheme should not be difficult for a new eligible member.
6. Feedback from members should be encouraged and systems in place to facilitate, interpret and act upon it.

Regulatory principles

The member and beneficiary are the most important focus for regulatory design. Regulation and supervision should be designed to ensure that good outcomes are achieved through the promotion of good practice guides, appropriate intervention in schemes, and effective rule setting. Schemes should be required to embrace the regulatory principles.

1. Costs and charges should be consistently calculated, be transparent and declared to members, and represent an understandable, comprehensive and fair indication of the impact on yield. They should also represent fair value for money.
2. Investment returns should be explained using cash terms as well as percentages.
3. Independent complaints procedures should exist and a protection and redress system should be in place at a Member State level.
4. All schemes should have protections irrespective of their size.

Principles for Member States

1. Member States should work towards the provision of education during school years that support the objective of citizens making arrangements to meet their long term financial needs.
2. Guidance and advice services should be established that provide regulated and non-regulated assistance to help consumers make informed decisions on pension issues at various points in their life.
3. Member States should assist consumer protection through enhanced digital services that create a single pension portal with all details of a consumer's pension savings from all pillars.

6.5. Personal Pensions

At its May 2014 meeting, the OPSG established a Personal Pensions Work-Stream (WS), with the aim of developing positions in response to EIOPA's consultations in this field. The WS, led by Michaela Koller, grouped ten OPSG members representing diverse stances (e.g. consumer representatives, beneficiaries, distributors, pension providers, asset managers).

Through the work of the Personal Pensions WS, the OPSG has taken a number of opportunities provided to stakeholders to feed into EIOPA's and EC's work on personal pensions.

In May 2015, the OPSG responded to the EC's Green Paper on a Capital Markets Union, commenting on the opportunities and challenges of introducing a pan-European personal pension product. The OPSG emphasised that it should be an individual savings product aimed for retirement purposes, with features that differentiate it from pure savings and investment products.

In October 2015, the OPSG provided further input on this initiative in the context of the EIOPA consultation on the creation of a standardised Pan-European Personal Pension product (PEPP). In its response, the OPSG elaborated suggestions on PEPP's key features (e.g. default investment options, flexibility and surrender rules, solvency requirements, product passport), as well as commented on the product's information disclosure and distribution rules. The Personal Pensions WS liaised with the relevant IRSG sub-group on PEPP, and discussed the possibility to adopt a joint position on the basis of the many points shared by the two bodies, (e.g. the investment strategies eligible as "default investment options" and the introduction of minimum investment periods). However, the Groups eventually decided to submit individual responses to EIOPA.

Later in 2015, the OPSG reiterated its main messages on PEPP in its response to EIOPA's Survey on PEPP's attractiveness.

Finally, the Personal Pensions WS began working on the 2016 consultation on EIOPA's advice on a single market for personal pensions. However, due to the very short time left before the end of its mandate, the OPSG could not adopt a formal position.

6.6. Other issues

Legal Entity Identifier

OPSG also gave its views in summer 2014 on the Legal Entity Identifier (LEI), which stems from ESMA's need to know the parties to financial transactions, but would also be used to identify all IORPs.

Cross-Border

An own initiative paper on the EIOPA Report on Occupational Pensions and Cross Border IORPs, drafted by Lukasz Budzynski was discussed at the October 2015 meeting and was approved by the OPSG. The paper made a number of recommendations in relation to future reports:

- Express assets of IORPs established in each Member State as a percentage of its GDP
- Provide comments on the reasons for changes in funding level for DB IORPs in each country
- For cross border IORPs, identify those which have been established since the coming into effect of the IORP Directive (as opposed to "legacy" cases which were already in existence) and the number of "active sections" within them, and separate out "cross border" assets from "domestic assets"

Automation in Financial Advice

A working party prepared an opinion on the consultation by the Joint Committee on automation in financial advice, which was submitted in March 2016. OPSG agreed that automation in financial advice presents opportunities for consumers and industry, and carries great potential for further growth and development, but may also present some potential risks to consumers and industry. OPSG stressed that as the concept of automated financial advice and its prevalence varies greatly across the EU, it is important to use legally robust definitions to avoid uncertainty and subjective interpretations of when advice is provided. There is a clear difference between the provision of a personalised recommendation to a consumer, which is financial advice, and other services that simply provide information in an interactive way, allowing consumers to make a choice.

OPSG noted that a number of the risks highlighted in the discussion paper are applicable to advice in general and are dealt with under general conduct of business rules. The OPSG acknowledges that the use of automated tools, in general, may not be suitable for all customers, and it is crucial therefore that rules concerning advice and information are technologically neutral, meaning that the rules should not favour one medium (e.g. automated) over another. Given the benefits of the use of automated advice tools, the OPSG recommends that their further development should be encouraged and care should be taken not to stifle innovation through rules that are obstructive or become quickly out-of-date.

Investment in infrastructure

The OPSG received updates from EIOPA and from Thomas Keller, who was concurrently a member of the IRSG, on how investment in infrastructure should be treated under Solvency II. Although this is currently an insurance issue, investment in infrastructure is also a hot topic for IORPs, for whom the duration of liabilities is generally even longer than typical insurance companies.

7. Joint Stakeholder Groups position on the Commission's Report on the operation of the ESAs and the ESFS, in relation to Stakeholder Groups

This is a position paper from the OPSG and IRSG arising from the Report from the Commission on the operation of the ESAs and the ESFS, published in August 2014, in relation to Stakeholder Groups (SGs).

The SGs recognise the work and key role of EIOPA in providing technical advice to the Commission and ensuring supervisory convergence and harmonisation across the EU.

The SGs serve an important role for EIOPA by providing input on consultations and own initiative work based on the collective views of its wide-ranging members. Where necessary the Stakeholder Groups should also challenge EIOPA to ensure the best outcomes for all interested parties. Effective SGs will help and encourage EIOPA to make careful, well informed decisions which are connected to the realities of the users and providers of insurance and pensions.

Below are the SGs' comments on the issues raised in the report (section 7.1) as well as some recommendations to further enhance the visibility and impact of the SGs (section 7.2).

7.1. Comments on the Report

Stakeholder Groups' impact and resources

The report states that *"the impact of Stakeholder Groups has been limited and resources required to set them up and run them are extensive"*. While the SGs believe that their impact can and should be greater, they consider the work they have done to date to be valuable and the costs involved for EIOPA very limited.

On costs, we understand from EIOPA's published information that the cost of running both SGs was €135,000 in 2015 or 0.68% of their total budget. We do not consider this excessive but rather providing good value for money. We note that figure is kept low because costs of travel and accommodation are paid for by those members who can be supported by their companies or organisations. For others, in particular academics and consumer representatives, there are re-imbursements from EIOPA, but these are capped so that in some cases members have to cover additional costs on a personal basis.

The report also states that *"transparency of the work of the stakeholder groups could be strengthened"* which does not seem a fair point as all work related to the SGs, including its meeting documents and minutes, opinions and responses to consultations are all made available at the EIOPA website.

Both SGs have undertaken considerable work and provided valuable, broadly-based and relevant input to EIOPA on a range of insurance and pensions issues by way of consultation responses and own initiative statements. The Stakeholder Group Activity Reports provide overviews of the work carried out by each SG during their term. These can be found on EIOPA's website along with individual opinions which are posted as they are submitted.

The impact of the SGs' work is difficult to measure. On detailed points, ad hoc analysis of the feedback statements provided by EIOPA after each consultation indicates that EIOPA has on a range of points taken on board SG detailed comments. However, there is a feeling from the SGs that when an SG expresses a strong disagreement with or concern about an EIOPA proposal, that while the concern is listened to, the ability to impact EIOPA's direction is limited. This is further strengthened by the fact that there seems to be little awareness of the SGs' role and their opinions outside of EIOPA. In Section

B of this note, the SGs provide some suggestions on how to increase the impact and visibility of their work.

EIOPA's power to investigate breaches or non-implementation of Union law

Article 17 of the EIOPA Regulation indeed empowers EIOPA to investigate breaches or non-compliance with Union law, but so far EIOPA has not made use of this new power. This power is an important mechanism by which EIOPA can ensure supervisory convergence. The report concludes that this is in part due to the governance of EIOPA as the governing body of the ESAs (the Board of Supervisors) is composed of the very persons the ESAs are supposed to supervise: the National Competent Authorities¹. The report suggests that the Commission should further investigate if changes are needed in the founding Regulations to address this concern. This suggestion is supported by the SGs.

Stakeholder Groups' composition

The report notes that concerns have been expressed about the balance of representation on the SGs², although it does not specify in what way the balance has been challenged. The report further states that this imbalance should be improved in the short term and outlines: "Stakeholder groups should be composed in a balanced way, taking into account the opinion of the Ombudsman".

It is difficult, if not impossible, even with two groups of 30, to achieve a perfectly balanced representation of the different interest groups when it is also necessary to achieve a balance in terms of nationality, gender, experience etc. The SGs agree that strong representation on consumer protection is needed but notes that overall, representation in the SGs should generally be commensurate with the topics and issues that the SGs are asked to comment upon. The OPSG specifically notes that there is no provision in the Regulation for the appointment of representatives of employers who sponsor IORPs and recommends that the Regulation is amended to require that a certain number of members represent employers.

The SGs agree that it would be preferable to have staggered appointments rather than new mandates every 2.5 years to provide greater continuity and extending the term to 3 years should also be considered.

Separate groups for Occupational Pensions and Insurance & Reinsurance

The report also suggests that in the medium term consideration should be given to limiting each ESA to a single stakeholder group. This would apply only to EIOPA which presently has two Stakeholder Groups, the OPSG and the IRSG. The SGs are of the view that a single stakeholder group would not have the capacity or breadth of experience and skills – necessary to adequately provide input on the heavy and wide-ranging agenda of both the SGs – or the breadth of expertise to provide appropriate input to EIOPA on insurance and reinsurance as well as pensions. This is recognised in Article 37 of the EIOPA Regulation which sets out different requirements for membership of the two SGs. The SGs strongly support the continuation of separate SGs for these two areas of EIOPA responsibility.

¹ Page 7 of the report

² Page 10 of the report

7.2. Recommendations to further enhance the visibility and impact of the SGs

The SGs believe that the visibility and impact of the SGs could be further enhanced in a number of ways. Some of these can be implemented by the SGs themselves and will be put forward for consideration by the new SGs starting their term in April 2016. Other suggestions require support from EIOPA Board of Supervisors (BoS), the European Parliament, the Council or the Commission.

1) Direct exchanges between SGs and the EIOPA BoS

For example, the BoS could invite representatives from a SG to provide views on a topic to be discussed. This would be especially of value if a decision were to be made where the SG has strong concerns or a view that differs from the proposals made by EIOPA. The SG could also request to attend BoS meetings where issues of particular importance would be discussed. To facilitate this:

- The SGs should be made aware of relevant agenda BoS points well in advance
- The BoS should be advised clearly of the SGs views
- A decision should be made ahead of each BoS meeting if the SG should be invited or to accept a request by the SG to attend

2) Involvement in Parliamentary hearings with the Chair of EIOPA

It would be useful for the SGs to be present and to contribute when the Chair of EIOPA is reporting to ECON, to give their perspective on the issues being discussed. The SGs could also share their opinions and end of term report with the European Parliament.

3) Greater involvement and interaction with the Commission

It would be useful for a representative from the EC to attend SG meetings on a regular basis in order to be aware of the discussions and views. The SGs could also share their opinions and end of term report with the EC. It would be useful for the SGs to also seek at least an annual meeting with the EC to discuss the role and functioning of EIOPA. It would also be helpful for the EC to confirm that it has considered the SGs' opinions when it takes advice from EIOPA and to have a discussion with the SGs where the SG's opinions differ from EIOPA's advice.

4) Selective use of press releases

To increase visibility of the SGs, the SGs will explore the option of issuing a press release when submitting their advice, where this is considered to be of interest to an external audience.

5) Encourage direct input from external parties

Efforts should be taken to publicise the SG email address and for external parties to be encouraged to communicate concerns and issues directly to the SG.

6) Improve ability to assessment of impact of SG

To help assessment of impact, EIOPA should provide an extract from its feedback statements allowing the response to SGs' comments and proposed changes to be easy to assess. Other ways to assess impact and effectiveness should be considered.

8. Suggestions for the future

It is of course inevitable that, in looking back over their mandate, OPSG members can identify certain aspects which might, with the benefit of experience and hindsight, have been addressed differently. The suggestions below, drawn from comments made by OPSG members at the end of the mandate, are made with the objective of making future OPSGs more efficient and better able to present the views of stakeholders to EIOPA and other bodies.

I would first like to record that all members who commented felt that the experience had been a positive one for them personally, both in terms of what they contributed and what they learnt. In particular, many members would not initially have had much knowledge of pensions systems in countries other than their own and had a much better appreciation of the issues at the end of their term. Linked to this was a concern that more should be done, particularly in the early stages of a mandate, to provide information to newly appointed members, whether by way of an EIOPA induction course, presentations by other members of the OPSG or a briefing from members of the outgoing OPSG. Advance reading on current topics (not just slide presentations) could be circulated or identified well in advance of the meeting, which would enable a larger proportion of the time available at the meetings to be used for discussion, rather than detailed presentations from EIOPA.

Much of the work in preparing responses or own initiative papers is done outside the formal meetings by sub groups or working parties, either by teleconference, email or additional meetings. The subgroups were established with formal mandates and workplans but there is also a benefit in greater flexibility i.e. the appointment of an ad-hoc working group to draft a response or an own initiative paper on a particular topic. Members from industry associations are usually best placed to commit the additional time, and bear any additional expenses, in relation to subgroups than those drawn from less well-resourced bodies, but it is difficult to see how this imbalance can be addressed given budgetary constraints.

It has also been suggested that all own initiative reports should clearly identify the target audience (which may be wider than EIOPA) and the objective in preparing the report, with a clear timescale, before the project commences.

One of the subgroups established by the OPSG was on consumer protection issues, and this produced a number of excellent documents during the course of the mandate. During the course of our work on various issues, it became clear that, to varying degrees, there was a consumer protection aspect to almost all topics and we recommend that this be borne in mind by future OPSGs in deciding on how to structure their work. In this context, there are a number of suggestions for the future in section 6.4.

Finally, there was some frustration that the process whereby one OPSG mandate finishes and a new OPSG is formed can lead to certain issues being missed during the changeover period. For example, the OPSG was unable to complete a response to the EIOPA consultation on a single market for PPPs before the expiry of its mandate, but the deadline for responses was before the first meeting of the incoming OPSG. A transition process whereby the OPSG continued in existence and was able to address issues arising during that period should be considered.