



EIOPA-BoS-14/029

**Towards an EU-single market for  
personal pensions  
An EIOPA Preliminary Report to COM**

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## 1. Introduction

### 1.1. Rationale for working towards a single EU market for personal pensions

#### ➤ COM perspective

1. In the broader context of efforts to develop private funded pensions, COM decided to start a new project to develop the Single Market for Personal Pensions.
2. The COM initiative is in line with the overarching principles of action established in the 2011 White Paper on Pensions<sup>1</sup> relating to the development of complementary private retirement savings in order to deal with the untapped potential to realise further efficiency gains through scale economies, risk diversification and innovation. The objective to develop complementary personal retirement savings is also consistent with the overarching objective stated in the COM White Paper to develop multi pillar pensions systems in EU MS, and especially in countries where occupational pensions (2<sup>nd</sup> pillar) are not well developed.
3. At the Public event organised by EIOPA in June 2013, the COM representative informed attendants that COM's main rationale for launching the initiative on personal pensions was to:
  - contribute to diminishing the obstacles to labour mobility in the EU (Although still relatively low, cross-border labour mobility has increased from 2.1% of the EU labour force in 2005 to 3.1% in 2012. There are around 7.6 million EU citizens economically active in another EU country. Looking forward, cross-border labour mobility is likely to gain further in significance considering that it is an important macroeconomic adjustment factor particularly within the euro area)
  - adapt the regulatory framework to the general shift towards individual responsibility for securing retirement income (DB to DC)
  - address market failures - principal agent problem and information inefficiencies; accordingly ensure that governance, risk management and disclosure requirements are appropriately managed/dealt with in all pensions schemes throughout the EU.
  - help to address the low replacement rates (PPPs could be a way of enhancing earnings on top of the 1<sup>st</sup> and 2<sup>nd</sup> pillars payments and in that way help to improve the adequacy<sup>2</sup> and sustainability<sup>3</sup> of pensions in EU MS).
4. In this context, we also note that personal pensions may be important in the future for addressing the "pensions gap". The "Pension gap" is the difference between what pension provision people need for an adequate standard of living in retirement and the pension amount they can currently expect to receive. Personal pensions can play an important role in filling the gap and thus raising the adequacy

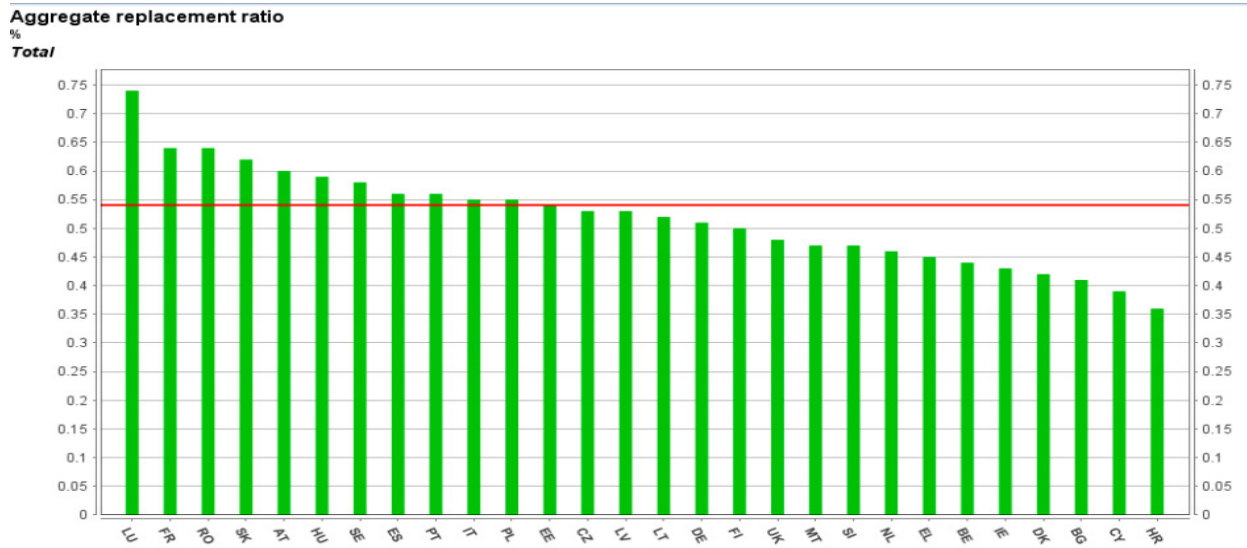
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<sup>1</sup> COM "White Paper: An Agenda for Adequate, Safe and Sustainable Pensions" available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0055:FIN:EN:PDF>

<sup>2</sup> Adequacy of pensions is measured by their ability to prevent poverty, the degree to which they replace income before retirement and how they compare to the average incomes of people below pensionable age. Source: Adequacy Report Available at [http://ec.europa.eu/europe2020/pdf/themes/04\\_pensions.pdf](http://ec.europa.eu/europe2020/pdf/themes/04_pensions.pdf)

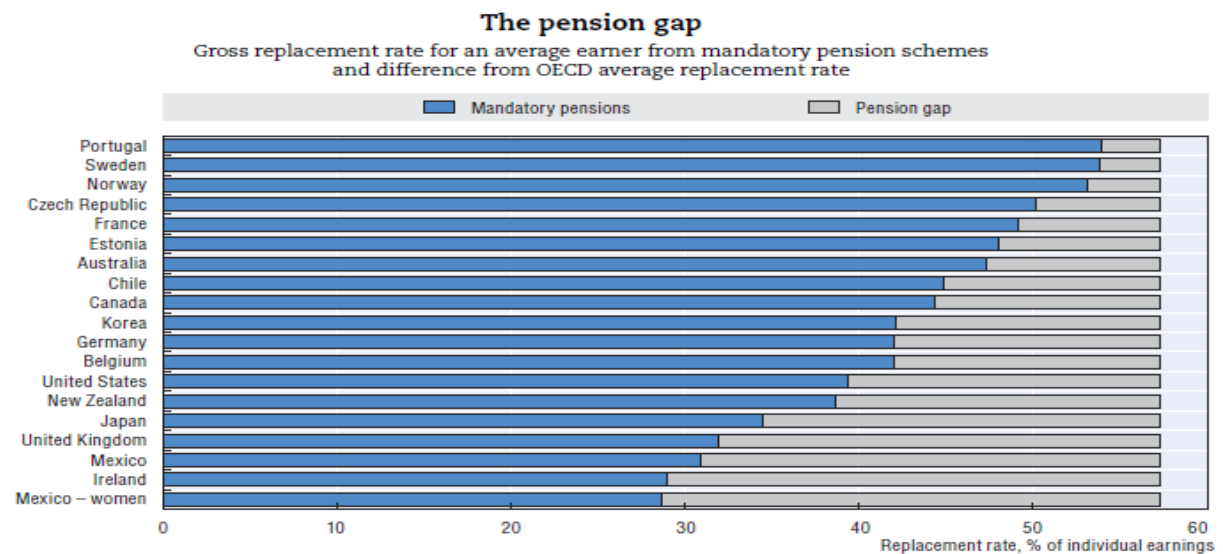
<sup>3</sup> Sustainability relates to the fiscal and financial balance between revenues and liabilities (and ratio of workers/contributors to pensioners/beneficiaries) in pension schemes. Source: 2012 Ageing Report [http://ec.europa.eu/economy\\_finance/publications/european\\_economy/2012/pdf/ee-2012-2\\_en.pdf](http://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-2_en.pdf)

of pensions. The graphs below<sup>4</sup>, roughly illustrates the pension gap in EU MS and selected third countries:



Source: Eurostat<sup>5</sup>

Commentary: The indicator is defined as the ratio of the median individual gross pensions of the 65-74 age category relative to median individual gross earnings of the 50-59 age category, excluding other social benefits. The pension gap is the difference between the individual country replacement rate and the EU 27 average (red line).



2: OECD pension models; OECD Earnings Distribution Database.

StatLink <http://dx.doi.org/10.1787/888932371196>

Source: OECD<sup>6</sup>

<sup>4</sup> Available at at OECD(2011), *Pensions at a Glance 2011: Retirement-Income Systems in OECD and G20 Countries* (<http://www.oecd.org/pensions/pensionsataglance.htm>)<http://www.oecd.org/pensions/pensionsataglance.htm>)

<sup>5</sup> <http://epp.eurostat.ec.europa.eu/tgm/graph.do?pcode=tsdde310&language=en>

<sup>6</sup> Source: OECD(2011), *Pensions at a Glance 2011: Retirement-Income Systems in OECD and G20 Countries* (<http://www.oecd.org/pensions/pensionsataglance.htm>);

## ➤ **EIOPA Perspective**

5. EIOPA work is driven by the following overarching principles:
- In general, achieving mass of scale on the one hand and competition on the other hand are both key preconditions to increase returns (incl. by decreasing costs);
  - Trust in products is of imminent importance;
  - Focus on transparency; better information leads to better decisions. Giving projections and informing about costs helps PPP holders (i.e. consumers) in their decisionmaking.

### **1.2. Background, structure and aim of this paper**

#### ➤ **COM requests**

6. In July 2012 the European Commission (COM) requested the European Insurance and Occupational Pensions Authority (EIOPA) to provide technical advice on the prudential regulations and consumer protection measures needed to create a single market for personal pensions.<sup>7</sup>The COM further specified that EIOPA, in doing so, should consider at least two approaches:
- Developing common rules to enable cross-border activity in the field of PPPs (similar to the IORP Directive); or
  - Developing a 28th regime<sup>8</sup>
7. Under this initiative, COM expects that the main issues to be dealt with at the early stage of the work should **focus** on:
- Identification of common features of personal pensions
  - Establishing the regulatory and disclosure issues with regard to personal pensions.
8. Furthermore, in preparing its input, EIOPA explored practical ways forward for achieving economic integration through scale economies, risk diversification and innovation (note a DNB study revealing that spreading fixed costs over larger pool of members could save 25% administration costs<sup>9</sup>).
9. COM is aware that any future proposals will need to be accompanied by micro-prudential regulation to ensure member protection.
10. EIOPA is expected to include in its input considerations as to best regulatory approach for ensuring pension funds act in the best interests of their members. COM is convinced that pension funds<sup>10</sup> need to be operated with high professionalism and skill. Research suggests that good governance is associated with increased returns. Better governed pension funds outperformed poorly governed funds by 2.4 per cent per annum (Capelle et al, 2008). Other studies have confirmed this link (Ambachtsheer et al, 2006; Ambachtsheer et al, 2007;

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<sup>7</sup>[http://ec.europa.eu/internal\\_market/pensions/docs/calls/072012\\_call\\_en.pdf](http://ec.europa.eu/internal_market/pensions/docs/calls/072012_call_en.pdf)

<sup>8</sup> For the purpose of this paper the „28th regime“ is referred to as „**2nd regime**“.

<sup>9</sup> Is there an optimal pension fund size? A scale-economy analysis of administrative and investment costs, DNB Working paper No. 376, available at [http://www.dnb.nl/en/binaries/Working%20Paper%20376\\_tcm47-289626.pdf](http://www.dnb.nl/en/binaries/Working%20Paper%20376_tcm47-289626.pdf)

<sup>10</sup> The term „pension fund“ used in this paragraph is to be interpreted as PPP provider.

Clark et al, 2007; and Clark and Urwin, 2007).<sup>11</sup> Furthermore, COM is keen on stimulating competition as another method of reducing costs.

11.COM is convinced that better informed individuals are likely to make better decisions. Questions such as "*Should I join this scheme? Am I saving enough? Which multifund should I choose?*" need to be answered using clear, simple and relevant information to be provided throughout the contractual relationship with the personal pension provider.

12.This is why COM believes that information on accruals, returns, guarantees, risks and costs should be available to any PPP holder.

➤ **EIOPA – responding to COM requests**

13.In the beginning of 2013 EIOPA established the Task Force on Personal Pensions (TFPP) and decided to phase its work as follows:<sup>12</sup>

- Stage 1: Draft a Discussion paper in order to engage stakeholders at an early stage in the project by gathering their views on a wide range of issues relating to personal pensions
- Stage 2: Draft a Preliminary report outlining issues and options in order to receive a more specific request from COM
- Stage 3: Draft a Final Advice to COM

14.On 16 May 2013 EIOPA published the Discussion paper on a possible EU-single market for personal pension products. During the three months public consultation that ended on 16 August 2013 EIOPA received 33 responses. Furthermore, on 11 June 2013 EIOPA organised a public event on personal pensions in order to provide representatives of industry, consumers, supervisors and academia a forum for exchanging views on an EU single market for personal pension products.

15.The aim of this report is to provide an overview of issues and options for creating a single EU market for personal pensions in order to enable COM to specify in more details what areas should be further developed by EIOPA in its Final Advice.

16.The report is structured in 8 Chapters each of them containing subsections providing the following headings:

- Background
- Stakeholder views<sup>13</sup>
- EIOPA view
- Main findings.

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<sup>11</sup> Ambachtsheer K., Capelle R., Lum H. (2006), "Pension Fund Governance Today: Strengths, Weaknesses, and Opportunities for Improvement", Financial Analysts Journal.

Ambachtsheer, K., Capelle, R. and Lum, H. (2007), "The State of Global Pension Funds Governance Today: Board Competency Still a Problem", Rotman International Centre for Pension Management.

Clark, G. L., Caerlewy-Smith, E. and Marshall J. C. (2007), "The Consistency of UK Pension Fund Trustee Decision Making", Journal of Pension Economics and Finance, Volume 6 (1).

Clark, G. L. and Urwin, R. (2007), "Best-Practice Investment Management: Lessons for Asset Owners", Oxford-Watson Wyatt Project on Governance.

Capelle, R., Lum, H. and Ambachtsheer, K. (2008), "The Pension Governance Deficit: Still with Us". Rotman International Journal of Pension Management, Vol. 1, No. 1, 2008

<sup>12</sup><https://eiopa.europa.eu/about-eiopa/organisation/working-groups/task-forces/task-force-on-personal-pensions/index.html>

<sup>13</sup> For a comprehensive list of the inputs and their assessment by EIOPA, see <https://eiopa.europa.eu/consultations/consultation-papers/2013-closed-consultations/may-2013/discussion-paper-on-a-possible-eu-single-market-for-personal-pension-products/index.html>

17. EIOPA, in line with the request from the COM, will provide advice on what legislative changes are needed in the areas of prudential law and the protection of personal pension plan holders (PPP holders) in order to create a single market for PPPs.
18. This report will be made available to the European Commission in early 2014. The Commission is then expected to issue a detailed Call for Advice to EIOPA, with a response deadline set for 18 months after delivery of a detailed call for advice.

### **1.3. Summary of consultation**

19. EIOPA would like to thank all those who participated in the public consultation. All the consultation responses have been carefully read, considered and whenever possible taken into account in drafting of this paper.
20. The Occupational Pensions Stakeholder Group of EIOPA has responded, its opinion is on the EIOPA website at  
<https://eiopa.europa.eu/consultations/consultation-papers/2013-closed-consultations/may-2013/discussion-paper-on-a-possible-eu-single-market-for-personal-pension-products/index.html>.
21. A number of respondents raised issues which either go beyond EIOPA's remit or which EIOPA was not discussing in its paper. Furthermore, the report does not aim at providing a comprehensive summary of inputs but rather a synthetic overview of the most important issues relevant to the scope of the EIOPA work.
22. Reasoned feedback by EIOPA on the responses to the consultation is being published simultaneously with this report and is available via the EIOPA website. The responses themselves have already been published. The 3 respondents who asked for their response to be confidential were excluded from publication.

### **1.4. Key input from commenting stakeholders**

23. The key outcome of the stakeholders' contributions received during the summer consultation period is the overarching conclusion that a single market for PPPs is advantageous for consumers, providers, and for the broader EU economy.
24. Stakeholders are aware of the advantages and the incentives arising from a single market for PPPs.
  - Beneficiaries:
    - They have the opportunity to participate in different schemes (or a new EU regime) across the EU according to their preferences and needs, in particular with respect to investment strategies. This aspect is quite interesting for consumers from smaller member state markets who would get access to a wider range of PPPs.
    - Transparency and consumer protection may be improved.
    - The cost efficiency is expected to be enhanced.
    - The transferability of accumulated capital is facilitated.
    - Portability could enhance the potential for job mobility of employees.
    - A single market may support the development of pension provisions and also stimulate product innovations ensuring more adequate pensions in the future and more choice. Thus, competition would increase.



- Moreover, a single market could contribute to making European citizens aware of the importance of individual retirement provision and the necessity to organise this provision in time.
- A single market may allow for an easier assessment of tax issues related to the PPP and, as a consequence, greater harmonisation.
- Providers
  - Pension providers have the opportunity to achieve economies of scale, at least in the case of standardised products which allow for successful cross-border selling.
  - More generally, if the single market is based on standardised products which can be implemented at moderate expenses providers are willing to complement their range of products and join the single market.
  - Standardised products would help approaching a level playing field for providers of PPPs.
- Overall EU economy:
  - In a single market, PPPs could become a main driver for long-term investments and thereby contribute to higher growth and more employment if the provider selects investments in areas like transportation and energy or small and medium enterprises.
  - The labour market is improved once job mobility is facilitated

25. However, most stakeholders seem to be satisfied with the present situation within the EU which also realises/provides for a single market. When a single market for PPPs is still to be created or improved the potential benefits have to be checked against the costs first in order to avoid financial disadvantages for the consumers.

26. More specifically, a significant number of the commenting stakeholders gave the opinion that it is neither feasible nor necessary to create or improve a single market for PPPs. There were various lines of reasoning. The main arguments were:

- a) The existing passport system suffices.
- b) Regarding the underlying investment vehicles of PPPs (insurance and investment funds), a single market already exists. Actually, some stakeholders even believe that a single market for PPPs already exists.
- c) In light of the market diversity and the large variety of products, a fully-fledged single market can hardly be achieved. In addition, pension products are highly specialised on the national level.
- d) The target group is too small. Consumers are not really interested in a market which is larger than that of their home state.
- e) The advantages of a more developed single market are low compared with the effort which is required to establish it and the suspected regulatory burdens.
- f) Changes related to the creation or improvement of a single market will cause additional costs which the providers of PPPs would charge to PPP holders.
- g) A European expert group, mandated by the European Commission, is considering whether differences in insurance contract law pose obstacles to cross-border trade in insurance products and, if so, in which specific insurance areas, including certain life insurance products that could serve as private pensions, this is the case. Some stakeholders suggest waiting for the findings of that expert group first.

27. A few stakeholders explicitly state that a single market is needed. The rationale is the increasing mobility of employees due to expanding European business. Conversely, they expect that a uniform and flexible framework on pensions could enhance labour mobility within the European Union. However, this flexibility must not disadvantage those employees who do not move across borders.

### 1.5. Relation to DG SANCO work

28. EIOPA, in line with the request from the COM, will provide advice on what **legislative changes** are needed in the areas of prudential law and the protection of personal pension plan holders (**PPP holders**) in order to create a single market for PPPs.

29. EIOPA work on this preliminary report was conducted in parallel with a separate initiative from the COM<sup>14</sup> focusing on improving consumer protection in the area of third-pillar retirement products through **voluntary codes** coordinated at the EU level and possibly an **EU certification scheme**.

30. Throughout the consultation period of the COM paper consumers, shareholders, and associations representing civil society indicated they would generally be in favour of initiatives with respect to third pillar retirement products. Preliminary conclusions COM indicate that the predominant view across the financial industry is that any EU action should take into account and respect the national features of pensions markets. Nevertheless, some industry contributions stressed the need for help addressing the current fragmentation of the legal framework on private pensions while taking into account existing EU legislation<sup>15</sup> (although not covering third-pillar pension funds as such). COM strongly underlines the preliminary nature of these conclusions which should not in any way pre-empt the contents of its upcoming feedback document to the 2013 consultation.

31. The COM also informed that it has received multiple inputs advising/requesting consistency of any PPP initiative with the outcomes of the current inter-institutional negotiations on the Directive on "Packaged Retail Investment Products" (PRIPs) (covering aspects of transparency); the outcome of the review of the Directive on "Markets in Financial Instruments" (MiFID2); and the review of the Insurance Mediation Directive (covering sales practices).

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<sup>14</sup> Commission Staff Working Document - Consumer protection in third-pillar retirement products (consultative document) available at:

[http://ec.europa.eu/dgs/health\\_consumer/dgs\\_consultations/ca/docs/swd\\_consumer\\_protection\\_thirds\\_pillar\\_pension\\_en.pdf](http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_thirds_pillar_pension_en.pdf)

<sup>15</sup> Directive on "Packaged Retail Investment Products" (PRIPs), Directive on "Undertakings for Collective Investment in Transferable Securities" (UCITS), review of the Directive "Markets in Financial Instruments" (MiFID2), review of the Insurance Mediation Directive (IMD2), review of the Directive "Institutions for Occupational Retirement Provisions" (IORP)

## 2. PPPs in the EU – main characteristics and establishing a definition

### 2.1. Background

32. The future scope of a directive/regulation needs to be clear and this is the rationale for EIOPA analysis of the main characteristics and definition of PPPs.

33. In today's discussions, a variety of terms are used when speaking about pensions. One of them is using references to "pillars", another is about categorisation of schemes into public vs private and, personal vs occupational.

34. The pillar structure was explained in the OECD document "Maintaining prosperity in an ageing society". The first pillar notion covers the statutory, publicly managed, mostly defined benefit pension schemes while the second pillar includes all privately managed pension schemes provided in an occupational context. The third pillar consists of personal private pension schemes.<sup>16</sup>

35. OECD defines personal private pension schemes as follows:

*"Access to these plans does not have to be linked to an employment relationship. The plans are established and administered directly by a pension fund or a financial institution acting as pension provider without any intervention of employers. Individuals independently purchase and select material aspects of the arrangements. The employer may nonetheless make contributions to personal pension plans. Some personal plans may have restricted membership.*

- *Mandatory personal pension plans: these are personal plans that individuals must join or which are eligible to receive mandatory pension contributions. Individuals may be required to make pension contributions to a pension plan of their choice – normally within a certain range of choices – or to a specific pension plan.*
- *Voluntary personal pension plans: participation in these plans is voluntary for individuals. By law individuals are not obliged to participate in a pension plan. They are not required to make pension contributions to a pension plan. Voluntary personal plans include those plans that individuals must join if they choose to replace part of their social security benefits with those from personal pension plans."<sup>17</sup>*

36. At the time of drafting this report, EIOPA notes that to date there are no official and/or legal EU definitions of personal pensions.

37. For the purposes of previous work, EIOPA used the following definition of PPPs: "PPP - a pension plan that hosts members only on an individual basis."

38. At the same time, COM, in a 2012 questionnaire sent to MS and targeted stakeholders, used the following definition of third pillar products:

*"Any type of private retirement product subscribed to by consumers on an individual basis (as opposed to occupational), whether voluntary or mandatory.*

### 2.2. Stakeholders' view

39. Following analysis of inputs received during the public consultation period, EIOPA notes that the OECD definition was preferred.

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<sup>16</sup>[http://ec.europa.eu/dgs/health\\_consumer/dgs\\_consultations/ca/docs/swd\\_consumer\\_protection\\_thirds\\_pillar\\_pensions\\_en.pdf](http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_thirds_pillar_pensions_en.pdf)

<sup>17</sup><http://www.oecd.org/finance/private-pensions/38356329.pdf>

40. Most commentators emphasise the individual character of PPPs. The individual nature of PPP is understood as a possibility; “individuals independently purchase and select material aspects of the arrangements”, “individual initiative in contacting a pension provider, negotiation on the products offered, and free personal choice of products”, “it is a contract (any definition should impose that the legal relation between saver and provider is on a contractual basis whose subject is a pension product sold to the end-users) defining clearly the obligations of both parties;”.
41. The EIOPA Occupational Pensions Stakeholder Group (OPSG) noted in its opinion that the OECD definition is comprehensive, and is useful insofar as it does not exclude but rather recognises, the concept of employer involvement or sponsorship. The OPSG recommended that the definition of mandatory PPS could be widened to account for “quasi-mandatory” systems where for example the mandatory arrangement is in place unless the individual then opts out for an alternative arrangement.
42. The Financial Services User Group noted in its input that the definition of PPPs should take into consideration three dominant aspects:
- it is a product (any definition should clearly recognise, that the subject of any relation between the saver and provider is based on a product basis - vehicle);
  - it is a contract (any definition should impose that the legal relation between saver and provider is on a contractual basis whose subject is a pension product SOLD to the end-users) defining clearly the obligations of both parties;
  - it has a clear primary objective or purpose (any definition should recognise, that the main socio-economic objective or purpose of buying, holding and financing such product by a consumer and managing the savings by financial provider is to contribute to secure adequate stream of income during the retirement).

### **2.3. EIOPA view**

#### Main Characteristics of PPPs

43. The EIOPA Database of Pension Plans/Products, hereinafter named “Database”, shows that there is a large variety of pension products in the EU<sup>18</sup>. On the basis of information available and experiences of EIOPA members it is possible to conclude that the large majority of **PPPs possess the following characteristics that separate them from other pension products:**<sup>19</sup>
- Individual membership – Employers do not play a role in establishing or sponsoring a PPP but may pay contributions to an individual PPP on behalf, or for the benefit, of the employee. Self-employed persons are often seen as potential PPP members.
  - Payment of contributions to an individual account - PPPs are financed by contributions paid to an individual account by product holders themselves or by third parties on their behalf.
  - PPPs have an explicit retirement objective - set out in income tax law or other national legal instruments (usually unrelated to Labour Law);

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<sup>18</sup> For detailed overview please refer to annex 1 – also former annex 1 in EIOPA Discussion paper

<sup>19</sup> Furthermore, the majority of PPPs offer multiple investment options.

- The early withdrawal of accumulated capital is limited or penalised;
  - Providers are private entities;
  - All PPPs are funded.
  - Restrictions may apply as to use of accumulated capital (i.e. type of benefits available for pay-out phase);
44. While information already available to EIOPA has significantly facilitated the work of establishing the main differences between PPPs and other pension products, a “grey area” of borderline cases has also been revealed. Section 3 of this report deals in more detail with these particular arrangements.
45. A significant part of delivering on the COM request for “identification of common features of personal pensions” has also been the identification of the **main characteristics that set PPPs apart from other financial products**.
46. EIOPA’s starting point was the fact that a PPP holder entrusts the PPP provider of choice with capital during a period that may cover decades. During this period the PPP holder does not have free access to this capital although he can change the provider.
47. The same fact that a PPP holder entrusts capital to his PPP provider over a prolonged period of time (unless the former is willing to suffer the penalties that are inherent to e.g. early withdrawal), makes the PPP holder dependent upon a PPP provider and relatively vulnerable to information asymmetries (as the provider would be a financial services provider while the beneficiary will most probably not be a *homo economicus*).
48. In some MS, particularly in the CEE<sup>20</sup> ones, 1st pillar bis products that share all PPPs characteristics<sup>21</sup> are an essential part of the national pension framework and the participation of large portions of the population in these products may be an important objective on the national pension policy. This characteristic distinguishes 1<sup>st</sup> pillar bis products from other financial products, where such a public interest and implicit state support in their development is not so evident.
49. Further to these beneficiary specific considerations, EIOPA has also identified the following characteristics that are specific to PPPs which separate them from other financial products:
- Unlike other financial products, the specific aim of PPPs is to provide an income to PPP holders after retirement;
  - PPPs provide capital accumulation from the mid to long term until the (expected) retirement age and may also cover biometric risks;
  - During the accumulation phase premiums and contributions are deferred to a private entity, the PPP provider;
  - During the accumulation phase the possibility for early withdrawal of the accumulated capital is limited and often sanctioned;
  - Upon retirement the legislation of the MS restricts the ways in which the accumulated PPP capital can be used (e.g. (lifelong) annuitisation, programmed withdrawal, (partial) lump sums);

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<sup>20</sup> Central and Eastern Europe (CEE)

<sup>21</sup> For more detailed discussion of 1st pillar bis products see the next section.

- PPPs are funded.

### Definition for existing PPPs

50. EIOPA acknowledges that a definition of PPPs is needed to serve a regulatory intent/purpose. A definition established for use in classification of existing pension plans<sup>22</sup> (such as an OECD definition or definition used by EIOPA in its Database) may differ from a definition used to define scope of a EU body of law.
51. In the latter case, a further distinction is needed between a definition to be used for a EU directive (aimed to apply to a wide range of plans across MS); and a definition to be used in order to define a 2<sup>nd</sup> regime, that would probably exclude many PPPs at national level, and define a more specific set of characteristics that would be needed for a PPP to comply with the second regime (and therefore qualify for the EU passport).
52. As far as a definition to be used for a EU Directive is concerned, EIOPA underlines that the current EU PPP landscape is highly diverse. Every MS has its own specific rules with regard to PPP design and characteristics. It would be arduous to come up with a definition that comprises all of the existing, national PPP characteristics<sup>23</sup>. The challenge therefore is to introduce a definition that is of a sufficiently high level nature so that it covers all existing PPPs EU wide.
53. As the characteristics of PPPs are for the most part determined by widely differing national tax and other country specific rules, and it does not seem likely that these rules can be harmonised in the near to medium future, EIOPA believes an EU wide definition (in order to capture all existing and future PPPs) should refer to national definitions of PPPs.
54. As the definitions mentioned above have not been used for regulatory purposes and as they may not be sufficient to cover all EU PPPs, EIOPA has also analysed the definition used by the EU Council in the Proposal for a Regulation on key information documents for packaged retail investment<sup>24</sup>, which stands as "*Products which under national law are recognised as having the primary purpose of providing the investor an income in retirement and which entitles the member to certain benefits.*"
55. While this proposal could serve in today's environment as a good starting point for defining what financial products qualify as PPPs, EIOPA believes further regulatory work specifically aimed at the PPP request is required so that this definition is further improved by adding the following elements/amendments:
- a) Replace the term 'investor' with a more appropriate term;
  - b) A PPP must be a funded product;
  - c) A PPP is based upon a contract between a provider and an individual (this does not necessarily exclude products where an employer also makes contributions into the product);

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<sup>22</sup> i.e. for defining a taxonomy with the intent of classifying the existing plans as occupational or personal for descriptive purposes. For instance, this is the approach taken by the OECD and by the EIOPA Database

<sup>23</sup> One example of difficulty is the MS treatment of some personal pension schemes which due to national legislative matters are no longer able to accept new members.

<sup>24</sup> Document 11430/13 of 24 June 2013, <http://register.consilium.europa.eu/pdf/en/13/st11/st11430.en13.pdf>

- d) The options for early withdrawal and surrender are limited/non-existent<sup>25</sup>;
- e) In some countries, the pay-out phase is also relevant in establishing whether it is a PPP.

56. These proposed elements are also supported by commentators to consultation of April 2013 which indicated that the following requirements need to be met in order to have a personal pensions product: "the provision of life-long regular benefits (payment of lump-sum included), the fixation of capital requirements against the risk of providers' insolvency; the restriction of access to the capital only for retirement purposes; and the extension of the benefits to cases such as disability or income provision to survivors."

57. Moreover, EIOPA believes that in any future PPP-related initiative it should be made clear that public pension plans (1st pillar) and occupational pension plans (2nd pillar) are explicitly excluded from the definition of PPP.

#### Definition for PPPs under second regime

58. As mentioned above (see paragraph 51), EIOPA analysis and discussions regarding the best way of defining PPPs, revealed that there may also be a case for a specific definition to be used in the context of a 2nd regime. It should include *inter alia* the following elements:

- a) A PPP is based on a contract or agreement<sup>26</sup> between an individual and a financial institution
- b) The PPP has an explicit retirement objective, although it may be difficult to define this objective at EU level given interlinks with national tax law requirements. EIOPA notes that for 2<sup>nd</sup> regime purposes, future work will be needed in order to establish a clear understanding of this concept.
- c) The PPP is financed by contributions paid by the individual itself or any other third party (legal/natural person) on behalf of that individual.<sup>27</sup>
- d) PPP providers need to be regulated by an existing EU body of prudential law or they must meet EU wide requirements provided by a 2<sup>nd</sup> regime in order to be able to provide the products on a cross border basis.

59. EIOPA acknowledges that this definition is quite wide and may pose challenges in terms of its compatibility with some of the so called "borderline cases" and that further refining may be needed to better focus it. In this context we note that it is not just the 2nd regime definition that would need to be met by a product in order to qualify for a 2nd regime label. The product would also need to comply with all the different rules discussed in section 7 (e.g. life cycling, transition from accumulation to decumulation phase, transparency, etc.).

60. Furthermore, EIOPA also acknowledges the point made by commentators to the COM discussion paper of April 2013, regarding potential benefits of aligning the terminology with other existing legislation (such as the key investor information document" (KIID) contained in the Directive on "Undertakings for Collective Investment in Transferable Securities" (UCITS) and the key information document

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<sup>25</sup> Please also EIOPA proposals are also supported by views noted in section 4.2.1. of COM Summary of Responses to Public consultation on 3<sup>rd</sup> pillar retirement products.

<sup>26</sup> The term "agreement" is to reflect situations where a formal contract between individual and financial institution is not always used for the establishment of a PPP (please see UK practice, for example).

<sup>27</sup> Note, current plans labelled at MS level as occupational pensions (i.e. IORP Directive remit) are excluded.

(KID) of PRIPs, i.e. potential ways to contribute to improving consumer understanding of complex financial products while at the same time enhancing cross-border comparability of products.

**Main findings:**

61. Even though the pensions landscape is diverse in EU MS, EIOPA identified several features that are common to most of the PPP products available today. EIOPA notes that PPPs are distinguishable from other financial products by their specific retirement objective. Any new legislative initiative should include a clear definition of PPPs based on the features presented in the EIOPA view section above.
62. EIOPA acknowledges that an EU legislative initiative should include a definition of PPPs in order to define its scope. The width of the definition is expected to vary according to the kind of legislation to be introduced at EU level<sup>28</sup> (Directive or Regulation).
63. EIOPA acknowledges that establishing a definition that would include the 2<sup>nd</sup> regime, as requested by some stakeholders, while at the same time covering currently existing PPPs, could be highly challenging. Depending on the future scope of COM work, the PPP definition should vary.
64. EIOPA stands ready to further contribute to COM work by building on the proposals made above.

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<sup>28</sup> As stated in EIOPA analysis part, it is expected that a definition to be used for a EU directive would have a wider scope, aiming to be applied to a wide range of plans across member states; a definition to be used in order to define a 2<sup>nd</sup> regime could be narrower, and would probably exclude many PPPs at national level, and define a more specific set of characteristics that would be needed for a PPP to comply with the second regime and therefore qualify for the EU passport.



### 3. PPPs in the EU – The borderline cases

#### 3.1. Background

65. In its analysis, EIOPA has taken particular care in mapping existing pensions arrangements that are already in place and which either share some commonalities with PPPs or due to other national circumstances (for ex. mandatory nature) are not considered to be personal pension schemes. These arrangements are referred to as "borderline cases".
66. The 2013 Oxera report "Study on the position of savers in private pension products"<sup>29</sup> distinguishes between personal pensions and employer-arranged pensions. "Employer-arranged pensions" means that *"the employer sets up the pension scheme for the benefit of its employees; the employer may contribute to the scheme, but not necessarily. From the viewpoint of the consumer, the pension scheme is something associated with the employer, and not a generic scheme to which the employer simply channels employee contributions;"* EIOPA notes that this product category broadly overlaps with "group pensions" discussed below.
67. This section provides detailed information as to borderline cases currently available in UK; DE; IT; and SE and CEE Member States, respectively. This analysis is not exhaustive and EIOPA recognises that in the EU, there may be a variety of other products that may be considered as borderline cases. In the Annex 4, a list of plans that at national level may be used as personal and occupational are listed as a reference for further analysis.

#### Group pensions/contracts

68. A quick analysis of products included in the EIOPA Database shows that in many Member States there are products that are sold as occupational and personal at the same time. A list of these products is included in Annex 3. Some of them are discussed in the following paragraphs.
69. In several MS financial product providers offer retirement savings products that could perhaps best be described as group personal pensions/contracts<sup>30</sup> (GPs). The common characteristics of these products are:
- a) The employer and/or trade union representatives select the provider of the GP; or
  - b) The introduction of a GP scheme in a company may be the result of negotiations between the employer and employee representatives;
  - c) All employees have the opportunity to join the GP scheme that is offered;
  - d) Once in the scheme, the employee cannot change or vary the terms and type of service offered without the consent of the employer.
  - e) The contract is usually concluded between the employee and the provider; in some cases, the contract may be between employer and provider<sup>31</sup>.

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<sup>29</sup> Available at [http://ec.europa.eu/internal\\_market/finservices-retail/docs/fsug/papers/oxera-private-pensions-study\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/papers/oxera-private-pensions-study_en.pdf); prepared for the DG Internal Market and Services of the European Commission and the Financial Services User Group

<sup>30</sup> E.g. United Kingdom, Italy, Czech Republic and Belgium

<sup>31</sup> E. g., both models may be found in Germany.

- f) The employer may contribute to the GP of his employees, but is not usually obliged to do so.

*In the United Kingdom (Group Personal Pensions):*

70. In the UK, group personal pensions (GPPs) came into life in the 1970's. It is the employer's choice whether they set up an occupational pensions fund or engage with an insurer, asset manager or bank in order to establish the GPP.
71. There is evidence that more and more employers are choosing to offer pensions via contract-based schemes - GPPs. This is the method used by many employers as a way of complying with the automatic enrolment duties being phased in under the Pensions Act 2008.
72. Under automatic enrolment, employers have new duties to automatically enrol their workforce, beginning on their 'staging date' - depending on the size of the employer - into a qualifying pension plan. The fulfilment of these duties requires the employer to assess their entire workforce in the UK by age and earnings, to establish into which category each individual falls.
73. In order to comply with the new duties, a scheme must meet certain minimum criteria. Qualifying schemes need to be open to new joiners and allow them to achieve active membership without the worker being required to express any choice. A DC (trust-based or contract-based) scheme must provide a minimum contribution in order to be a qualifying scheme.
74. The qualifying existing pension schemes will need some degree of change; common areas to review include eligibility, joining processes, benefit or contribution structure, definition of pensionable earnings and any upper age limit on pension provision.
75. An individual who is automatically enrolled can choose to 'opt out' and stop contributing. Employers are required to assess their workforce for re-enrolment every subsequent three years from their staging date.
76. The total minimum contribution for DC qualifying schemes is currently 2% of qualifying earnings, split between employer and employee. This will rise to 5% and 8% in 2017 and 2018 respectively.
77. Work-based personal pensions have become a popular choice for many employers. The employer chooses the provider, default fund and other funds available to the employee. The employer or their advisers may also negotiate preferential terms and conditions with the provider. Individuals may opt-out from that product but then they lose out on any employer contribution i.e. the employer is only obliged to provide a scheme.
78. This type of personal pensions has additional characteristics similar to occupational pensions. The UK regulators share the regulation of work-based personal pensions, the two regulators (TPR and FCA) having responsibility for different aspects.
79. Under UK legislation, work-based personal pensions are from a structural perspective almost identical to personal pensions (normally a contract between individual and provider). Although the employer selects the provider and a default fund, employees normally have options in choosing their fund (that the employer has chosen). It is also the employee's responsibility to choose how they take a retirement income e.g. through an annuity (which does not have to be taken with their existing pension provider) or income drawdown; the employer has no official role to play in the de-cumulating decision.
80. It makes sense to include GPPs in SII where provided by insurers. Nevertheless, there are some GPPs provided by asset managers and banks.

81. Under the UK legislation, the employer provides access to a GPP, the worker can only choose the funds and services that the employer has offered via the GPP. The employer role and responsibilities are not dissimilar to those relating to occupational pension schemes and the employee does not choose the scheme, so this would be an indication that they should not be considered PPPs for the purpose of the document

82. On the other hand, the employee is the one signing an individual contract with the provider even though it is a group (collective) scheme. Although the member is not able to change or vary the terms and type of service offering without the consent of the employer, the employee can choose the funds (that have been selected by the employer) and de-cumulating methods and therefore this would be an indication that they should be considered PPPs for the purpose of this document.

*In Italy: ( Fondi pensione aperti - Open pension funds) – text of IT-AR 22 Nov.*

83. Under IT law, the so-called Fondi Pensione Aperti are open to individual and to group membership. Group membership takes place by joint initiative of the employer and representatives of the employees. The individual employee may opt-out but then the employer is not obliged to contribute to another pension scheme. The IT framework recognises this kind of membership to open pension funds as occupational, and therefore the IORP directive is applied to open pension funds.

84. However, the regulatory framework applicable to IT open pension funds is complex, as their providers remain also subject to their own financial sector regulation. An open pension fund can be established by a bank, an insurance undertaking, an asset management company (under UCITS IV Directive) and/or investment firm. Insurance companies are subject to the Life Insurance Directive (LAD) as Italy did not use the option provided in art 4 of the IORP directive that allows life insurance companies to opt out of LAD prudential regulation.

85. Open pension funds are not independent legal entities. However, the resources of members are legally separated from those of the undertaking that manages the fund. For the pay-out phase, all kinds of providers are obliged to convert the capital accrued at retirement into an annuity, to be paid by a life insurance undertaking.

86. The IT legislation has in place an automatic enrolment mechanism that in general has to be applied to all kinds of occupational membership (including the case of open pension schemes). However, automatic enrolment applies only to employees when they are employed for the first time in their working life - and most potential members opt out.

87. Both occupational and personal open pension funds are in general DC-based. Pure DC are prevailing, while DC schemes with guarantees (provided by external entities, typically insurance companies) are also offered. For occupational plans, DC schemes with guarantees have to be used as the default for automatic enrolment.

88. Open pension funds' members are usually offered multiple investment options in both occupational and personal schemes, while the employee can actively choose the provider only in personal plans. Participation of members in pension schemes' governance is required only for occupational plans (including open pension funds).

*In Germany:*

89. In Germany, group life insurance has a long tradition. This arrangement is not restricted to companies or employers; other institutions (e. g., associations) may use this instrument as well. The following remarks describe the general concept of

group insurance and discuss the special case of group personal pensions realised within this framework.

90. Group insurance is based on an agreement between the life insurer (provider) and the institution (contractual partner). The agreement specifies the group of individuals that is insured or entitled to be insured, determines the tariff, and fixes the details regarding the relationship between the individuals and the institution or the provider. In many cases, the tariff is just a product for single business but with lowered costs reflecting the economies arising from the realisation as group insurance. However, there are also group insurance agreements based on specific tariffs which exploit the deep knowledge of biometric allocation of the particular group. Apart from such modifications, group insurance is calculated in quite the same way as single business and is subject to the ordinary prudential regulation of life insurance (this is also true in the event of group occupational pensions).
91. The policyholder in a group insurance arrangement is either the institution or the insured individual himself/herself. While membership of the group scheme is voluntary, a minimum portfolio size is expected by agreement to justify the privileges arising from the group feature. If the policyholder is the institution, a separate accounting scheme may be part of the group insurance agreement, especially in the event of potential large portfolios.
92. In general, members of the insurance agreement who leave the specified group have the right to continue the policy on an individual basis but they have to pay the premium of the respective tariff for single business thereafter.
93. Group insurance is often used to establish occupational pension schemes. Group schemes are actually occupational if and only if they are subject to the German Occupational Pension Act. In contrast, all other group pension schemes seem to represent a grey area, for the access to the schemes is restricted and the premiums may change once the insured individual leaves the group. These features are more typical of occupational pensions. However, group pensions also meet at least some of the characteristics of PPPs discussed in section 4 of this report. In any case, the treatment of group pensions will require some modifications regardless of which framework is used for them (occupational vs. PPP).

#### 1st pillar bis

94. A quick analysis of products included in the EIOPA Database shows that there is a group of products in some Member states that are linked with public 1<sup>st</sup> pillars and share many other common features. A list of these products is included in Annex 2 and some of them are discussed in the following paragraphs.

#### *1<sup>st</sup> pillar bis - Sweden /The premium pension*

95. The premium pension is the funded part of the earnings-related old-age pension. The premium pension system is administered by the state Swedish Pension Agency. The Agency's mission is twofold: a) to administrate the pensions in the public pension system and the pension-related benefits, in total 11 products and b) to provide general as well as individual pension information, not only about the national public pension system but also about the occupational pension schemes
96. Of the pensionable income 2.5% is paid to the funded pension scheme, which is compulsory. The money is deposited in individual investment accounts with individual choice. Employees can choose to have their premiums invested in up to five funds out of more than 800 mutual funds offered by independent fund managers. In addition, the government has set up a special investment fund for

individuals who do not want to make their own investment decisions; their contributions are automatically invested with the Premium Savings Fund, which is managed by the Seventh National Swedish Pension Fund (AP7). The individual is free to change the chosen fund at any time and free of charge. The premium pension can be drawn at the age of 61 at the earliest, but it is also possible to postpone withdrawals from the pension account, which requires that the assets are invested in security funds.

97. The Swedish Pension Agency is responsible for the operation of the premium pension system. It collects contributions and invests them in the individually chosen investment option; thus, there is no relationship between the individual and the fund manager.
98. All funds available as choices for premium pension savings must be registered with the Swedish Financial Supervisory Authority and fulfil the requirements of the UCITS directive.<sup>32</sup>
99. Management companies wishing to register funds with the Swedish Pension Agency are also obliged to accept conditions concerning daily trading, rebate on the administrative fee and forms for reporting NAV.<sup>33</sup>
100. Management companies wishing to register funds with PPM are also obliged to accept the conditions of the Swedish Pensions Agency. These conditions concern daily trading, rebate on the administrative fee and forms for reporting NAV.

*1st pillar bis – CEE arrangements:*

101. In the period 1998 – 2006 many Central and Eastern European (CEE) countries introduced a pension reform aimed at reinforcing the sustainability of their pension systems. As part of these reforms, they established so called 1st pillar bis systems.<sup>34</sup>
102. First pillar bis systems were carved out of the public PAYG system, by diverting part of the contributions of the traditional 1st pillar PAYG system into 1st pillar bis pension funds managed by dedicated<sup>35</sup> private management companies. The 1<sup>st</sup> pillar bis contribution rate is expressed as a percentage of the wage (eg. 4% in RO (with 0.5% yearly increase, until it reaches 6%), 2.8% in PL (with gradual increase up to 3.5% in 2017), 5 % in the universal pension funds in BG (7 % from 2017), 3% in CZ, 4% in SK, 6% in LV). The higher the contribution rate to 1<sup>st</sup> pillar bis, the lower the contribution rate to the public PAYG system. This in turn leads to a decrease in the pension from the PAYG system, which is partially substituted by the 1<sup>st</sup> pillar bis pension.
103. Membership in the 1st pillar bis pension fund can be either mandatory with automatic enrolment, voluntary or a combination of both.<sup>36</sup>

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<sup>32</sup>[http://www.pensionsmyndigheten.se/ForFundMangers\\_en.html](http://www.pensionsmyndigheten.se/ForFundMangers_en.html)

<sup>33</sup>[http://www.pensionsmyndigheten.se/ForFundMangers\\_en.html](http://www.pensionsmyndigheten.se/ForFundMangers_en.html)

<sup>34</sup> One CEE country (CZ) established 1<sup>st</sup> pillar bis in 2012.

<sup>35</sup> However, please note that in CZ and BG the 1st pillar bis funds are managed by 3rd pillar provider. In LV 1<sup>st</sup> pillar bis is managed by UCITS management companies.

<sup>36</sup> In some MS membership is mandatory (eg. PL), in other MS it is voluntary (eg. CZ, SK) and in other MS it is a combination of both (eg. RO, where is mandatory for new entrants in the labour market, but only for those under 35 years, and voluntary for those between 35-45 years, LV). In MS where membership is mandatory, if the eligible member doesn't choose a pension fund in a certain time frame than he/she is randomly allotted to one of the exiting pension funds.

104. First pillar bis systems are unregulated at EU level. The regulatory framework is provided for at the national level and comprises social law aspects, prudential and conduct of business aspects.
105. The extent of social law aspect differs among MS. In most cases they comprise eligibility criteria for membership, means of entry into the system (mandatory, voluntary), possibility to pay additional contributions to the pension fund<sup>37</sup>, etc.
106. Prudential law is mostly inspired by the UCITS framework<sup>38</sup> and in general it sets out rules for licensing of providers, minimum capital requirements, governance, default options and supervision (incl. reporting to supervisors).
107. Conduct of business rules prescribe the extent of disclosures to members (e.g. pre-contractual information, on-going information, selling practices), mandatory elements of the contract between member and provider, selling practices and caps on fees charged by management companies.
108. In most of the CEE MS **the 1<sup>st</sup> pillar bis management company (provider)** is a private financial institution established for the sole purpose of managing the 1st pillar bis pension funds and is not allowed to conduct any other business. In a few countries the management is done by entities that also have other kind of assets under management<sup>39</sup>. The provider has legal personality and is subject to national regulation, licensed and supervised by the national supervisory authority. The provider is required by law to be established (i.e. have its registered office) in the country where it provides pension funds.
109. In most cases<sup>40</sup> the management company does not pay any benefits that include biometric risks. Such benefits are paid by an insurance company or a state owned special purpose entity to which the accumulated savings of members are transferred upon retirement. The employers do not play any role in establishing or sponsoring the management companies. The majority of management companies in CEE MS are subsidiaries of large global or pan-European financial groups.
110. **A 1<sup>st</sup> pillar bis pension fund (product)** is a pool of members' assets acquired using contributions and related income (e.g. dividends, interest). They are jointly owned by the members of the fund. The pension fund is based on a DC promise, although in many CEE countries it is required to provide a minimum return guarantee. The scope of this guarantee and the role of the MS therein may vary considerably.<sup>41</sup> In other MS however these are pure DC pension plans where investment risk is solely borne by members<sup>42</sup>. Assets of the fund are ring-fenced from the assets of the management company and other pension funds. Membership in a pension fund is based on the contractual relationship between an individual and a management company in most of the countries<sup>43</sup>.

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<sup>37</sup> Additional contributions may be allowed, forbidden or required. In some cases it is mandatory for the member to pay a contribution to the pension fund beside the contribution diverted from the public pension contribution (eg. 2% in CZ). In other cases a member may pay additional contribution and is motivated to do say by tax advantage (e.g. SK). In other MS is not possible for members to make additional contributions at all (eg. RO).

<sup>38</sup> RO also uses elements of the IORP directive

<sup>39</sup>In LV the asset managers of 1st pillar bis are allowed also to manage UCITS, alternatives and individual portfolios including occupational pensions. In BG the pension insurance companies governing the 1st pillar bis pension funds can also manage voluntary pension funds and voluntary pension funds with occupational schemes.

<sup>40</sup>In BG according to the present legislation annuities will be provided by the management company.

<sup>41</sup> Please see EIOPA database

<sup>42</sup> In LV there are no minimum guarantees

<sup>43</sup> In LV the membership is based on member's application to Social Security Agency

111. Each member has his/her own individual account in which contributions are recorded and that shows the amount accrued since he/she joined the pension fund. A member can transfer his account balance from one pension fund to another, without the ability to transfer the money outside of the 1st pillar bis system. The balance of the individual pension account is inheritable.
112. The contribution to the 1st pillar bis systems is collected either by the social security network or by the state tax office.
113. Even though the philosophy and main elements of 1<sup>st</sup> pillar bis systems in CEE MS are very similar, some essential differences do exist. Examples of these differences are:
- The pension fund may or may not have legal personality. In some cases the pension fund may have legal personality (e.g. PL, BG). In other MS the pension fund doesn't have legal personality (e.g. SK, RO<sup>44</sup>).
  - In most of the MS the management companies are allowed to manage only 1st pillar bis assets while in some countries this restriction is not in force.
  - In some MS management companies are restricted by law to managing only one pension fund (e.g. RO), in others management companies are allowed to manage multiple pension funds with different risk/return profiles (e.g. SK).
  - The membership of a pension fund in most of the CEE MS is based on a contract between members and the management company. However, there are also exceptions where, instead of direct contractual relations between the management company and the member, the Social Security Service is acting as an intermediary. Here, the contracts are concluded between providers and the Social Security Service and membership applications are filed with the Social Security Service.

#### *Other cases*

114. EIOPA notes that based on its Database (see Annex 4), these are also products that may or may not be covered by national social security regulation and for which there is no EU prudential law directly applicable to them. In many cases, UCITS or the IORP Directive were taken as benchmarks for the delivery of these national frameworks. These products will be subject to further analysis by EIOPA.

	No EU legislation applicable (NEL)	Social Security Regulation (SSR)	Total
Personal Occupational & Personal	20	6	26
	1		1
<b>Total</b>	<b>21</b>	<b>6</b>	<b>27</b>

### **3.2. Stakeholders' view**

#### Group pensions

115. There was little consensus among the respondents about whether these pensions should be considered personal pensions. Of the 21 respondents, 9

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<sup>44</sup> A pension fund in RO is subject to a "civil association agreement" which states that the founding members of the pension fund establish the pension fund and the pension fund management company. Any member of the pension fund has the same rights and liabilities as the founding members. Unlike a trustee agreement, after the civil association has been concluded, the members can't change the pension fund management company without its acceptance.

believed that they should not be considered personal pensions and 7 believed that they should. Of the remaining 5 respondents, 2 believed that they should be included in some cases. Not all respondents gave reasons to support their views for or against.

116. Some of the respondents who believed that these products should not be considered personal pensions considered that the link with employment meant that these pensions had greater similarities to workplace pensions. In particular, some respondents felt that where there is a requirement for employers to auto-enrol, under national law, there is a link to workplace pensions. Others considered that choice and voluntary membership should be at the core of the personal pension concept and therefore a pension selected by an employer would not meet these requirements. One respondent also commented that even though they did not consider these pensions to be personal that does not automatically make them occupational.

117. There were also varied views from the respondents who thought these pensions should be considered to be personal pensions. Some respondents considered that the key factor was whether the employer bore any responsibility to ensure that the end benefit was paid – if the employer did not bear that responsibility, then these pensions should be considered to be personal pensions. Others felt that it was the definition in EIOPA question no. 5<sup>45</sup> that should be the determining factor and if these type of pensions meet the definition then they should be included.

118. Further to these inputs, EIOPA notes that many of the commentators to COM public consultation of April 2013 view any pension fund where the employer has a role (including where the employer does not contribute) as not falling within the third pillar [PPPs]. Therefore, they identify third-pillar with “voluntary” products only.

#### 1st pillar bis

119. During the public consultation period input was received as to possible interference of EU lawmakers into Member States’ exclusive discretion over social security design. On one hand, there are opinions stating that passporting should be created for the 1<sup>st</sup> pillar bis providers. However, other voices are being raised that in the MS without 1<sup>st</sup> pillar bis, stating that there are no entities that would meet the requirements for the provision of services in the 1<sup>st</sup> pillar bis i.e. *“Marketing 1<sup>st</sup> pillar bis across MS would allow some pension providers to get access to 1st pillar assets of another country without having the same access to such 1st pillar assets of their home country. The challenges posed in the MS which have no 1st pillar bis may be overcome by the introduction of a mandatory 1st pillar bis system in their national law, which at EU level requires changes in Primary legislation.”*

120. With regard to the EIOPA question to stakeholders regarding establishment of a single EU market for 1<sup>st</sup> pillar bis arrangements, the opinion of the majority of comments are to the effect that there is no possibility of creating a single market for the 1<sup>st</sup> pillar bis products. Observations were also made that it is an internal, exclusive matter for each MS. A strong link with social and labour law is also

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<sup>45</sup> EIOPA Discussion Paper: Q5. Do you think that these definitions fully reflect the EU personal pension landscape? If the answer is negative, what changes would you suggest in the wording of the definitions? Which of the definitions is better?



mentioned. For these reasons, public institutions of the UK, France, Finland and the Czech Republic that commented do not see the need to create a single market, or recognise that it is not a subject of interest to them. The opinion was expressed that: "the Member States' social security in general is not open for internal market competition".

121. Moreover, most of the industry does not see the possibility of creating a single market for the 1<sup>st</sup> pillar bis products.
122. Isolated opinions indicate the need to develop uniform regulations for the 1<sup>st</sup> pillar bis, which indicates passporting rather than harmonisation. This approach suggests that it is only beneficial for the service providers (business development). In their opinion, this should increase competition in this market.
123. During the COM Consultation of April 2014, it is reported that "two national authorities stressed that the definition should not include the private pension plans that in some countries (Eastern and Northern Europe) the State makes compulsory (or quasi compulsory, with an opt-out possibility) for individuals".

### **3.3. EIOPA view**

#### Group pensions

124. Although employers play an important role in selecting or introducing a GP programme, it is not apparent that this automatically means that GPs should be qualified as occupational pensions. Based upon the GP characteristics summed up earlier, GPs do share some of the characteristics that are described in the previous section of this report (definition of PPPs). It should remain a matter of MS competence to decide whether these schemes are in the application remit of IORP Directive, or not. Those GP's that would not be subject to an existing EU wide body of legislation—and share the main characteristics of PPPs, should be included, for at least some aspects<sup>46</sup>, in the scope of any future COM initiative on PPPs.

#### 1st pillar bis

##### *Sweden - The premium pension*

125. While acknowledging that the SE arrangement shares many of the elements of the PPP definition, a contract is not available between the employee and provider. Here, we note the intervention of a SE state institution. The SE Premium Pension Authority is responsible for the operation of the premium pension system. It collects contributions and invests them in the individually chosen investment option; thus, there is no relationship between the individual and the fund manager.) Furthermore, the state acts as intermediary between members and providers.

##### *1<sup>st</sup> pillar bis – CEE arrangements*

126. When looking at the components of a possible definition for PPPs, as described in section 2 of this report, 1st pillar bis products do possess all of the characteristics mentioned there.
127. Legislators in the MS concerned seem to have ensured that 1st pillar bis products benefit from a level of protection similar or even higher than 'regular' PPPs. However, some of the systems also seem to have characteristics that warrant the question whether 1st pillar bis members, with regard to some specific

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<sup>46</sup> In some cases, the employer makes some of the choices on behalf of PPP holders

aspects, need the same protection that is deemed necessary for holders of 'regular' PPPs.

128. One could argue for example, as the systems are based upon the DC principle, that 1st pillar bis scheme members may encounter the same risks as holders of 'regular' PPPs. When the 1st pillar bis system of a specific MS allows scheme members to make their own investment decisions, the responsibility for the ultimate investment result is redirected to the scheme member. Taking into account that the majority of people are not 'homo economicus', a discussion on the desirability of an EU wide introduction of default investment options / life cycling (thus offering the investment expertise of the provider to the scheme member) might be warranted.
129. The majority of 1st pillar bis products are offered on a DC basis. Therefore, the costs/charges of these products are an important factor, influencing the level of a pensioner's future income. First pillar bis members should be (made) aware of the effect of costs and could benefit from EU wide disclosure rules, in the same way holders of 'regular' PPPs do. Therefore, for the sake of consistency with PPPs it seems to be feasible to have a similar standard for transparency and disclosure of information to members of 1<sup>st</sup> pillar bis schemes. It can also be noted that national law (whether social law or prudential law), may determine that a cap on charges and management fees is to be levied.
130. As a general principle, providers and scheme members benefit from increased competition via the creation of a single market at provider level, either via the freedom of providers to establish themselves in another MS or the freedom to provide services in another MS.
131. Financial services directives have as their legal bases Articles 47(2) EC, 55 EC and 95 EC [arts. 53 (2), 62 and 114 TFEU], which seek to establish the internal market by means of freedom to provide services and freedom of establishment. EIOPA finds that it is unclear whether there are enough legal grounds, to introduce EU wide legislation with regard to pillar 1 bis systems. Since article 114 is used as the legal basis for EU harmonisation initiatives in the area of the single market and seems to be applicable only in cases involving cross-border operation of providers or selling of products (like it is the case for insurance/ securities and banking sectors), it does not seem to be possible from the perspective of legislative technique to harmonise consumer aspects in the absence of a cross-border framework.
132. Pillar bis systems are generally considered to be part of the social security system of the MS concerned. The organisation of these statutory schemes most probably falls within the exclusive competence of the MS concerned.<sup>47</sup> However, EIOPA does not have authority to interpret provisions of EU founding treaties. At this point, EIOPA acknowledges that the current MS national competence prerogatives in the area of social law could create significant difficulties for establishing a single EU market for 1st pillar bis providers/products as first indent of Article 137(4) EC [art. 153 (4) TFEU] leaves the power to determine the

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<sup>47</sup>Arguments in support of this allegation are as follows:

- 1<sup>st</sup> pillar bis pension funds receive part of the social security contributions diverted from public PAYG system.
- The participation in the 1<sup>st</sup> pillar bis pension funds is often mandatory and in most of CEE countries the law does not allow members to opt-out of the 1<sup>st</sup> pillar bis system. If an opt-out is possible, the 1st pillar bis contributions (assets) return to public system (1 pillar).

fundamental structure of national social security schemes to Member States themselves.

133. Given the above constraints, some guidance from COM as to the scope of any further EIOPA work regarding pillar 1 bis arrangements would be welcomed. As some EU initiatives (such as the institution of a 2nd regime, see section 7 below) could have a positive implication for 1st pillar bis schemes, in order to allow critical mass and cost reductions, where 2nd regime products would be designed in such a way to be considered suitable for 1st pillar bis schemes in order to allow critical mass and cost reductions, where 2nd regime products would be designed in such a way to be considered suitable for 1st pillar bis schemes.

**Main findings:**

134. Based upon the group pensions characteristics presented above, group pensions do have some of the PPP characteristics identified by EIOPA, However, they differ in one important way – they are chosen by the employers. It should remain a matter of MS competence to decide as to whether these schemes are in the application remit of the IORP Directive. Those GPs that would not be subject to an existing EU wide body of legislation and share the important characteristics of PPPs, should be included, for at least some aspects, in the scope of any future COM initiative on PPPs.
135. EIOPA analysis has also revealed that 1<sup>st</sup> pillar bis arrangements meet all elements of a PPP definition. However they seem to be part of social security systems of member states and there does not seem to be a proper legal basis for their harmonisation.
136. At this stage, it will be up to COM to decide whether further work is to be pursued by EIOPA regarding pillar 1 bis arrangements. EIOPA stands ready to pursue further work regarding these borderline cases should COM decide to include them in the scope of future requests.

## 4. Why hasn't a single market for PPPs developed so far?

### 4.1. Background:

137. Existing EU legal instruments already provide a framework for cross-border operation for at least insurance companies (Solvency II Directive), asset managers (UCITS Directive/MiFid/ AIFMD) and banks (CR Directive) that offer PPPs.

	IORP	IORP art. 4	LAD	LAD/IORP art. 4	UCITS	CRD	More than 1 directive	No EU legislation applicable( NEL)	Social security regulation (SSR)	Total
Personal	1		30	4	4	2	2	20	6	69
Occupational & Personal	6	1	3					1		11
<b>Total</b>	<b>7</b>	<b>1</b>	<b>33</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>21</b>	<b>6</b>	<b>80</b>

138. However, there remain regulatory requirements applicable to PPP providers/products which differ across MS with regard to specific aspects that remain non-harmonised in the EU framework, some of which are analysed below.

### 4.2. Stakeholders' view

139. With regard to taxation, we note that even if direct taxation is a MS competence, some stakeholders think it may be useful to harmonise tax treatment or to propose a solution to overcome this major issue. According to input received, an easy solution is that MS and providers agree to develop a way to ensure that MS could verify and collect correctly their national taxes. Another way is that a 2nd regime includes a tax framework. To achieve this goal it would be useful to develop a system of balancing payments if a MS receives less tax than it should have.

140. Most of the stakeholders who commented noted agreement with the list of tax obstacles identified by EIOPA in its discussion paper. Approximately half of inputs received (6) noted a belief that these obstacles could be removed. The other half (7) noted disbelief that a solution is possible for the taxation hurdles identified.

141. Contributors to the EIOPA Discussion paper did not specifically address social law as a hurdle for creating a single market for PPPs. Nevertheless, comments made during the June public event triggered EIOPA to extend its analysis beyond pillar 1 considerations.

### 4.3. EIOPA view

#### Taxation hurdle<sup>48</sup>

142. Taxation seems to be the a significant hurdle that prevents the emergence of a single market for PPPs. Currently there is no specific EU legislation on the taxation of pensions. This area is covered by national laws and bilateral tax treaties. Therefore, pensions are taxed very differently across the EU. This raises various challenges to the creation of a single market for PPPs. In particular, the following four cross border tax issues can be identified:

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<sup>48</sup> Please note that EIOPA and its members do not exercise any powers in the area of taxation. The analysis in this section is based on publicly available information and has been carried out on a best effort basis.

## a) Differences among MS in taxation of contributions paid into foreign<sup>49</sup> PPPs and benefits received from foreign PPPs

143. Regarding the taxation of **contributions**, some MS may have restricted the tax deductibility of contributions paid to providers that are not established in their territory, while allowing such deductibility for contributions paid to domestic providers. This can lead to discriminatory treatment on the basis of nationality.
144. Nevertheless, during the last decade many MS have changed their national tax legislation by extending domestic tax relief to PPP contracts taken out with foreign providers, as a result of the adoption of the Commission's Pension Taxation Communication,<sup>50</sup> in the context of the IORP Directive implementation or, indeed, following CJEU case law<sup>51</sup> applicable to occupational as well as personal pensions.
145. As far as the **benefits** are concerned, however, the problem of discrimination may well pertain. There seems to be no case law of the CJEU forbidding the discrimination against foreign providers vis-à-vis domestic institutions when it comes to the taxation of benefit pay-out. Yet, since the payment of benefits is arguably the reverse situation to that of payment of contributions (already adjudicated at EU level) it can be assumed that the CJEU would come to the same conclusion and discrimination against foreign providers in the context of payment of benefits would be held to violate EU primary law.

Thus, in theory, these tax obstacles seem to be eliminated to the extent that MS cannot discriminate against foreign providers.

## b) Differences among MS in taxation of investment income paid to foreign PPPs

146. PPPs may be tax exempted in the MS of residence of the PPP holder or receive a credit for withholding taxes levied on their domestic investment income (dividends, interest). Nevertheless, PPPs may suffer source taxation on their foreign investment income which, due to the domestic exemption regime, becomes a final tax burden.
147. The differential treatment of outbound investment income paid to foreign PPPs as compared to domestic investment income to local PPPs may constitute discrimination on the basis of nationality that is inconsistent with the free movement of capital, being one of the fundamental freedoms of the internal market.<sup>52</sup>

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<sup>49</sup> The expression "foreign PPP" should be construed as meaning a PPP provider that has a tax residence in MS different from MS where it distributes its PPPs.

<sup>50</sup> Commission of the European Communities, "Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: The elimination of tax obstacles to the cross-border provision of occupational pensions", Brussels, 19.4.2001 via <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0214:FIN:EN:PDF>

As noted in the Commission's Pension Taxation Communication, "much of the discussion in this Communication applies equally to third pillar pension and life assurance services."

<sup>51</sup> In case C-150/04 Commission v Denmark, judgement of 30 January 2007 the CJEU held that by "introducing and maintaining in force a system for life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in Denmark, whereas no such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States the Kingdom of Denmark has failed to fulfil its obligations under Articles 39 EC [free movement of workers], 43 EC [freedom of establishment] and 49 EC [freedom to provide services]".

<sup>52</sup> This conclusion has been confirmed in Case C-493/09 Commission v Portugal delivered on 6 October 2011 where the CJEU declared that "[...]by reserving the benefit of the corporation tax exemption to pension funds resident in Portuguese territory alone, the Portuguese Republic has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area of 2 May 1992".

148. Thus, in theory, this tax obstacle seems to be eliminated to the extent that MS cannot discriminate against foreign providers.

### **c) Obstacles to the transfer of accumulated capital**

149. When a member wants to switch between PPPs or decides to change the provider of the PPP, a transfer of accumulated capital from a PPP in one MS to a PPP in another MS may be subject to withholding tax in the exiting MS or may even be prohibited.

150. The Commission's Pension Taxation Communication concluded that there might be an infringement of the EU primary law if Member States tax cross-border transfers, while domestic transfers are tax free.

151. Furthermore, the CJEU confirmed that the taxation of transfers of accumulated capital to providers elsewhere in the European Economic Area (EEA), while such transfers are tax exempted in a domestic situation, amounts to discrimination on the grounds of nationality and violates the freedom to provide services.<sup>53</sup>

152. Thus, in theory, this tax obstacle seems to be eliminated to the extent that a MS cannot discriminate against foreign providers.

153. However, when domestic transfers are taxed, the MS from which the transfer abroad is made is free to levy an exit tax on transferred capital. If the MS to which the transfer is made levies an entry tax on transferred capital, the transferred capital would be taxed twice. This double taxation would dissuade both providers and individuals from making the transfer. This situation is explained in more detail in the next section.

154. The EIOPA view is that although transferability could be a great opportunity to encourage the development of a single market for PPPs, it seems that both tax and technical issues are too difficult to overcome. At this stage, EIOPA proposes to take out the transferability of accumulated capital for passported PPPs due to the observed obstacles. Further work is also needed in order to assess the implications of this obstacle on the design of the 2<sup>nd</sup> regime.

### **d) Differences in MS tax arrangements and conditions for granting tax relief for contributions**

155. Most MS employ the so-called EET system (Exempt contributions, Exempt investment income and capital gains of the pension institution, Taxed benefits) or ETT principle (Exempt contributions, Taxed investment income and capital gains of

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See also European Federation for Retirement Provision and PricewaterhouseCoopers „Executive summary of the report supporting the complaint filed with the EC „Discriminatory treatment of EU pension funds making cross-border portfolio investments in bonds and shares within the European Union“, 2006 via <http://www.efrp.org/LinkClick.aspx?fileticket=A2oE2tzHLhQ%3D&tabid=1564>

For possible systemic solutions to this issue see report "Taxation of cross-border dividend payments within the EU: Impacts of several possible solutions to alleviate double taxation", 2012 written by Copenhagen Economics following the commissioning of a study by the European Commission, Directorate-General for Taxation and Customs Union via [http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/tax/venture\\_capital/tax\\_crossborder-dividend-paym.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/venture_capital/tax_crossborder-dividend-paym.pdf) and European Commission's DG TAXUD.D2 Roadmap for initiative entitled "Tackling discrimination and double taxation of dividends paid across borders" 07/ 2012 via [http://ec.europa.eu/governance/impact/planned\\_ia/docs/2012\\_taxud\\_001\\_cross\\_border\\_dividends\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/2012_taxud_001_cross_border_dividends_en.pdf)

<sup>53</sup> In Case C-522/04 Commission v Belgium delivered on 5 July 2007 CJEU concluded that "levying tax [...] on transfers of capital or surrender values built up by means of employers' contributions or personal contributions for supplementary retirement benefits, where the transfer is made by the pension fund or insurance institution with which the capital or surrender values have been built up in favour of the beneficiary or persons entitled through him, to another pension fund or insurance institution established outside Belgium, while such a transfer does not constitute a taxable transaction if the capital or surrender values are transferred to another pension fund or insurance institution established in Belgium" is inconsistent with EU primary law on fundamental freedoms of internal market.

the pension institution, Taxed benefits).<sup>54</sup> Other systems (such as TET, TEE, EEE) are less common, but can also be found across the EU.

156. Even within the EET system, the requirements for tax deductibility of contributions vary widely from one MS to another and may be often limited to a certain level of income replacement or a fixed amount. Therefore, in order to offer qualifying PPP in different countries, PPP providers manufacture and distribute through their subsidiaries or other entities established in MS PPPs tailored to the tax law of each MS and thus do not realise economies of scale.

157. Moreover, the transfer of accumulated capital from a TEE/TTE MS to an EET/ETT MS can lead to double taxation. The double taxation is for example the result of the denial of tax relief for contributions made in MS A and the taxation of the pension in MS B. On the other hand, a transfer from an EET/ETT system to a TEE/TTE system may lead to non-taxation. Furthermore, it cannot be ruled out that the tax administration of a MS would retrospectively deny tax credit granted in case of the transfer of accumulated savings outside its jurisdiction to a MS that prescribes different condition for tax relief (e.g. enables to take programmed withdrawal, or sets out different minimum retirement age).

158. Since direct taxation is within the competence of individual MS<sup>55</sup>, the principle of non-discrimination under EU law is not applicable as such. Any change in this area would probably require harmonisation that would be conditional upon unanimous approval by the MS. Alternatively, to prevent double taxation and non-taxation MS could be encouraged to adopt unilateral domestic rules or adjust their existing tax treaties.

### **Implications of the four tax obstacles identified above for cross-border operations and transferability**

159. As shown above, the income tax legislation in MS should afford the same tax relief to purchases from foreign PPPs as it affords to purchases from domestic PPPs (see points a) and b) above). Hence, this should provide sufficient comfort to the foreign providers to operate on a cross border basis.

160. In this context, EIOPA acknowledges that tax equality and unlawful discriminatory national practices have been explicitly addressed by the COM and by the European Court of Justice/Court of Justice of EU and, accordingly, are leading to changes in legislation and practices. Furthermore, COM has also committed to address tax any discriminatory tax treatment in the area of pensions in its White paper on pensions.<sup>56</sup>

161. In the case of transferability, different tax regimes applied to pensions in different MS may lead to double taxation or non-taxation of transferred capital (see points c) and d) above). Differences in conditions for granting tax relief for contributions leads to a necessity to tailor products to national tax requirements

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<sup>54</sup>[http://ec.europa.eu/taxation\\_customs/taxation/personal\\_tax/pensions/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/personal_tax/pensions/index_en.htm). See also „Pension systems in the EU – contingent liabilities and assets in the public and private sector“ a Survey requested by European Parliament’s Directorate General for Internal Policies, 2011, pg. 34, via <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>

<sup>55</sup> In Case In Case C-96/08 CIBA Speciality Chemicals Central and Eastern Europe Szolgáltató, Tanácsadó és Kereskedelmi kft v Adó- és Pénzügyi Ellenőrzési Hivatal (APEH) Hatósági Főosztály delivered on 5 June 2010 CJEU noted that “[...] in the current state of the development of European Union law, the Member States enjoy a certain autonomy in this area provided they comply with European Union law, and are not obliged therefore to adapt their own tax systems to the different systems of taxation of the other Member States in order, *inter alia*, to eliminate the double taxation arising from the exercise in parallel by those States of their fiscal sovereignty. [...]”.

<sup>56</sup> <http://ec.europa.eu/social/main.jsp?catId=752&langId=en&moreDocuments=yes> (page 18)

and prevents realisation of gains from economies of scale. It also hinders transferability of accumulated savings and hinders mobile employees to stay in the same pension plan. In practise, this is a barrier to cross border employment.

162. Overcoming these obstacles seems to require harmonisation of tax treatment of pensions across MS possibly on the basis of EET system<sup>57</sup> and adoption of compatible conditions across MS for granting tax relief for contributions. Such a measure may be in practice difficult to achieve as MS differ in how much importance they attribute to PPPs in their overall pension mix. Countries with large public pension systems offer little tax relief for PPPs even in the purely domestic situations and they may be reluctant to widen it.

163. Academic literature offers a handful of other ideas in this respect<sup>58</sup>, such as

- allowing tax relief for contributions of mobile workers to a foreign pension scheme for a certain period of time even if the foreign scheme is broader in substance than allowable under local tax law,<sup>59</sup>
- adopting a basic pension scheme in the form of 2<sup>nd</sup> regime that would qualify for tax relief in every MS<sup>60</sup>,
- devising a pension scheme that meets the domestic tax laws of several MS,
- linking the level of tax relief offered by MS in the second pillar and/or the third pillar to the overall level of benefits accrued in all pillars (compensating layer).<sup>61</sup>

164. EIOPA also notes that COM together with OECD<sup>62</sup> is conducting research on tax incentives for pensions. According to available information, the objectives of this work are as follows:

- Developing complementary private / funded retirement savings
- Improve the design of incentives to save for retirement
- Strengthen the value of tax incentives for mid to low income people

165. The research shall:

- Assess the role of the tax system and other financial incentives in supporting retirement income security
- Determine the total budgetary cost of financial and tax incentives, per unit of contribution and as a share of GDP
- Assess whether those incentives are the most efficient way to provide for retirement (cost effectiveness –policies)

166. While it does not expect to further investigate the issue of tax context of the PPP work, EIOPA will closely follow the progress of COM and OECD on this matter.

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<sup>57</sup> EET seems to encourage retirement saving because accumulated pension savings are not taxed and income tax brackets are often lower during retirement (so called deferred taxation). At the same time taxation of benefits allows MSs to maintain revenues, given the number of pensioners is rising due to the aging of population.

<sup>58</sup> Meerten, H. van, & Starink, B. (2011). Cross-Border Obstacles and Solutions for Pan-European Pensions , EC Tax review 2011-1, page 30-40..

<sup>59</sup> This system is already in place in the Netherlands.

<sup>60</sup> EIOPA notes that although this idea seem to be feasible, in the current situation most probably the *amount* of tax relief that would be granted for contributions to 2<sup>nd</sup> regime PPP would amount to the relief granted to domestic PPPs and thus it would differ from country to country. By only looking at the contribution amount for granting tax relief and not at other formal criteria, this idea can at least be a step in the good direction.

<sup>61</sup> Dietvorst, G., Proposal for a pension model with a compensating layer, [EC Tax review 2007-3](#), page 142-145.

<sup>62</sup> [http://www.ose.be/files/events/eurelpro250213/25-02-2013\\_Antolin\\_OECD-EU-Project.pdf](http://www.ose.be/files/events/eurelpro250213/25-02-2013_Antolin_OECD-EU-Project.pdf)



## (Insurance) contract law hurdle

167. Many PPP providers are insurance undertakings and the products they sell are based on insurance contracts. The buying and selling of insurance in the EU is subject to national contract laws. There are no uniform general rules covering the whole life cycle of an insurance contract. Therefore, if an insurer wants to market its products in other Member States with different insurance contract laws, it nearly always has to devise different products to make sure that they do comply with the national law. It is almost impossible to offer the same insurance contract in more than one MS. This is costly for insurance companies and might in consequence hinder them from offering their products on a cross-border basis. This situation also deters potential customers from concluding contracts, as they may not know the differences in the application of insurance principles between MS. Although most insurance principles are similar between MS, many laws and practices actually differ significantly. This affects both insurer and insured on a large scale.
168. The definition of an insurance contract varies between Member States. For example, the definition of what can be considered an insurable risk is not standardised at European level. Similarly, during the pre-contractual phase EU directives only define a minimum level of harmonisation.
169. Rules can be much stricter about the quality of the information provided by the insurer and the insured across MS. During the contractual phase, control of the contract differs significantly between Member States. For example, unfairness control of standard terms and conditions of insurance contracts diverge greatly between MS. Some countries only control non-individually negotiated terms while most MS include them in unfairness control. As a result, insurers in some MS cannot be sure that the clauses it uses will not be declared void in another MS. These issues also apply to rules for insurance premiums. In some cases, even premiums can be subject to the unfairness test and declared void. Moreover, between MS the consequences of late or non-payment of premiums are very different regarding the effectiveness of individual coverage and the remedies.
170. Secondly, between MS, a breach in the same or similar contractual obligations may lead to different results and the same/similar remedies might be subject to different conditions. For instance, in all MS the insured has the duty to disclose certain information. However, the causes of failure to comply with that disclosure duty diverge widely. In some member states negligence is enough to lose the contract benefit, while in others a case of fraud is needed. Similarly, the remedy in case of aggravation of risk is subject to different conditions depending on whether the insured event has actually occurred or not, whether there was a fault by the insured, or whether there was a fraud.
171. To tackle these issues the Commission decided on 17th January 2013 to set up the Commission Expert Group on a European insurance contract law. The goal of this group is to perform an in-depth analysis of the possible issues hindering cross border trade of insurance products. It will focus on identifying the areas particularly affected by legal obstacles. A report of its finding to COM is expected in 1<sup>st</sup> half of 2014.
172. Another alternative is explored by the Project Group on a "Restatement of European Insurance Contract Law" which was founded in September 1999. Its members are academic experts in insurance law. Since 1999, the Project Group has been drafting the "Principles of European Insurance Contract Law" (PEICL). The final version of the Draft Common Frame of Reference Insurance was submitted to the European Commission in April 2009. A revised and re-edited text

of the Principles of European Insurance Contract Law (PEICL) was published in October 2009. The goal of this project group is to propose a legal framework to offer the possibility to develop and sell insurance products throughout Europe based on a single European regime of insurance contract law. The PEICL proposal seeks to avoid the need to adapt insurance products to the mandatory rules of the Member State in which they are sold. Instead, the PEICL proposes to establish a comprehensive regime of insurance contract law with no recourse to national mandatory law.

173. Differences in national laws and regulations mean that insurers need to adjust their contracts to meet local requirements, including in the pensions market. This is an important issue as the contract itself is the product in the insurance industry. Therefore, providing a harmonised framework is necessary to facilitate cross-border distribution of pension products, as the lack of a common legal framework as shown above is one of the major barriers to a common insurance products market. The expert group report will be an important step forward identifying the main obstacles to making a harmonised pensions market possible. At this point in time, it appears that a 2nd regime may alleviate the national differences in terms of contract law requirements, by putting forward also provisions as to PPP contracts content reflecting on the PEICL.

174. EIOPA acknowledges the commitment COM has made in its' White paper on pensions to "explore the need for removing contract law-related obstacles to the design and distribution of life insurance products with savings/investment functions with the aim of facilitating the cross-border distribution of certain private pension products"<sup>63</sup> EIOPA will follow the progress of COM on this matter.

#### ***How the UCITS framework accommodates the contract law and tax differences?***

- a. Based on information available in its Database, EIOPA has identified several cases where UCITS serve as a vehicle for provision of personal pensions. More generally the UCITS framework is regarded as an example of a successfully functioning cross-border product. This box provides a short overview of the interaction of the UCITS framework with MS national tax and contract law regimes.
- b. UCITS are investment products in the form of collective investment undertakings subject to the UCITS directive<sup>64</sup>. The products are highly harmonised. For example, the following areas are fully harmonised:
  - ❖ rules applicable to the manager of the UCITS fund – UCITS Management Company
    - organisational rules, including: capital requirements, fit and proper quality of the persons managing the UCITS, sound administrative and accounting procedures, risk monitoring, control mechanisms,;
    - conflict of interest rules
    - conduct of business rules
  - ❖ rules applicable to the UCITS as an investment product
    - investment policy rules;
    - risk diversification and risk-spreading limits
    - requirements on use of financial derivatives and use of leverage
    - mandatory redemptions for investors
  - ❖ disclosure rules (prospectus, Key Investor Information Document (KIID), annual report). The minimum content of the prospectus and the annual report is laid down in the UCITS Directive. The content of the KIID is fully harmonised. Note that the accounting rules are not harmonised;
  - ❖ depositary – financial institution responsible for safe-keeping of UCITS assets and for oversight of the UCITS fund( eligibility and duties);

<sup>63</sup> Available at: <http://ec.europa.eu/social/main.jsp?catId=752&langId=en&moreDocuments=yes> (see pag. 18)

<sup>64</sup> Directive 2009/65/ECpdf of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)

❖ cross-border mechanisms

- merger procedures: rules for cross-border mergers of UCITS funds domiciled in different Member states;
  - notification procedure between member states: after proper notification, the UCITS can start marketing in the host member state without being obliged to fulfil other obligations required by the host member state authority;
  - cross-border management of UCITS: rules for management of UCITS by a Management Company established in a Member state different to the Member State of the UCITS fund
  - master-feeder structures
- c. Furthermore, as the units in UCITS are by definition financial instruments provided for in Annex I of the MiFID Directive, distribution and selling practices are also harmonised with MiFID.

Tax hurdle

- d. Generally **there** are no specific tax incentives (no specific tax relief) attaching to the contributions to UCITS, where they are not regarded as pension products under national law of MS. Therefore the issue of discriminatory treatment of contributions to UCITS marketed in host states does not arise.
- e. It needs to be noted that most of the UCITS marketed on a cross-border basis are tax neutral (no tax is levied at the level of the portfolio). However, in some MS UCITS capital gains at the level of the fund are taxed. Where in a different MS, there is also a taxation of the pay-out, this can lead to double taxation and thus making the cross-border marketing inefficient.
- f. As for the taxation of pay-outs, these are usually taxed. In order to avoid double taxation, there are bilateral tax treaties between Member States. Furthermore, we refer to the European savings directive: The ultimate aim of this directive is to enable savings income in the form of interest payments made in one MS to beneficial owners who are individuals resident in another MS to be made subject to effective taxation in accordance with the laws of the latter MS. However, it needs to be noted, that as regards UCITS, this Directive covers only those with substantial underlying interest income.
- g. At the same time, there may still be incentives for an investor to buy UCITS in a certain MS, due to the specific tax regime of the other MS. Furthermore, there can also be tax incentives for a UCITS management company to establish its headquarters in a certain MS in light of the latter's tax policy. However, these are not the same issues as the tax hurdles referred to in the TFPP document.
- h. In conclusion, there are not many tax obstacles in cross-border marketing of UCITS in the EU. However, different tax regimes still hinder the single market efficiency measures provided for in the UCITS IV Directive (the number of cross-border mergers, UCITS managed on a cross-border basis or cross-border master-feeder structures is lower than expected, due to problems with the application of more than one tax regime).

Contract law hurdles

- i. As UCITS are collective investment undertakings, there are no individual contracts between investors and the UCITS or its Management Company. A UCITS is governed by a single agreement in the form of fund rules (contractual type of fund) or instrument of incorporation (corporate type of fund). Each investor, by virtue of investing in the UCITS fund, agrees with that general agreement.
- j. An investor who wants to invest in a UCITS will normally make his decision on the basis of the KIID and, where provided, on the basis of a prospectus. The UCITS (or the distributors) will distribute the same KIID and prospectus in every MS where the UCITS is being sold.
- k. The Fund Rules or the Instruments of Incorporation are governed by the law of the Member State that is the domicile of the UCITS. Note, that investors could be residents of different MS and also the Management Company could be established in a Member state different to the domicile of the UCITS fund.
- l. In conclusion, as there are no individual contracts between the provider and holder, the contract law hurdles that exist in the context of PPPs are consequently not relevant for UCITS.

Social Law hurdle

175. Personal pension plans, despite being individual products, usually reflect the existence of their national social security system. The most recent reforms of privately managed pension provisions are part of the general reform process of pension systems. In some MS, private pensions provide an important contribution to meeting the demographic challenge to the sustainability of the pension system and to ensuring the future adequacy of pensions.

176. As a consequence, personal pensions are interlinked with the wider social security environment of MS. Firstly, it is the national social legislation that recognises and defines a financial product as PPP and distinguishes it from other similar long term investment products. Secondly, national social legislation also identifies the main characteristics of personal pension plans, with reference for example to the participation requirements. Thirdly, the benefit structure of a PPP is modelled by social law requirements regarding retirement age.

177. As explored in the EIOPA Database, the main connections with the public pension system seem to be the retirement age (main link) and the existence of opt-out clauses. For example, 70% of existing personal pension plans have a certain link with the first pillar pension system. Other elements in common with the first pillar system are also possible (see 3<sup>rd</sup> table below).

*Link to 1<sup>st</sup> Pillar: retirement age*

	Personal	Occupational & Personal	Total
No	22	3	25
Yes	47	8	55
<b>Total</b>	<b>69</b>	<b>11</b>	<b>80</b>

*Link to 1st Pillar: opting-out clauses*

	Personal	Occupational & Personal	Total
No	64	5	69
Yes	5	6	11
<b>Total</b>	<b>69</b>	<b>11</b>	<b>80</b>

*Link to 1st Pillar: other*

	Personal	Occupational & Personal	Total
No	63	11	74
Yes	6		6
<b>Total</b>	<b>69</b>	<b>11</b>	<b>80</b>

178. Another link with national social security legislation is the regulation of terms and conditions attached to the use of alternative pay-out options provided by retirement products. EIOPA has provides additional details in paragraphs below.

179. The analysis of the main forms of benefit payment at retirement, based on the EIOPA Database, suggests a consistent variance between pension plans. The possible forms of retirement payments allowed are annuities (a stream of payments for as long as the retiree lives), lump sums (a single payment), and programmed withdrawals (a series of fixed or variable payments whereby the annuitant draws down a part of the accumulated capital).

180. The annuity-based form of retirement payment, as evident from the table below, is possible for more than the majority of PPPs, while there are only a few products for which it is not possible. For about one third of the existing PPPs some elements required on a mandatory legal basis are also in place. Furthermore, we

note that for some PPPs annuities are mandatory at retirement, while for others annuities are only partially mandatory<sup>65</sup>.

181. Lump sums are possible for about 75% of PPPs, while programmed withdrawals are allowed for 49% of them. In table below a more comprehensive description of the pay-out phase is provided with regard to PPPs offered in different countries.

	Pay-out phase				
	100% mandatory	Partially mandatory	Possible	Not possible	Total
	Annuity				
Personal	9	17	35	8	69
Occupational and Personal	1		8	2	11
<b>Total</b>	<b>10</b>	<b>17</b>	<b>43</b>	<b>10</b>	<b>80</b>
	Lump sum				
Personal	Not applicable		51	18	69
Occupational and Personal	Not applicable		9	2	11
<b>Total</b>	Not applicable		<b>60</b>	<b>20</b>	<b>80</b>
	Programmed Withdrawals				
Personal	Not applicable		35	34	69
Occupational and Personal	Not applicable		4	7	11
<b>Total</b>	Not applicable		<b>39</b>	<b>41</b>	<b>80</b>

### Product diversification, costs and absence of critical mass

182. The absence of any EU-wide standardisation of PPPs may also be included in the list of hurdles that have prevented economies of scale from prevailing and made the comparison and the assessment of products very difficult for potential members. Partially as a result of differences in national tax and social law, providers are not able (or not willing) to offer products that are suitable for an EU-wide market and otherwise might have achieved critical mass and economies of scale. Potential members have many products available at national level, but they are often quite costly and carry features that make them difficult to compare; these information asymmetries depress potential demand.

### Other hurdles

183. Other hurdles (not an exhaustive list based on stakeholder comments) that might prevent providers from offering PPPs cross border are: not 'knowing their customer' who lives far away, understanding the true risk proposed for cover, language, culture (including expectations of the local policyholder), the form and prevalence of fraud, the tax environment and supervisory environment. Consumers might also experience reluctance to buy a PPP from a provider that is not located in his MS.

184. When a participant wants to switch between PPPs or decides to change the provider of the PPP, a transfer of accumulated capital from a PPP in one MS to a

<sup>65</sup> i.e. under certain conditions, the annuity is not compulsory to use

PPP in another MS may be a complicated process not just from a tax perspective but also in terms of the administrative process to be pursued.

185. Finally, although not within the focus of EIOPA analysis, we also note that on top of hurdles discussed above, national requirements established under the principle of general good may also contribute as further hurdles to the cross border operation of PPPs<sup>66</sup>.

186. EIOPA notes that the Solvency II Directive will significantly improve the current hurdles EIOPA has identified in its Discussion Paper regarding the cross border provision of life insurance PPPs. For a complete analysis of the current issues regarding cross border provision of life insurance PPPs under the LAD please see Annex 5 (technical details).

### **Main findings:**

187. EIOPA analysis has revealed that taxation, social law, as well as difficulties in the area of harmonisation of contract law, appear to be the most significant hurdles to developing a PPP single market. In particular this implies large product variety across EU MS<sup>67</sup> resulting in obstacles to economies of scale and the achievement of critical mass.

188. While COM has already initiated work in the area of contract law, the taxation and social regimes remain an area of full national competence. EIOPA also notes that the taxation hurdle is just as relevant for existing PPPs as well as for any new products (as proposed by some stakeholders).

189. EIOPA therefore acknowledges that further analysis may be needed concerning the conditions (PPP characteristics) each MS sets in order for premiums/contributions to qualify for beneficial tax treatment. EIOPA will closely follow the progress of COM and OECD on this matter.

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<sup>66</sup> For more details see: COMMISSION INTERPRETATIVE COMMUNICATION Freedom to provide services and the general good in the insurance sector (2000/C 43/03). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2000:043:0005:0027:EN:PDF> and EIOPA overview of general good provisions available at: <https://eiopa.europa.eu/disclosure/committee-on-consumer-protection/general-good-provisions/index.html>

<sup>67</sup> i.e. tailored products for individual markets

## 5. Short considerations of options available for establishing a EU wide body of legislation for PPPs

190. As acknowledged in COM's White paper on pensions, "*the Single Market is a key instrument to support pension adequacy and fiscal sustainability. There is untapped potential to realise further efficiency gains through scale economies, risk diversification and innovation.*"<sup>68</sup> This is not only the case with regard to occupational, but also with regard to personal pensions.
191. In the first section of this report, EIOPA has analysed available options in terms of defining EU PPPs. EIOPA has found that even if definitions for personal pensions may have been used in its previous work or OECD initiatives, the way forward for having a clear notion of what a EU PPP will be warrants a new definition that would provide, at least, for the following:
- other than public and occupational pensions,
  - based on a contract between provider and individual,
  - under MS national law is recognised as having the primary purpose of providing the individual with an income in retirement,
  - entitles the individual to certain benefits and
  - enables limited or no early withdrawal of accumulated money
192. The two main "borderline cases" identified by EIOPA in the context of this preliminary report are:
- Group pensions (GPs)
  - 1<sup>st</sup> pillar bis pensions.
193. GPs meet most of the definition elements listed above, apart from:
- The employer and/or trade union representatives selects the provider and/or products of the GP; or
  - The introduction of a GP scheme in a company may be the result of negotiations between the employer and employee representatives;
  - The contract is usually concluded between the employee and the provider; in some cases, the contract may be between employer and provider.
194. In EIOPA's view, GPs that would not be subject to existing EU legislation should be included, for at least some aspects, in the scope of any future COM initiative on PPPs. EIOPA strongly believes that PPP holders protection rules should apply at the highest level of EU legislation including for "un-regulated" products, even though some commentators may argue in favour of a "no action" option.
195. The 1st pillar bis pensions, on the other hand, meet all elements of the PPP definition proposed above. At the same time, 1st pillar bis pensions are considered to be part of the MS national social systems. Following the detailed analysis in section 4, EIOPA took note of the limitations of using art. 114 TFEU as a legal basis for any initiative for harmonisation of the consumer aspects of 1st pillar bis

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<sup>68</sup> European Commission. White Paper on adequate, safe and sustainable pensions, 2012, pg. 13, available at <http://ec.europa.eu/social/BlobServlet?docId=7341&langId=en>

pensions. Nevertheless, EIOPA strongly believes that PPP holder protection measures should be the same across the EU for all PPP products.

196. Therefore, EIOPA is of the opinion that the purpose of PPPs differs significantly from other financial products and should be adequately regulated at EU level. This may include PPP design and PPP holder protection rules to address the detrimental effects that could result from the dependency and vulnerability issues described above.

197. There seem to be two options for creating a single market for PPPs, one perhaps more viable than the other:

a) Option 1: Introduce common EU rules for all existing and future PPPs by way of a Directive.

b) Option 2: Introduce a 2<sup>nd</sup> regime (also known as a 29th regime). A 2<sup>nd</sup> regime would take the form of a Regulation.

198. The following 2 sections of this report address in detail these 2 options. The findings of this analysis support both a proposal to establish a directive providing for enhanced consumer protection requirements to cover the whole spectrum of existing PPPs together with a Regulation that would focus only on a 2<sup>nd</sup> regime for PPPs (as assumed to be a newly introduced highly standardised product)



## **6. Establishing a common regulatory framework for all existing PPPs (Directive)**

### **6.1. Background**

199. This section discusses possible building blocks for a Directive as a tool for introducing EU common rules for existing and future PPPs.

### **6.2. Stakeholder's view:**

200. A large majority of stakeholders recommend/argue in favour of EIOPA working principally or indeed only on DC PPPs. Many of them refer to the prolonged trend away from DB schemes and towards DC schemes. In fact, some markets do not exhibit any DB concepts at all. Several stakeholders highlight that DB PPPs would be too complex for a regulation aiming at a single market, in particular with respect to transferability and portability including difficulties with respect to capital requirements. The focus on DC PPPs is considered more appropriate if products are intended to be sold to mobile people, cross-border employees, or the self-employed.

201. There are also a couple of minority views.

- Some stakeholders believe that the distinction between DC and DB is not the appropriate focus. Rather they propose to classify PPPs according to the risks they contain from the holder's point of view (e. g., financial risks). In contrast, DC and DB schemes are also understood to be features of occupational pensions reflecting the role of the employer who makes a promise regarding a scheme of that kind.
- Other stakeholders want both DC and DB PPPs to be covered since these two types are actually important and have different features. If the work were restricted to DC PPPs, providers from DB markets would be excluded from the single market to some extent.
- A minority of stakeholders do not see any reason, or have doubts, about the need for additional requirements for PPPs, irrespective of whether they are DC or DB. On the one hand, they recall that insurance PPPs are already subject to EU regulation. On the other hand, they point out that the PPP markets are highly specialised at national level, in particular due to taxation issues. Therefore, they state that further regulation should be left to the individual MS.

202. There is also a minority proposal to create a single market using the concept of an Officially Certified European Retirement Plan (OCERP). More precisely, stakeholders feel that a harmonisation of the existing PPP market would be too ambitious. Therefore, they recommend to try an approach based on DC OCERPs and the following elements:

- a common framework of rules for qualifying an OCERP,
- an EU passport for OCERPs, so the products can be offered to all EU citizens,
- a regulatory framework under which financial institutions could provide OCERPs across the EU.

203. From the above, stakeholders favour a focus on DC type PPPs which are expected to become more and more important and come with the added benefit of potentially being easier to handle than DB schemes. Stakeholder's views find the prospect of creating a single market based on DC products more promising.

204. This approach does not mean that all existing DC PPPs are automatically qualified or suitable for a single market. Indeed, a harmonisation of the existing PPP market would be too ambitious. Therefore, the common framework for a cross-border single market should apply to particular DC products only which could be specified by the concept of an OCERP. However, solutions other than OCERPs may work as well.
205. Most stakeholders do not think that it is feasible to create **a cross border framework for PPPs with guarantees**. A main objection relates to the life insurance sectors where various national regulators set a maximum interest rate; stakeholders do not see the chance of a common framework for the maximum interest rate. In addition, the concept of a maximum interest rate is applicable to insurance PPPs only.
206. Some of these stakeholders are opposed to the development of a cross-border framework for PPPs (with or without guarantees) which is nothing but more regulation. Others do not consider this aim relevant or achievable. Further commentators think that such a framework should apply to all PPPs, or they actually want PPPs without guarantees to be covered.
207. A minority of stakeholders supports the idea of a cross-border framework with respect to guaranteed PPPs, at least to some extent. In their opinion, guarantees are part of the competitive features of national products. Thus, the introduction of a single market for PPPs could trigger more competition and an evolutionary harmonisation. They suggest a standard defined at European level with guarantees of approach and protection, specifically for DC PPPs.
208. Stakeholders also mention the relationship between loss mitigation (guarantee) and its cost (lower return) which should be addressed in a cross-border framework on guaranteed PPPs.
209. Stakeholders proposed many elements which should be regulated for both DC and DB PPPs in order to create a single market. The following issues aiming at the PPP holder's point of view seem to be most important:
- investment options and investment choice,
  - transferability between providers and MSMS,
  - type and level of charges and costs of PPPs.
210. One stakeholder proposed the following list of additional elements to introduce a 2<sup>nd</sup> PPP regime via Directive (preferred option):
- recognition of PPPs for both taxation and social purposes throughout the EU,
  - definite focus on retirement (i.e., contracts running until the normal retirement age, including options for early and late retirement),
  - options for de-cumulating at retirement,
  - pre- and post-contractual disclosure requirements, including annual information about the accumulated capital and the possible future income from the PPP contract calculated on regulated assumptions,
  - flexibility of contributions in the event of changes to personal circumstances (such as change of job, redundancy, illness, and disability)
  - provisions on advice both when commencing a contract and on-going (e.g., changes to personal circumstances or investment risk appetite),
  - maximum availability of advice to all individuals on payment of a fee or commission to the advisor or a combination of both agreed by the parties,

- a security system in the event of failure of the product provider
- rules to protect PPP contracts from creditors of the individual,
- regulation and supervision of prudential risks from the consumer’s point of view (including quality, governance, transfer risks)
- provisions to standardise assumptions in all countries, for both DB and DC (such as uniform choice of rate).

### 6.3. EIOPA view

211. Some stakeholders argue against incorporating DB and DC with guarantees into the scope of possible EU initiative in the area of personal pensions. They refer to difficulties already encountered in the IORP environment for creating a portability and transferability framework (incl. mortality tables and maximum interest rates used for determining benefits). Furthermore, stakeholders also reflect on the general trend to move from DB to pure DC arrangements that is currently observed in the market.

212. The EIOPA Database of Pension Plans/Products (“Database”) confirms that more than half of the PPPs contained are DC schemes. Only a small number of PPPs are DB schemes, including DB contribution based schemes. The remaining PPPs are variations to pure DC schemes, e.g. DC schemes with guarantees.

*DB vs DC – Personal and Occupational & Personal pension plans/products*

	DB vs DC				Total
	DB	DB contribution based	DC	DC with guarantees	
Personal	4	10	40	15	69
Both Occupational and Personal	2	1	3	5	11
<b>Total</b>	<b>6</b>	<b>11</b>	<b>43</b>	<b>20</b>	<b>80</b>

213. EIOPA acknowledges the current market data indicates DC products are predominant. Nevertheless, as a principle, EIOPA believes both DB, DC with guarantees, and DC products should be covered by a future PPP initiative<sup>69</sup>.

214. The EIOPA Database shows that according to the criterion of applicable EU prudential law, PPPs can be grouped into the following categories:<sup>70</sup>

- a) PPPs provided by institutions regulated by the Life Assurance Directive (LAD) (life insurance PPPs) / future SII Directive
- b) PPPs provided by institutions regulated by the CRD (CRD PPPs)
- c) PPPs regulated by the UCITS Directive (UCITS PPPs)
- d) Borderline cases (i.e. 1st pillar bis products ( see annexe 2), group pensions ( see annexe 3) and other cases ( see annexe 4) )<sup>71</sup>.

<sup>69</sup> In this context, we refer to DB schemes as schemes where some form of guaranteed benefit is offered (incl hybrid schemes). This concept of DB scheme differs to the one usually adopted for occupational DB schemes, where benefits are defined on the basis of the salary of the scheme member.

<sup>70</sup>Please note that the Database does not distinguish the legal framework applicable to products from legal framework applicable to providers.

<sup>71</sup> EIOPA would also like to inform that during the course of its analysis, an “alternative proposal to a Directive” was made and this proposal considered a possibility of introducing a kind of equivalence regime, possibly inspired by AIFMD Directive. EIOPA did not further pursue this approach given the following:

215. EIOPA notes that at this moment in time, a **comprehensive EU prudential regulation regime is already in place for most PPP providers** i.e. those that are insurance companies (Solvency II), asset managers (UCITS) or banks – (CRD). EIOPA acknowledges that some borderline cases under par. 219 letter d) are an exception<sup>72</sup>.
216. Furthermore, for most of the hurdles for establishing a single market for PPPs, while COM may investigate ways of overcoming them, a future Directive may not be the most appropriate tool due to the absence of EU powers in the areas of taxation, contract law, and social and labour law.<sup>73</sup>
217. Therefore, EIOPA believes a strong case is made for a future Directive that would establish a single market for PPPs inter alia through the alignment **across the EU of PPP holder protection measures** regarding:
- i. Transparency and disclosure – similar to PRIPS and IORPII but adjusted to PPP specificities
  - ii. Distribution requirements (Selling practices & Professional requirements) – similar to MiFID and IMD but adjusted for PPP specificities
  - iii. Product governance requirements
218. These aspects are of **key importance** and specific input as to what the focus of such arrangements should be is provided in Chapter 8 onwards. As PPPs may be an important part of individual retirement provision, COM may also consider whether at EU level there are possible ways to ensure that PPP holders are protected from claims of creditors against PPP holders in an appropriate way.<sup>74</sup>
219. EIOPA believes that transferability issues should not be tackled at the level of a directive as particular difficulties both in terms of tax but also in some technical areas (incl. mortality tables, interest rates used for guaranteed returns,)<sup>75</sup> remain a MS competence.

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- a) Equivalence is currently a concept used across EU Directives in relation to a third country regime. There is no precedent as to “internal equivalence”.
  - b) Equivalence needs to be assessed towards an existing directive – and this needs careful consideration as the details may be difficult in terms of identifying the EU benchmark for the assessment.
  - c) The concept DB concept varies from MS to MS and this would make an assessment very difficult.

<sup>72</sup> Nevertheless, in some MS, PPP are operated by pension companies, regulated at national level at similar standards as financial institutions in EU single market, without any obligation to comply with EU prudential regulations.

<sup>73</sup> Other obstacles identified are general good, culture and language.

<sup>74</sup> For example, Germany introduced such a legal framework in 2007. The protection applies to old-age pension contracts which comply with certain criteria (roughly, contracts must stipulate a life-long regular income, must not include a surrender option and must not allow for a lump sum but in the event of death). Though many types of PPP contracts are actually not subject to protection the PPP holder has the right to transfer accumulated capital to a protected PPP contract every time. However, the protection of accumulated capital is restricted to amounts scaled in accordance with the PPP holder’s age in life. Indeed, an unlimited protection would hardly be in line with the basic right of protection with respect to creditor’s property assured by constitution in Germany. German social security law also provides some protection mechanisms for certain PPP contracts, for example, in the event of unemployment. Public authorities will not insist on surrender as long as the accumulated capital does not exceed the respective maximum amounts

<sup>75</sup> Further details: a) The rate of interest that has to be chosen shall be determined in accordance with the rules of the competent authority in the home MS (the MS in which the head office of the assurance undertaking covering the commitment is situated). To compute the provisions, the rate used is (most of the time) the rate of the commitment.

b) There may also be issues linked to the mortality tables, which are most of the time based on the MS’ mortality statistics and, possibly, on their expected trends. When transferring a commitment from one MS to another, the new provider will most probably continue to use its own mortality table. This is most relevant for transfer of a large portfolio.

**Main findings:**

220. EIOPA believes is not necessary to introduce additional a fully-fledged EU prudential framework with regard to already regulated PPP providers in order to ensure their financial soundness.

221. EIOPA believes a strong case is made for a future Directive that would establish a single market for PPPs inter alia through the alignment across the EU of PPP holder protection measures.

## **7. Establishing a 2<sup>nd</sup> Regime (also known as the 29<sup>th</sup> regime) – Regulation**

### **7.1. Background**

222. According to the mandate from the COM, EIOPA should investigate the possibility of developing a single market for PPPs through a so called 2<sup>nd</sup> regime.

223. The 2<sup>nd</sup> regime is a body of law enacted by the European legislator in a particular field of law<sup>76</sup>. The 2<sup>nd</sup> regime creates an alternative uniform European system to different national regimes. The 2<sup>nd</sup> regime does not replace existing national level rules, but offers an alternative to them. Private parties (providers and PPP holders) can choose which of the two bodies of law will govern their legal relations.

### **7.2. Stakeholders' view**

224. Stakeholders answers are divided concerning the need for a 2<sup>nd</sup> regime. Some of them consider the 2<sup>nd</sup> regime as a good way to overcome the various obstacles that exist at national levels, others, especially insurance associations, do not see the need to develop it and they make comments about the timing of this consultation. Before giving views on a 2<sup>nd</sup> regime, these stakeholders ask EIOPA to await the results of the debate in the European expert group on an optional European insurance contract law. Moreover, they underline that European regulations, like Solvency II, already offer good conditions for cross-border activities.

225. Among those opposing the 2<sup>nd</sup> regime, concerns were expressed about the possibility that the legal framework could become additionally complicated, because of divergent interpretations among MS.

226. At the same time the 2<sup>nd</sup> regime is viewed as a good opportunity, particularly to develop a single market without threatening national markets. Nevertheless, the level of harmonisation should not conflict with the freedom to innovate for the providers.

227. Finally, stakeholders note that two issues should be addressed before the initiation of any legislative action re a 2<sup>nd</sup> regime:

- the cost of a 2nd market should not exceed the benefit, and
- a 2nd regime should also propose a solution to differences between MS tax regimes.

228. Stakeholders in favour of establishing a 2<sup>nd</sup> regime have identified the following desirable characteristics for a the 2<sup>nd</sup> regime:

- simple,
- based on DC products and
- providing a solution for tax issues.

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<sup>76</sup> Examples of existing 2nd regime regulations include:

- Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)
- Regulation 1257/2012 Implementing Enhanced cooperation in the area of the creation of unitary patent protection
- Regulation 1260/2012 Implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

229. Stakeholders have noted that a 2<sup>nd</sup> regime needs to attract a critical mass and PPP holders should be able to compare with ease products from different providers.
230. When asked whether a 2<sup>nd</sup> regime should comprise product rules only or product and provider rules, most respondents defended the idea of developing both product and provider rules.
231. A majority of stakeholders agree that DC products without any guarantee are the best solution for the accumulation phase although a few suggested that the presence of guarantees in a DC product could be important for attracting consumers. With respect to the details of the product rules, stakeholders most frequently mention the following points:
- Maximum flexibility for the pay-out phase is mostly envisaged.
  - Nevertheless, product design contained in the 2<sup>nd</sup> regime should not be too strict in order not to stifle competition and product innovation.
  - Rules have to be applied to providers and a 2<sup>nd</sup> regime framework should include transparency and consumer protection measures (a few stakeholders suggest that the UCITS framework could be a benchmark).
  - For product rules, stakeholders highlighted the importance of having selling practices regulation.
232. Regarding the need to establish prudential rules also in a 2<sup>nd</sup> regime, including a common set of rules for calculating technical provisions for different types of providers, some stakeholders have noted a preference for having a single set of rules for TP calculation for all providers operating under a 2<sup>nd</sup> regime PPP. Other stakeholders have noted their preference for relying on existing TP calculation rules in order to avoid any duplication in a 2<sup>nd</sup> regime.
233. Moreover a 2<sup>nd</sup> regime should not introduce competitive distortion with other regulations and further consideration would be needed to ensure a level playing field is achieved<sup>77</sup>.
234. Stakeholders noted that transferability could be an opportunity to make the single market in PPPs more concrete and to increase labour mobility across the EU. Transferability, in the view of some contributors, may increase commonalities between European PPPs. Furthermore, administrative costs of transfer should be regulated to stop providers from introducing prohibitively excessive charges.
235. On the other hand, other contributors such as insurance associations are reluctant about transferability for the following reasons:
- technical issues, such as prudential treatment of guarantees and interest rates across MS or impact of currency exchange rates would hinder cross border transfers.
  - prudential regulation may also generate burdens if providers are not ruled by the same EU regulation.
  - transferability may also have a negative impact on insurer duration. This impact could result in more expensive products, lower guarantees and less shorter term investment opportunities for the financial institutions.

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<sup>77</sup>EIOPA notes that compensation schemes are in place in some MS. A second regime without such a requirement may lead to un-even playing field with national PPPs.

### 7.3. EIOPA review of current proposed designs for a 2<sup>nd</sup> regime

236. EIOPA has undertaken to analyse two of the existing proposals<sup>78</sup> for establishment of a 2<sup>nd</sup> regime, namely the Officially Certified European Retirement Plan (OCERP) and the European Pension Plans (EPP). While not the only proposals currently under discussion in the EU environment, EIOPA considered the two as most representative.

#### Officially Certified European Retirement Plan (OCERP)

237. **The OCERP** is intended as a blueprint of a European brand of personal pension products to be distributed on a cross-border basis. As a personal pension product, an OCERP possesses the following features:

- Individual membership: Individuals decide voluntarily to subscribe to an OCERP and determine key aspects of their participation, in particular regarding the contribution level, the investment option, and the pay-out solution at retirement.
- Individual account: OCERPs are financed by contributions paid to an individual account by OCERP holders themselves or by third parties on their behalf.
- Retirement objective: OCERPs are primarily designed to provide a source of retirement income which complements other sources.
- Tax treatment: OCERPs benefit from the available tax benefits that are applicable to other personal pension products available at national level.
- Provider: OCERPs are managed by private financial institutions.
- Funding: all OCERPs are funded.
- Certification: The national regulatory body that has the authority to authorise personal pension products awards the OCERP status to the personal pension products that comply with the OCERP standards that are described below. Once certified in one member state, an OCERP benefits from an EU passport and its provider is allowed to market it throughout the European Union.

238. An EU legislative framework for the OCERP would have to define standards for the certification of an OCERP as a product, for the governance and the administration arrangements that OCERP providers would have to comply with, and for the distribution of OCERPs at national level and across the European Union (All the three levels may be specified by the standards detailed below)

239. The standards of the product are specified by standards 1-8. A pension product that meets these criteria would be deemed an OCERP product and could be distributed throughout Europe with an EU passport.

240. Any provider that meets standards 12-17 would be entitled to distribute such products. As a result of these standards existing providers could distribute the product.

241. The OCERP product could be distributed by the provider in accordance with standards 9-11.

242. According to the EFAMA proposal there are two ways of regulation on an EU level, namely the Directive and the 2<sup>nd</sup> Regime. The Document suggests that a

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<sup>78</sup> Note to reader: contents of the EIOPA description for these 2 products are at times full reproductions of the EFAMA or EFR proposals,



directive that would regulate the OCERP would help boost investors' confidence in the quality of the OCERP and its legal foundation. Should there not be enough support among Member States to agree on a directive to be implemented in national law, EFAMA is of the opinion that the 2nd regime would offer a sufficiently simple framework to create a single market for personal pension products.

243. EIOPA notes that the OCERP is a framework that appears focused on the accumulation phase. At the current stage of development, the EFAMA proposal for an OCERP also briefly contemplates the possibility of providing guarantees against investment risk or biometric risk (the latter based on an "outsourcing" arrangement with an insurer).<sup>79</sup>

244. The EFAMA proposed standards are:

<b>The Standards</b>		<b>Aim of the standard</b>
<b>Investment options</b>		
1.	Adequate choice	<i>OCERPs should offer a limited range of investment options</i>
2.	Appropriate default option	<i>OCERPs should specify an appropriate default option</i>
3.	Clear risk-reward profile	<i>OCERPs should categorize the investment options according to their risk-reward profiles</i>
4.	Ability to switch between options	<i>OCERP holders should be allowed to change investment options over the investment period</i>
5.	Flexibility in underlying products	<i>OCERPs should invest in a selection of underlying investment products</i>
6.	Prudent person rule for diversification	<i>OCERPs should invest in accordance with "prudent person" rule</i>
7.	Ability to offer risk coverage	<i>OCERPs could offer options to manage investment risk and biometric risks</i>
8.	Access to pay-out solutions	<i>OCERPs should offer a range of solutions for the payout phase</i>
<b>Standards for Communication</b>		
9.	Clear and consistent pre-enrolment information	<i>OCERPs should be accompanied by a Key Information Document (KID)</i>
10.	Accessible annual statements	<i>OCERP providers should provide on-going information to OCERP holders</i>
11.	Full transparency on all costs	<i>OCERPs should disclose all cost items in a form that individuals can easily understand</i>

<sup>79</sup> Page 17 of EFAMA proposal.

<b>Standards for Governance</b>		
12.	Robust internal and product governance	<i>OCERP providers should establish a robust governance framework</i>
<b>Standards for Administration</b>		
13.	Effective and efficient administration	<i>OCERP providers should maintain effective and efficient administration systems</i>
<b>Standards for Distribution</b>		
14.	Consistent regulation of advice	<i>Uniform rules on advice should be applied to OCERPs and all other personal pension products</i>
15.	Level playing field between different kinds of providers	<i>All financial institutions subject to EU prudential rules are potential OCERP providers</i>
16.	Flexibility of transferability between providers	<i>OCERPs should be transferable between providers and countries</i>
17.	EU passport	<i>OCERP providers should be able to market OCERPs throughout the European Union</i>

245. In EIOPA's view, the advantages of the OCERP approach are as follows:

a) The product level

- Uniform criteria shall refer to the pension products on an EU level
- the pension products may be easily assessed based on the standards
- Due to their uniform criteria such products may be distributed on a cross-border basis

b) The provider level

- Existing providers could distribute the product

c) The distribution level

- There would be clear distribution standards.

246. EIOPA also acknowledges the position of contributing industry representatives to the COM consultation of April 2013 stating "Certification schemes have the potential to make products easily recognisable, to foster investors' ability to compare costs and benefits of products and to push providers to release projections on expected yields".

247. Nevertheless, EIOPA also notes the following disadvantages of the OCERP approach:

- The document does not give an answer to taxation questions. (The document itself points out that it is not the purpose of the document to answer all questions raised.)
- The proposal does not provide considerations regarding nationally regulated entities.
- The concept does not seem to add in terms of PPP beneficiary protection (e.g. in areas of the investment decision and related information asymmetry). The

current proposal is a high-level draft which currently does not anticipate the disclosure regime expected by EFAMA for an OCERP.

- The OCERP proposal also contemplates coverage for bio-metric risks but does not provide additional details in terms of regulatory treatment.
- The OCERP proposal introduces a new<sup>80</sup> conceptual approach to EU financial supervision i.e. certification by the supervisor. Further information is needed as to how this process would be reconciled with the concept of risk-based supervision.

248. One of the aims of the Commission is to enable cross-border activity of personal pension schemes. The method proposed by EFAMA, namely creating standards for pension products, would enhance cross-border activity and is in line with the goal of the Call for Advice. The UCITS Directive is based also on this principle: there are investment funds that comply with the criteria specified for distribution on an EU level, such funds are subject to cross-border activity, in case of non-compliance such funds may be distributed only in the MS.

249. Similarly PPPs that meet the standards to be specified could be subject to cross-border activity whereas in the case of non-compliance such products could be distributed only on a national level.

250. The standards specified above may be modified but may serve as a basis for future regulation. This method is also in accordance with the proportionality principle of European regulations since the regulation based on standards would not affect the pension system and the pension products of the MS, it is the provider that decides to develop PPPs that comply with EU standards.

251. EFAMA prefers the regulation in the form of a Directive to the 2<sup>nd</sup> Regime but it does not object to the latter method. In this context we note that DG SANCO has also published a Consultation Paper on a similar topic (*Consumer protection in third-pillar retirement products*)<sup>81</sup>.

#### European Pension Plans (EPP)

252. Having deemed full harmonisation of national pension legislation an unrealistic option for the near future, **the European Financial Services Round Table (EFR)** promoted via its 2007 Report an intermediate practical level of regulation, co-existing with the current national regulations, in which pan-European pension products could be developed.

253. EFR proposes the creation of a **pan-European legal regime for personal retirement** savings co-existing with national 3<sup>rd</sup> pillar structures and/or products, which would enable financial institutions to provide and sell pan-European Pension Plans in all Member States.

254. The main characteristics of this optional legal framework would be:

- respect national and EU legislation governing the existing products
- a high and robust level of consumer protection across Europe

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<sup>80</sup> EIOPA notes certification is new in terms of EU supervision arrangement. At national level, product approval has been in place for significant period.

<sup>81</sup> Stating "An EU certification scheme would involve a direct relationship between a provider fulfilling a number of precise requirements (established at EU level) for a specific product or service, or some specific aspects (including information)"

- product innovation must be possible in order to best meet consumers changing needs
  - must foster competition between providers
255. To qualify as an EPP, different pension products would have to fulfil the following key features reflecting common characteristics of private pension systems in the Member States:
- a) The product:
- The EPP products would be highly (not fully) standardised plans which could be provided all over the EU with basic characteristics;
  - Individual participants would be the owner/holder of the EPP;
  - No uniform fee level across the EU to enhance/ allow competition
  - would, optionally, offer cover for additional risks, like disability or survivor pension; specific riders would be available as an option;
  - During the accumulation phase the (flexible) contributions would be directed into an individual retirement contract i.e. single premiums (lump sum);/ periodic payments; transfer or rollover from other plans or accounts;
- b) Investment policy:
- The participant could choose between different product types with different risk/ return profiles. If the participant bears the investment risk he would have different investment choices.
  - The provider would be required to offer the option where the value of the retirement plan is not less than the contribution paid, minus expenses (see Riester plans). An appropriate balance between freedom to choose and protection would need to be attained.
- c) The provider & its supervision
- The provider could choose to offer various product types in the framework of the EPP;
  - An EPP would be provided by financial services providers that are duly authorised to operate in a Member State, in accordance with the requirements currently in place;
  - The supervision of the provider as well as the compliance of the EPP with the EU-wide prudential rules would be the responsibility of the supervisor of the country where the (European) headquarters of the provider is located (the "home Member State"). This supervisor would act as lead supervisor;
- d) Taxation
- The holder of the EPP should get tax incentives according to the EET-model: contributions to the EPP should - as far as possible - be tax-deductible, the investment gains during the pay-in phase would be tax exempt and any pay out would be taxed;
256. The EPP framework proposal is a 28 ½ regime that would cover the following:
- general provisions: defining the scope of the EPP framework as well as the definition of the main terms ;
  - the contract: definition of the types of benefits, guarantees and investment options, applicable law, cancellation period, information due to consumer and to

plan-holder before and after subscription of the EPP, individual transfers, pay-out of the plan ;

- the distribution and marketing of the EPP: this part mainly relies on existing legislation
- the contributions to the EPP: this part enables all means of payment, including portfolio transfers, and states a non-discrimination principle versus national contracts
- complaints, redress: this part comes within consumer protection rules and specifies the conditions under which a plan holder may take action against the provider (notably through the definition of the competent jurisdiction);
- the EPP provider: this part deals with the rules applicable to the provider concerning supervision, prudential rules (investment rules, liabilities, solvency); those rules come within the home Member State regulation and control ;

257. Taxation issues: non-discrimination rule between national operations and EPP as long as they provide the same types of retirement benefits. The main elements of the EFR proposal are:

A. Approval	A provider wishing to produce, market and sell pension plans subject to this framework in one or more Member States is not subject to any form of prior notification or approval from any competent authority of any Member State.
B. Qualifying as an EPP	A product which does not comply with the requirements set out in this framework may not be marketed or sold as Pan-European pension plan or EPP. A provider or any other assurance or financial institution shall not market or sell as a Pan- European pension plan or EPP any pension or other product which does not comply with the requirements of this framework.
C. The contract	<p>1. A Pan-European pension plan shall be a contract concluded with the provider by the plan holder or by a third party (the "policyholder") on behalf of him to entitle the plan holder to retirement benefits in accordance with the legal form of the plan and the provisions of this framework.</p> <p>2. The contract for a Pan-European pension plan is concluded when the plan holder, after acceptance of the provider, signs the contract or makes the first payment of contributions whichever comes first.</p> <p>3. The contractual terms of the Pan-European pension plan shall include:</p> <p>(a) Conditions and procedures of participation in the plan;</p> <p>(b) Procedure and timeframe for paying contributions including a clause on possible modification thereof;</p> <p>(c) Charges and fees to be paid;</p> <p>(d) The principles for asset allocation;</p> <p>(e) Procedure for calculating pension benefits;</p> <p>(f) Description of all types of pension payments and conditions for paying thereof;</p>

	<p>(g) Rights and responsibilities of the plan holder;</p> <p>(h) Name of the provider, its legal form and address of his head office and/or his main administration, including the name of the Member State and of the competent authority responsible for the financial and prudential supervision of the provider;</p> <p>(i) Law applicable to the plan;</p> <p>(j) Other terms and conditions complying with this framework and the law applicable</p>
D. The applicable law	<p>Without prejudice to this framework, the plan shall be governed either by the law of the host Member State at the time of subscription of the plan or by the law of the home Member State according to the terms of the contract creating the plan.</p> <p>The law specified in paragraphs 1 of this section shall govern the validity of the plan, its effects and its administration, and in particular the relationships between the provider and the plan holders or the beneficiaries, unless this law come to conflict with this framework.</p> <p>The provisions of this framework, except (some sections), may be disregarded when their application in the host Member State would be manifestly incompatible with public policy or with rules laid down for consumer protection.</p> <p>The law of the host Member State may therefore govern :</p> <ul style="list-style-type: none"> <li>- the recourses of the personal creditors of the plan holder;</li> <li>- the matrimonial property;</li> <li>- the plan holder's estate upon his death.</li> </ul> <p>The laws specified in this section shall not govern the provisions which come under the financial and prudential supervision of the provider.</p> <p>Where a Member State includes several territorial units, each of which has its own rules of law concerning contractual obligations each unit shall be considered a Member State for the purposes of identifying the law(s) applicable to the contract under this framework.</p>
E. Fees and Charges	<p>When the retirement benefits depend on the balance of the individual account, the fees and charges to be paid under an EPP, including the basis they are calculated on, shall be expressed in any promotional or other material and in the plan document.</p>
F. Types of plans	<p>A Pan-European Pension Plan may, for example, take one of the following forms or any combination of them:</p> <p>(a) a pension promise expressed in the form of a defined retirement benefit paid at the retirement age set in the plan, whereby the portfolio of assets held on the account of the plan holder is managed by the provider and the provider takes the investment risk;</p> <p>(b) agreement for the payment of contributions whereby the retirement benefit will depend on the balance of the individual account of the plan holder, whereby the providers offers the plan holder certain options for the investment of his assets and the plan holder takes the investment risk.</p>
G. Taxation	VII.1 Taxation

	<p>Member States must adopt provisions designed to ensure that Pan-European pension plans governed by this framework are granted the same tax deductibility or tax-incentives as applicable to pension plans or retirement plans defined on a national basis, where appropriate.</p> <p>However, the Member State may limit or restrict the pay-out options in accordance with the rules that apply for other retirement or pension products with tax-deductibility or tax incentives, avoiding unequal treatment of the EPP.</p> <p>The host Member State may require that for contributions that were tax deductible or got another tax-incentive in that Member State, the pay out of the benefit based on these contributions and the return on investment thereon, will remain subject to taxation in that host Member State.</p> <p>In the personified record keeping system the provider shall hold track, in the subaccount as mentioned in section II.4.a, of all contributions, the return on investment and the pay-out based thereon that were tax-deductible or got another tax-incentive in a host Member State.</p> <p>The provider may disclose information on the rights of the plan holder to the tax administration of the host Member State in a European format to be defined hereafter. Conversely, the host Member State shall not require that the provider disclose to its tax administration additional information or the information listed in a different format.</p> <p>VII.2 Non-discrimination principle</p> <p>Any law, regulation or administrative provision in force in a Member State, including declaratory obligations of the plan holders towards the tax administration, having as a direct or indirect consequence a discrimination against EPP in comparison with other personal pension plans defined on a national basis is null and void</p>
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258. EIOPA considers that the advantages of the EFR-EPP proposal are:

a) The product level

- Uniform product requirements which would lead to high standardisation
- Individual participants would be the owner/holder of the EPP
- Designed for EU wide distribution. Follows EPP holder through job related geographical migration.
- Due to the uniform criteria such products could be distributed on a cross-border basis

b) The provider level

- Existing providers could distribute the product

c) The distribution level

- There would be clear standards for the distribution – re information disclosure.

259. EIOPA considers that the disadvantages of the EFR-EPP proposal are:

a) The document provides a convoluted response to the issue of taxation:

- at pay-in time: the tax regime applicable in MS where income is made to apply
- investment results: proposed to be exempt – requires political will

- pay-out phase: mosaic of applicable regimes.
- b) It does not address difficulties of contract law
- c) It does not cover EU non-regulated entities.
260. One of the aims of the Commission is to enable cross-border activity in personal pension schemes. The method proposed by EFR, namely creating standards for pension products would enhance cross-border activity and is in line with the goal of the Call for Advice. The UCITS Directive is based also on this principle: there are investment funds that comply with the criteria specified for distribution on EU level, such funds are subject to cross-border activity, in the case of non-compliance such funds may be distributed only in the MS.
261. Similarly PPPs that meet the standards to be specified could be subject to cross-border activity whereas in case of non-compliance such products could be distributed only on a national level.
262. The EFR proposed framework for the EPP was written with the intent of showing a possible content outline of future regulation.
263. EFR favours regulation in the form of a Directive over a 2<sup>nd</sup> Regime as it provides the highest level of legal certainty.

#### OCERP vs EPP proposals: a short comparison

264. EIOPA appreciates the level of analysis and prospective thinking undertaken by both EFR and EFAMA. While the two proposals were made some years apart, they both propose establishment of a pan-EU framework for personal pensions.
265. The similarities between the two proposals do not stop here, even if, at times these similarities concern gaps in terms of solutions to tackle some of the hurdles that to date have prevented the internal market for PPPs from developing.
266. Both proposals are made by the “fund management industry” and as such they tend to build on the existing UCITS framework. They share a number of similarities, among which we mention:
- Argue in favour of product standardisation
  - Do not provide fully developed proposals on cost disclosure
  - Do no deal with taxation
  - Do not provide practical solutions to the contract law obstacle
267. The main difference between the two proposals appears to be the proposal for “product certification” that is specific to the OCERP proposal.

#### **7.4. EIOPA high level analysis of pro’s and con’s for a 2nd regime**

268. As part of its analysis, EIOPA has also undertaken to map and discuss the most relevant aspects that could be classified as *pros* or *cons* for introduction of a 2<sup>nd</sup> regime.
269. Advantages of the 2nd regime in general are:
- Expands options for businesses and citizens operating in the single market;
  - Provides a reference point and an incentive for the convergence of national regimes over time; this could also help achieve critical mass, economies of scale, and the consolidation of multi-pillar pension systems in many EU countries.



- Enables the development of a single market in parallel with national systems, thus preserving national specificities;
- The creation of a 2nd regime, introducing a highly standardised EU PPP, could overcome many consumer protection issues in the distribution process (e.g. by framing the decision-making process in a way that could encourage potential members to make suitable choices - e.g. through default solutions and electronic platforms) and in this way encourage more consumers to buy a PPP. This would be beneficial for reducing distribution costs and reaching the critical mass that is needed for providers to offer cost effective products and reach economies of scale.
- EIOPA acknowledges the arguments in favour of including a prior approval requirement for 2<sup>nd</sup> regime products (whereby supervisors check whether the provider is eligible to offer 2nd regime products and whether the product is designed in line with rules on protection of PPP holders). As a positive consequence, we see the possibility of establishing 2<sup>nd</sup> regime PPP registers that would further enhance transparency of the system.

270. However, the disadvantages of the 2nd regime in general are:

- Due to the complexity of the 2nd regime, its implementation might be burdensome for providers, but especially for supervisors. It would increase administrative costs of supervision because of the need to run two regimes in parallel – a national and a European one;
- By being optional and by applying only to individuals and providers rather than MS, it would add to the complexity by introducing yet another regime, alongside all existing national regimes;
- The development of the 2nd regime is likely to take a long time with no guarantee of ever having the desired effect.
- Although a 2nd regime EU PPP would have harmonised product characteristics, the product will encounter the same main hurdles that existing PPPs already encounter. For example, the fact that taxation requirements would also (partly) determine the product characteristics of the EU PPP.

## **7.5. EIOPA view**

271. The range of providers that may offer 2nd regime products need not be limited to existing EU regulated financial institutions. The internal functioning of a PPP provider and the basic design of products must be consistent with the existing EU framework (e.g. only life insurance companies would be allowed to sell life annuities). Providers regulated only on a national level would be eligible to market 2<sup>nd</sup> regime products only if they meet prudential principles defined in a 2<sup>nd</sup> regime regulation.

272. The 2<sup>nd</sup> regime, in EIOPA's view could provide for the following elements:

- Definition of PPP without reference to national law (but including a link with the pay-out phase in order to distinguish the PPP from other financial products that do not have a "retirement objective")
- Eligibility/scope – i.e. area of application (all EU regulated entities may receive a 2nd regime label for their products that meet the definition and complying with rules covering governance and protection of PPP holders)
- Prudential rules for EU non-regulated providers that are interested in offering PPP's in MS.

- Product-focused accumulation phase, with strong DC bias (expected); however some link with the EU MS pay-out phase rules will also be required.
- Administration:
  - i. individual accounts; (incl. possible sub-accounts to reflect tax regime(s) applicable for contributions received)
  - ii. minimum content of contract
  - iii. potential solutions to mitigate existing hurdles (e.g. sub-accounts to accommodate different tax, contract law, social law and other hurdles)
- Protection of PPP holders
  - i. Transparency and disclosures – same as for a Directive (i.e. a robust consumer protection framework with PRIIPs and IORP II as a benchmark for disclosures)
  - ii. Default options<sup>82</sup>
  - iii. Requirement that the provider must offer a minimum variety of funds with different risk/return profiles
  - iv. Life-cycling and enrolment of members into funds that best match their age as a default option
  - v. Transfer from accumulation into pay-out phase
- Provisions on the role of supervisors in relation to PPP products and providers. Rules of competence for home/host prudential and market conduct supervisors.
- Rules for transfers among PPP providers (related to DC bias mentioned above)

273. Following this high level overview as to scope/main content items for a 2<sup>nd</sup> Regime proposal, EIOPA takes the opportunity to provide some more detailed considerations as to the following topics:

*2<sup>nd</sup> regime - Definition of PPP:*

274. EIOPA believes that the creation of an EU PPP 2<sup>nd</sup> regime would also mean a separate definition of these new PPPs. As noted earlier in an EIOPA view section, a 2<sup>nd</sup> regime PPP definition should introduce inter alia the following characteristics:

- a) A PPP is based on contract/agreement between an individual and a private financial institution
- b) The PPP has an explicit retirement objective,
- c) The PPP is financed by contributions paid by the individual itself or any other third party (legal/natural person) on behalf of that individual.<sup>83</sup>
- d) PPP providers need to be regulated by the existing EU body of prudential law or they must meet EU wide requirements provided by a 2<sup>nd</sup> regime in order to be able to provide the products on a cross border basis.

*2<sup>nd</sup> regime – Key content points for a future 2<sup>nd</sup> Regime*

- DC v DB type products:

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<sup>82</sup> building on existing World Bank principles for organising private pensions. This could also include use of electronic platforms that would ease comparison and choice and cut distribution costs

<sup>83</sup> Note, current plans labelled at MS level as occupational pensions (i.e. IORP Directive remit) are excluded.

275. The EIOPA Database has shown a strong **DC bias** in existing PPP's. While previous analysis reveals multiple reasons for this trend, the key reason is that DB arrangements are too expensive to offer.
276. Nevertheless, in terms of regulatory coverage, the 2nd regime should also encompass products with different risk sharing arrangements. The PPP provider that would be operating products providing coverage for biometric risks or that guarantees a certain return on investment or a given level of benefits, **shall** be requested to execute the calculation of technical provisions and the solvency margin according to the Solvency II framework.
- Main requirements for PPP providers:
277. EIOPA expects that all PPP providers shall be required to provide record keeping of PPP holders or of their beneficiaries based on **individual accounts**. The details of administration could be provided in the 2nd regime regulation.
278. This could also provide a possible solution<sup>84</sup> to accommodate in the 2nd regime some of the hurdles discussed in previous sections. For example, the use of an individual account could also allow for **establishment of sub-accounts** of the individual PPP records related to specific social (e.g. minimum retirement age) and tax requirements of various MS. Such sub-accounts would only have record keeping value and should not prevent providers from pooling the assets of the PPP.
279. Introduction of individual account record-keeping at the level of the PPP provider would also facilitate **easy tracking of contributions** to become one of central features of 2<sup>nd</sup> regime products.
280. During the consultation period, most stakeholders, except insurance associations, supported the idea that EIOPA should develop a framework for transferability of accumulated capital for passported PPPs. Nevertheless most stakeholders also agreed on the fact that taxation issues will be very difficult to overcome. EIOPA expects the 2<sup>nd</sup> regime regulation will provide for the requirements to be fulfilled for **transfers** among PPP providers and most importantly should determine the method for calculation of transfer value and specifies the terms under which the transfer operation is achieved (notably time limits, deadlines, terms of payment)<sup>85</sup>.
281. To further enhance PPP holder protection, EIOPA notes there is value in **ring-fencing the underlying assets of PPP holders from those of the PPP provider** and recognises the value of some current proposals regarding the use of a custodian bank as an additional safeguard in case of PPP provider bankruptcy.
282. EIOPA also believes that the PPP provider should be considered fully responsible for all operations vis-à-vis the PPP holders and the supervisory authority. The 2<sup>nd</sup> regime Regulation should ensure an appropriate division of responsibilities between the different service providers involved in the operations of such a product. EIOPA underlines the fact that competent authorities must have at their disposal appropriate supervisory intervention tools including sanctions in the event of a provider's failure to comply with the provisions laid down in the regulation.

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<sup>84</sup> This possibility is put forward in EPP, OCERP report as well as in Feasibility Study for a EU Pension Fund for Researchers available at [http://ec.europa.eu/euraxess/pdf/research\\_policies/exec\\_summ\\_final\\_june2010EN.pdf](http://ec.europa.eu/euraxess/pdf/research_policies/exec_summ_final_june2010EN.pdf)

<sup>85</sup> EIOPA notes that at the time of this report, the transfer in a pure DC environment appears possible. EIOPA has not formed a technical view regarding transfers in case of products with any type of guarantees at this point.

## *2<sup>nd</sup> regime – Key product regulation aspects.*

283. EIOPA also notes the stakeholders input that an EU PPP would need to be cost effective in order to create critical mass and to profit from economies of scale. To enable transferability and facilitate distribution on a EU wide basis, the product should be highly standardised.
284. Furthermore, a highly standardised product should ensure that it is obvious that the “same kind of product” is sold by different providers, both within the same country and on a cross-border basis.
285. One way of achieving standardisation is by using the 2<sup>nd</sup> Regime regulation to harmonise the contents/terms of the contract between PPP provider & PPP holder/beneficiary. EIOPA underlines that such an approach will still mean that some aspects of the PPP contract will continue to be governed by national legal regimes, especially those embedded in the wider civil law of MS and the general good provisions.
286. As for product rules, there is agreement that for the 2<sup>nd</sup> regime we need to ensure cost effectiveness so as to attract critical mass to achieve economies of scale<sup>86</sup>.
287. In order to safeguard adequate PPP holder interests, EIOPA notes that if a provider offers the PPP holder several options for the investment of contributions, then the provider needs to also be required to provide a default investment strategy.
288. EIOPA underlines that the default strategy should be the one that best matches the investment horizon of the PPP holder (life cycling funds).
289. EIOPA acknowledges that reducing the number of investment options would also lead to a reduced need for professional advice when acquiring the product and lead to lower product pricing.

## *2<sup>nd</sup> regime and current tax hurdles*

290. Building on existing EU case law, the 2<sup>nd</sup> regime Regulation could re-iterate the rule of prohibiting tax discrimination with regard to 2<sup>nd</sup> regime PPPs. The Regulation should specifically require that contributions to 2<sup>nd</sup> regime PPPs are to be afforded the same tax treatment as domestic PPPs (tax deductibility and tax incentives).
291. Finally, we see value in proposals made that the regulation could provide for standardised communication requirements between providers and tax administrations across the EU for PPPs (similar to those under the European Savings Directive).
292. Given its lack of tax expertise, EIOPA will not further develop any work in relation to tax issues nor will it include tax related proposals in its Final Advice to COM.

## **Main findings:**

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<sup>86</sup> For example, we note that a structural element to consider is the possibility to establish Electronic platforms that would ease comparison and choice and cut distribution costs

293. EIOPA notes that there is a strong interest in pursuit of further work at EU institution level to clearly identify the costs and benefits of establishing a 2<sup>nd</sup> Regime for EU PPPs.
294. EIOPA's analysis has revealed both advantages and drawbacks of establishing a 2<sup>nd</sup> regime. Nevertheless, EIOPA analysis should not be seen as an exhaustive one given the limited scope of our investigation.
295. As stated in the previous section, for any PPP providers that are not currently regulated at EU level, a fully-fledged framework would need to be developed so as to create a level playing field with regulated undertakings.
296. EIOPA also notes that in context of discussions on a 2<sup>nd</sup> regime, should there be one, a case can be made for further focusing on DC products and an appropriate level of standardisation. These products could be focused on the accumulation phase, while including a link with the pay-out phase in order to distinguish from other financial products that do not have a retirement objective.
297. EIOPA nevertheless acknowledges that the 2<sup>nd</sup> regime will also need to deal with the de-cumulating phase even if only to provide rules for the transition from the accumulation phase in the pay-out phase.
298. With regard to products, EIOPA acknowledges that there is a debate as to the desirable level of product standardisation. EIOPA recognises that as always there is a trade-off between product standardisation and product innovation. On the other hand, a higher level of standardisation will help in achieving the required critical mass in order to reduce costs and facilitate the consolidation of multi-pillar systems in many countries.

## 8. Considerations for the protection of PPP holders

299. The following sections of this preliminary report further develop some elements of the considerations relating to the Directive and the 2nd Regime.
300. In order to develop a successful single market for PPPs, the interests of PPP holders have to be well protected. Therefore this section provides an overview of some possible frameworks for the protection of PPP holders. It builds on the previous work of EIOPA, namely in the context of the Call for advice on the review of the IORP Directive.
301. Retirement planning is a difficult issue for most people. At the same time, saving and planning for retirement is one of the most important elements of lifetime financial planning. With people living longer every individual needs a steady adequate income stream to sustain them into old age. The long timescales required for a successful pension investment further complicate the picture as many of the assumptions can change over the pension lifetime.
302. On the other hand, there is a strong need to encourage people to engage with pension provision at the earliest opportunity to ensure that they make sufficient provision for retirement. Indeed, State welfare systems across MS may not be in a position to provide adequate retirement income to citizens if they are not supplemented by occupational and personal pension schemes. A multi-pillar structure of national pension systems has to be encouraged and consolidated.
303. Following the above reasoning, it is clear that consumer protection provisions for PPP holders, while essential, have often to be tackled differently than for other financial products, where the kind of public policy interest for the diffusion of supplementary pension plans and products is not in place.
304. In particular, this section addresses the level of regulation needed in order to introduce meaningful transparency, fairness and appropriateness in PPPs. For the purposes of this section, consumers, both holders and potential holders of personal pensions, are referred to in the report as PPP holders.
305. The level of regulation needed to introduce transparent, fair and appropriate PPPs can be examined in several areas, which are set out below. In discussing these issues the emphasis will be more focussed on specific PPP-related protections, although some reference will also be made to the norms of consumer protection found more generally across financial services markets.
- **Transparency and Information Disclosure** looks at the information that should be presented in order to help PPP holders to make informed decisions and when, how, and in what form, this information should be presented.
  - **Distribution practices** examines the level of protection needed in the distribution process, including some consideration of web platforms, to prevent conflicts of interest from adversely affecting the interests of PPP holders, as well as looking at other requirements, for example with respect to complaints handling.
  - **Professional requirements** consider the level of professional requirements considered necessary before PPP distributors, in situations where they play a role, should engage with PPP holders. Of course, this requirement too can be proportional to the risk so that, for instance, requirements could be less stringent for the seller of a standardised product.

- **Product regulation and product standardisation (incl. default options):** looks at the role that product regulation, which can take a number of forms, can play. In addition the area of product standardisation, including default investment options, is considered.

306. DG SANCO has carried out a public consultation on third pillar retirement products and a summary of the responses is awaited.

## 9. Transparency and information disclosure

### 9.1. Background

307. Many existing Directives contain information disclosure requirements designed to improve transparency for consumers. Typically these requirements are designed to ensure that potential and current consumers have sufficient information to make informed decisions whether these relate to a purchase decision or the need to adjust the level of cover that is already in place. Often these information requirements are linked to the provision of advice to clients or potential clients.
308. For instance in the Insurance Mediation Directive (IMD) these information requirements range from basic information such as identity of the intermediary, the register in which he is entered, and providers with whom he has ties, to provision of information about the basis on which advice is given. He must specify the needs of the client and the basis on which advice is given. Furthermore, information must be provided in paper form or another accessible durable medium, and must be clear, accurate and comprehensible.
309. Meanwhile in the Markets in Financial Instruments Directive (MiFID), although not applicable to insurance undertakings or intermediaries, there are information requirements with a consumer protection orientation. Here too there are requirements to provide basic details such as firm name and address, communication media and language, as well as with regard to provision of information in a durable medium, and related requirements to ensure such media are appropriate. Where it is not possible to mitigate a conflict of interest this must be disclosed to the client. Specific information must also be provided about services offered, costs and charges, financial instruments, client categorisation (which informs the level of protection provided to the client), safeguarding of client assets, and so on.
310. In the UK, pension providers are required to automatically contact PPP holders nearing conclusion of their pensions saving contract, i.e. retirement, to provide them with information about their options. In this way the PPP holder gets information that should help facilitate a comparison of different providers and thereby make an informed decision about how best to maximise their personal situation in the retirement phase.
311. Pension savers in the UK have the right to buy an annuity from the provider of their choice i.e. they don't have to buy an annuity from their existing pension provider. This right is known as the 'open market option' and pension providers have an obligation to let their customers know about this.
312. Providers of personal pensions (and work-based personal pensions) have to send their customers two documents ahead of their retirement date: an 'open market option statement' (which must be provided between four and six months ahead of the customer's retirement date) and a reminder letter at least six weeks before the customer's retirement date.
313. The content of the open market option statement is set out in the UK's Financial Conduct Authority rules. It consists of a named factsheet (Your pension: it's time to choose) plus a written summary which contains sufficient information for the consumer to make an informed decision about whether or not to exercise the open market option. Alternatively, providers can use their own documentation if it provides materially the same information.



314. Pension providers that are members of the Association of British Insurers (ABI) have to comply with the ABI's Code of Conduct on Retirement Choices. This Code contains requirements over and above the regulatory requirements and includes a template cover letter and 'shopping around guide'. The Code also prevents ABI members from sending out application forms with open market option communications.
315. Although correspondence about the open market option should be sent out automatically, the actual annuity (or other retirement income) purchase is not automatic. The consumer has to decide what options they want and from which provider they want to purchase. There are tools that can help them decide, including online comparison tables.
316. There has been considerable research into the area of transparency and relevant information and extracts from recent papers are included in the following pages. EIOPA would like to build on the insights provided in these various reports and apply the knowledge in the pensions context, where relevant.
317. DG SANCO in its paper/research entitled: "*Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective*" (Nov. 2010) points out that "*..... there is evidence that consumers often fail to make optimal choices and not only because of asymmetric information. Even well-informed and numerate consumers may exhibit systematic departures from welfare-maximising behaviour. This evidence reflects one of the main tenets of Behavioural Economics (BE): the homo economicus of classical economic theory is an over-simplified description of human behaviour. Consumers are not always selfish, rational and independent agents but instead they exhibit a strong interdependency and limited or "bounded" rationality*".
318. It further observes that "*According to the fourth Consumer Markets Scoreboard, retail financial services are one of the sectors characterised by substantial market malfunctioning. In particular, the 2010 Scoreboard shows that the market for "investments, pensions and securities" ranks worst out of fifty consumer markets for overall market performance; worst for ease of comparing products and services sold by different suppliers; worst in trust that suppliers will respect consumer protection rules; fourth worst in experiencing problems; and worst for overall satisfaction. The financial environment has evolved so much that consumers are often ill-prepared to make sound decisions about increasingly complex retail financial products. The inability to benefit fully from this market is in part due to limited financial literacy or asymmetric information, but it may also be directly related to instincts driving consumers towards choices which are inconsistent with their long-term preferences. Recent evidence shows that consumers often have limited time to fully understand complex retail financial products. "Herding" instincts and over-reliance on experts' advice may also limit rational reflection*".
319. The paper makes the following recommendations:
- **Simplification and standardisation of product information** disclosure enables consumers to make better quality investment decisions, at least in our simple choice tasks. Providing **pre-calculated and directly comparable relevant information** about investments enables better choices between dissimilar options, e.g. across product classes. These principles and ideas could be applied to current and future work on information disclosure, such as the Key Investor Information (KIID) document.
  - If **disclosure of conflicts of interest**, such as commission payments to advisors, is mandated then further testing should be conducted to determine the best form and format for disclosure. Our findings point to the need for

***either full disclosure or an accompanying health warning to ensure the implications of disclosure are understood. Policy makers must also be careful not to simply elicit a "knee-jerk" loss of trust in advice that may not be in consumers' best interest, especially given their limited capacity to make good decisions without the help of an advisor.***

320. An OECD paper, [Antolin, P. and O. Fuentes (2012), "Communicating Pension Risk to DC Plan Members: The Chilean Case of a Pension Risk Simulator", OECD Working Papers on Finance, Insurance and Private Pensions, No. 28, OECD Publishing] considered the merits of different forms of risk communication. There are essentially two categories, basic accounting information and forward looking information. The report sets out that accounting information is a statement of facts, mainly used for required disclosures. This basic disclosure is necessary to keep a pension system accountable and transparent. Disclosure of accounting information also has an education function.
321. Forward-looking information on the other hand can assist pension scheme members by giving them a more concrete idea of what to expect from their pension plan over a longer time period. Thus the pension statement can be a powerful tool for pension scheme members when they need to make important decisions about their pensions. It can, be used to show the impact that different choices they make can have, such as retiring later, increasing contributions, or choosing an annuity as opposed to a lump sum for example. The paper also points out that some are of the view that using projections in the context of younger subscribers can outweigh the benefits as the uncertainties (e.g. investment outcomes, employment prospects, life expectancy) for the individual at that stage are so great. However, for older contributors the uncertainties are less but there is often little time for any identified shortfalls.
322. The paper also considers deterministic and stochastic projections. While it points out that the majority of pension projections are deterministic, with the advantage of being relatively clear and simple, this sacrifices any effort to inform the member about the uncertainty or probability of outcomes.
323. Provision of projections based on the probability of different outcomes would address these shortcomings but they are complex to prepare and difficult to understand. However, careful preparation and communication of the information could be a means to convey the most valuable information on uncertainty and risks.
324. The OECD report found that the best tool to provide this information on uncertainty about future pension benefits may be a pension risk simulator. However it identifies risks with this as the individual may not understand much about the assumptions and variables that must be chosen to generate the projection. The report also mentions the possibility of combining deterministic and stochastic information to provide an alternative pension projection.
325. Another OECD report [Antolín, P. and D. Harrison (2012), "Annual DC Pension Statements and the Communications Challenge", OECD Working Papers on Finance, Insurance and Private Pensions, No. 19, OECD Publishing.] looked at the content and design of the annual pension statement sent to members of funded defined contribution (DC) pension schemes in a selection of OECD and non-OECD countries. The report found that there is confusion in the intent of these statements with some providers using them in a passive way by just fulfilling regulatory disclosure requirements. Others use them proactively as a means to increase the understanding of members and stimulate them to take action if required.

326. Difficulties arise between the acknowledged need for brevity, clarity and simplicity in communications and the perceived need to inform about the complex risks involved. The report found that most members do not read the statements nor do they engage with lengthy and complex information. Indeed, even the reasonably simple deterministic statements that are prevalent in the research tend to cause problems to members. The regulatory requirements do not help as the language and format are considered to effect a barrier to engagement with and understanding of the statements.
327. There is a move among those that are proactive towards a simple summary of key facts on the first page of the statement. While the written statement is still considered necessary, use of internet facilities such as pension calculators offer a more flexible approach.
328. Furthermore the paper states that there is growing recognition that a statement based on a single plan limits its value and it sees a slow trend towards a more holistic statement reflecting the member's main pension sources, including any state entitlements.
329. EIOPA has built on the findings in these various pieces of research. In 2013, EIOPA issued its report entitled **Good practices on information provision for DC schemes** which further examines behavioural issues in the pensions context; further reference to this report can be found later in section 11.
330. A Paper entitled "SAVING FOR RETIREMENT AND INVESTING FOR GROWTH" a "REPORT OF THE CEPS-ECMI TASK FORCE ON LONG-TERM INVESTING AND RETIREMENT SAVINGS", draws some interesting conclusions in relation to PPP holders, investment options etc.
331. Retail investors and beneficiaries need easily accessible, high-quality and cost-efficient long-term savings and investment solutions. While such solutions exist in some member states, they are lacking or sub-standard in others.

#### **National and cross-border tracking of pensions (Consolidated Pension Statement)**

- a. Tracking services can be an additional information provision tool to consider for tracking all of a citizen's pension entitlements covering state pensions (first pillar), occupational pensions (second pillar) and personal pensions (third pillar). The widely held view is that the provision of some kind of consolidated solution makes citizens more aware of their situation and makes them more likely to act if pension provision is below their expectations.
- b. Indeed, One suggestion from stakeholder comments on the EIOPA discussion paper was for an evaluation of whether individual pensions will be sufficient to meet the consumer's demands and needs to be integrated into a compulsory annual projection of the first pillar pension treatment (carried out by a suitably qualified national body available to all citizens). In this way, everyone could verify their possible supplementary needs.
- c. The tool could take the form of an annual statement provided to each citizen that gives a full overview of a person's pension entitlements. An alternative delivery mechanism could be a tool available on a website. In this approach all the information is again consolidated in one place and can be accessed via the tool. This approach allows citizens to check their consolidated entitlements at a time that suits them and to get the most up to date information available.
- d. Aviva have produced a report on this topic, entitled "Towards Annual Pension Statements Across The EU" which built on their earlier 2010 report "Mind the Gap".
- e. COM has addressed and expanded on the issue in its project on cross-border tracking of pension rights. The **Commission's White Paper on pensions** already indicates that tracking services can provide citizens with accurate and up-to-date information about pension entitlements, as well as projections of their income after retirement from statutory and occupational pension schemes. Personal pension schemes could also be included in these services, in order to cover all three pension pillars. These services could be provided at national level or be connected into an EU system of tracking services (possibly at a later stage), as already

envisaged by the Commission in the White Paper on pensions.

- f. According to an update, "Implementation of the EU White Paper on Pensions - Status as of 28/09/2013 (2013): In 2012, the European Commission announced two calls for proposals: a pilot project on cross-border tracking of pension rights. The implementation of the selected projects started in June 2013."<sup>87</sup>
- g. In June 2013 the European Commission with the help of a number of pension providers in Denmark, Finland and the Netherlands started exploring the possibility of creating such a tracking service. According to published information "The group aims to develop a cost-effective system by 2015 and will then send its recommendation to the European Commission"<sup>88</sup>.
- h. Development of tracking services, no matter what delivery mechanism is chosen, would require close co-operation between governments and pension providers alike. At this point in time a solution focussed on uniform information provision to occupational pension holders and PPP holders would be appropriate.
- i. Alternative initiatives that go further than tracking alone could be the provision of an up-to-date internet environment (website) where consumers can obtain and access information and also see the results of certain decisions or life events for the pension. Clearly, in a PPP situation such initiatives have the potential to offer considerable benefit to PPP holders.
- j. As COM is currently working on tracking services EIOPA will not look further at it in the context of the PPP work, but will follow the progress of COM on this matter.

Stakeholder views:

- k. Almost all stakeholders agreed that tracking services are a useful tool and they support the initiative highlighted in the COM's White Paper to promote the development of tracking services for first and second pillar. One suggestion is that either of two types of institutions could provide these services: a body established at governmental level to provide information on individual's first and second pillar retirement benefits, or different private organizations (that in theory may provide information about non-pension savings as well). Some good examples of tracking service are also indicated such as the UK Pension Advisory Service (PAS) or the UK Pension Tracing Service (PTS). Some EU member states have developed very sophisticated tracking services to inform citizens about their expected retirement income. The Group Consultatif recently published a paper<sup>89</sup> analysing the tracking services arrangements in those countries that appear to have developed this concept most at this stage. All countries should be encouraged to develop such systems.

## 9.2. Stakeholders' view

### General

336. Respondents had a **variety of views** on the information requirements needed to protect PPP holders. Information requirements identified were on risks, costs, tax treatment, expected income at retirement age, contribution rates and pension rights. Communication should be understandable, accurate, transparent, simple and timely, and should take place regularly across the life of the product right up to retirement. There should be room for specific local information to be included. There was support for the provision of layered information.
337. There should be clear lines of responsibility for information disclosure: the provider should review the offering to make sure that the options and the charges of the product remain appropriate. As there is a contractual relationship between

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<sup>87</sup> <http://ec.europa.eu/social/BlobServlet?docId=11067&langId=en>

<sup>88</sup> <http://www.ipe.com/brussels-asks-pension-providers-to-explore-pan-european-tracking-system/52241.article>

<sup>89</sup> Group Consultatif Report "Report on key issues from the review of national tracking services"  
[http://www.actuarios.org/espa/web-nueva/servicios\\_colegiados/documentos/UE/20131001/Report%20national%20Tracking%20Services%20Sw-Fi-DK-NL%20Final.pdf](http://www.actuarios.org/espa/web-nueva/servicios_colegiados/documentos/UE/20131001/Report%20national%20Tracking%20Services%20Sw-Fi-DK-NL%20Final.pdf)

consumer and provider, the provider has to ensure the product is fit for purpose for that market.

338. Another view is that while clear harmonised minimum standards of protection of PPP holders are needed, it is also important to ensure that any new European information disclosure requirements will not reduce the minimum quality standards that already exist in EU member states.
339. One suggestion was for, an evaluation of whether individual pensions will be sufficient to meet the consumer's demands and needs to be integrated into a compulsory annual projection of the first pillar pension treatment (carried out by a suitably qualified national body available to all citizens). In this way, everyone could verify their possible supplementary needs.
340. One way to make information more helpful for PPP holders would be to use a **layering** approach whereby more important or relevant information is presented more prominently or at a different time to less important information. Many stakeholders are in favour of a layering approach although the view was also expressed that layering may lead to the dispersion of information and confuse the potential subscriber.
341. In the **"must know"** layer a wide variety of information disclosure was suggested, including product and manufacturer details, main features, risks and warnings, various costs, past performance, contribution rates, investment and switching options, supervisory authority details, In the "should know" layer stakeholders suggest including possible future outcomes, basics of the national pension products legal framework as well as related cross-border implications.
342. In the **"nice to know"** layer stakeholders suggest including information about EU market development, investment yield trends, and cross-references to sources of additional information (e.g. reference to website(s) where more information can be found).

#### Pre-contractual information

343. Wide views were expressed on the **content** of pre-contractual information requirements with many elements considered fundamental and, as a consequence, worthy of inclusion in the "must know" list. These ranged from a view that a personalised approach should also be adopted in the pre-contractual phase (especially in projections) to suggesting merging the principles of pre-contractual information contained in the PRIIPs Key Information Document (KID) with the ones suggested in the EIOPA advice on good practices on information for DC schemes.
344. The availability and costs of potential switches, legislative changes that have an impact on PPPs should also be mentioned. Basic personal and financial information on the PPP holder should also be provided in the document. Few stakeholders consider the existing insurance or UCITS provisions to be sufficient to meet the needs of the PPP holder. Some stakeholders consider that national legislators are the most suitable people to set down appropriate regulation for their own markets. The majority of stakeholders consider a **KIID/KID document** a suitable option, as its goal is to provide information on the product's main features, as well as on the risks and costs associated with the investment. Some further analysis should be conducted in order to adapt the structure and the content of the document to address the specificities of personal pension products. The purpose of the document should be to provide relevant information to potential pension purchasers and to allow an easy comparison of different products and product providers. Some stakeholders suggest the creation of a more personalized document, possibly web-based. Other stakeholders believe that investor protection

would be better achieved by allowing member states to design disclosure requirements tailored to the particular features of their domestic markets. Concern was also expressed that the current EU work on PRIIPS and other EU initiatives is creating a tangible risk of overlap of information requirements to the detriment of consumers.

345. Stakeholders believe that typical **risk-reward indicators** (RRI) are not a good reference point for pension products. Parameters like the long-term of the investment, the age and investment horizon of the investor should also be taken into consideration. Some useful suggestions are provided: a RRI for pension products should look forward (using a stochastic scenario instead of historical figures), all providers should use the same asset model with the same calibration, the reward measure should be the mean value of the return, there should be an even number of classes (to avoid a “middle class”). An additional issue is that asset allocation in DC schemes is likely to change over the accumulation phase of the pension. Concern was expressed about how to capture the evolution of a dynamic strategy in a pre-contractual disclosure document.

#### Ongoing or accumulation phase

346. Stakeholders suggested including in the **first layer** the performance achieved in the previous year, the value of accumulated capital, charges and fees paid during the year, the and a pension projection.
347. In the **second layer** they suggested including information about the taxation of contributions and associated fiscal benefits, switching rights, and a brief description of the national legal framework governing the pension product.
348. The **third layer** information should set out the investment yield trend, the structure and functioning of the product, and individual asset choices.
349. In general there is no broad consensus on how to structure the **three levels** in the accumulation phase. Indeed, for some stakeholders the layering approach is not suitable for on-going information and could be misleading for consumers.
350. The majority of stakeholders consider **projections** to be useful information tools for assisting consumers in understanding risks and performance of a product. Some believe that projections should be provided at least annually but also whenever requested. Another view warns that a lack of understanding of the underlying assumptions may cause damage to PPP holders, and further argues that at the extreme, pension projections could cause unwanted distortion of the market. To avoid this problem, an interactive web-based application where PPP holders can modify all the additional assumptions (e.g. contribution rates, contribution payments) is the appropriate approach to take. There is also a suggestion to adopt the UK requirement that projections must be accompanied by a specific warning statement setting out the shortcomings of the projections.
351. A further suggestion is that projections should take into account the probabilistic margin of fluctuation. Another argues that projections based on a stochastic approach and well-calibrated models should be part of both the pre-contractual and the on-going phase, while projections based on deterministic approaches should not be allowed.
352. All stakeholders suggest that **different information** is needed in the case of switching or before termination. In the case of switching, on the one hand, the most important information is the associated costs although PPP holders should also be informed of the exact value of their accumulated capital, the different risk-reward profiles of the available investment options and the fiscal treatment of the

switch. A statement of the pros and cons of switching is suggested. Switching capability should be possible for every PPP holder at any point of time. Furthermore, providers should encourage them, through an active communication plan, to switch to a lower-risk-reward investment option as they get older.

353. Very few stakeholders believe that it is feasible for providers to provide information on the **first and second pillars**.
354. **Electronic communication**, according to the stakeholders, is a more efficient, targeted and environmentally friendly means of communication that could really help citizens in planning for their retirement however they also consider that paper-based information should always be available on request.
355. Very few stakeholders addressed the potential to **link on-going information requirements with the implementation of tracking services**. In principle stakeholders consider it possible to connect both these types of information, but highlight that some technical and legal problems may make it very difficult to achieve.
356. According to stakeholders, the **format** of on-going information may be standardised, provided there is a certain level of flexibility to allow adaptation of the on-going information requirements for product specific features.
357. There is broad consensus amongst stakeholders that an **annual frequency** is the most suitable for information provision in the accumulation phase, although PPP members should be able to check specific individual information at any time, for example on a website account or by e-mail request. Other suggestions favour provision of quarterly information, or indeed some form of continuous access to ongoing information.
358. Some stakeholders indicate that regulatory or contractual changes should be the only circumstances warranting **specific information** provision. However, other stakeholders think that all variations in contractual, fiscal, normative aspects and also relevant life events (change of working condition, early retirement, change of partner) should trigger the provision of specific information. There is no consensus amongst stakeholders about types of information that should be provided on request. The majority of stakeholders think that in principle any kind of information should be provided on request (except for commercially-sensitive information) although some stakeholders believe that there is no necessity to provide further information.

### Pre-retirement information

359. Before termination, PPP holders should be informed about the current value of their accumulated capital and the different payout options available to them including a clear indication of the related potential costs and tax issues.
360. Many stakeholders think that information about **payment options** should be included in the pre-retirement disclosure requirements, even if it's only a choice between an annuity and a drawdown. A smaller number believe that additional disclosure requirements for PPP holders should be determined by local standards.
361. Some believe that any **taxation** implications should be included in the pre-retirement disclosure requirements. Another suggestion is that costs information should be provided as well as encouragement to seek professional advice.
362. Most of the respondents believe in only provided suggestions for information that should be in the "**must know**" layer. Many believe that layering should be

determined by local standards. Some think that there should be no layering at all in the pre-retirement phase.

363. Those providing suggestions about the first layer believe that PPP holders should be informed about the open market option i.e. the possibility to shop around different providers for an annuity (possibly assisted by a comparison tool). PPP holders should also be informed about the payment options and taxation implications. Other information possibilities include contribution rates, costs and risk.
364. Respondents who provided suggestions for subsequent layering think that any legal documents should be in a **2nd or 3rd layer** as well as more detailed information on possible payment options.

### Pay-out phase

365. The views expressed by stakeholders ranged from no need for any disclosure to the need for specific disclosure of information related to the type of pay-out being considered. In the case of annuities the information need is very basic if it is a level pay-out situation. In cases where the annuity pay-out can change there was a suggestion that it is only necessary to provide information when a change is about to take place.
366. For **more complex pay-out products**, there is recognition that relevant information, customised for the characteristics of the individual product, must be provided. For instance, with products where the PPP holder's capital remains invested and there is a consequent continuing investment risk, disclosures should be tailored accordingly to set out the risks, options, capital value, charges etc.
367. In the context of the above comments about the variety of payout products and the very different characteristics they can display it was noted that there would be considerable **difficulty in setting EU-wide disclosure requirements** for very different products and some comment to the effect that information provision should be decided entirely at local level.
368. There was some support for **layering** of information in the payout phase. Views ranged from everything to be categorised as 'must know' information to a belief that the 'must know' information should be related to the specific characteristics of the payout product chosen (option to switch between providers, investment options, benefit payment options, etc), allied with more generic information provision in the subsequent layers.
369. Once more, comments supported the use of a **variety of delivery methods** with some comment about mandatory provision of must know information in written form.

### **9.3. EIOPA view**

#### General

370. The issue of transparency and information disclosure has been central in the Call for Advice by the COM on the review of the IORP Directive and in the Advice provided by EIOPA (February 2012)<sup>90</sup>.

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<sup>90</sup> In particular, Chapter 29 of the Advice discussed how to strengthen the information requirements for members of DC pension plans.



371. EIOPA supported the adoption of a “Key Information Document” (KID) at joining a pension scheme and of an annual statement throughout the accumulation phase, together with pension projections. This discussion, though originally made in the context of DC occupational pensions, is also a good starting point for PPPs. Behavioural aspects will not change when PPP holders are considered. The need to present the right information in easily understandable form at the right time remains a key requirement when considering PPP holders.
372. Turning to specific issues, EIOPA has addressed the difficulties with the **risk-profile** of different investment options.
373. In EIOPA’s Advice on the review of the IORP Directive, EIOPA stated in relation to DC schemes (p. 499): *Letter e) of art. 78.3 requires the presentation of a risk/reward profile. For pension schemes, this is much trickier than for most financial instruments as it implies an assessment of risk of different investment policies and asset allocations across different time horizons, up to the very long term [...]*
374. In other terms, while it is in principle important to attribute a risk label to different investment options, the relative ranking of these options may be conditioned to the time horizon of the member and may not be an objective characteristic of the option itself. A possibility worth exploring is to label the investment options according to their investment horizon and not to the level of risk.
375. EIOPA’s Good practices on information provision for DC schemes report of 24 January 2013 showed the importance of **pension projections** for members. On p. 64 EIOPA states the following: *... it is important to note that an accrued balance, the total amount of pension savings, is not meaningful or easy interpretable for DC scheme members. It does not give an answer to whether it will provide sufficient income. Members need support to understand the value of these figures. The annual statement should provide at least the answer to the key questions which are posed above. Pension projections should be provided in euros (or the currency of the country) and in terms of purchase power. Research suggests that – for information which is provided on paper – showing three scenarios (positive, neutral, negative) may be effective.*
376. EIOPA believes that all of the above considerations hold good for the PPP scenario. However, given the structural differences between an occupational pension and a PPP, specific requirements need to be considered in relation to areas of investment risk and investment options, including default options (which are discussed elsewhere in this report).
377. Indeed, it can be argued that in the PPP context the information needs are more acute because information needs to support a PPP holder as much as possible in making sensible decisions about PPPs at different stages over a potentially protracted period. Therefore, PPP holders need timely and differing information throughout different phases of the contract.
378. To be effective, information needs to be able to answer key questions especially at key times, while also taking human characteristics into account. This means taking into account that humans are not “homo economicus”; they have limited time, and they often use rules of thumb to quickly process information.
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379. One possible way for the information to be effective and not to overwhelm PPP holders, is through the principle of **layering**. This has been acknowledged in EIOPA's report on good practices on information provision for DC schemes, 24 January 2013.
380. In a first layer of information PPP holders should be able to find answers to key questions covering essential information (i.e. information that PPP holders must know).
381. In this respect, EIOPA considers it of vital importance that prospective PPP holders are informed about the various **costs** levied by the direct and indirect providers of the PPP they are considering. In the context of occupational pensions EIOPA, in its response to the Commission Call for Advice, advised: *A specific important point will be that of cost disclosure, with the need to provide consistent concepts of "ex-ante" costs, to be disclosed in the KID document, and "actually levied" costs, to be disclosed ex-post in the annual statements. The issue of disclosing investment transactions costs should be specifically considered.* However, it is difficult to provide accurate cost information due to the complexity and variety of costs that can apply in different situations. In order to overcome this synthetic cost indicators have been introduced in some markets so that some reasonable uniform basis for assessing the level of costs is provided to pension holders. A synthetic cost indicator uses a mathematical model or type of algorithm to provide this estimate of costs in the form of a single figure, e.g. a percentage value. EIOPA believes that the use of synthetic cost indicators may be a useful tool for providing meaningful cost estimates to PPP holders. Apart from providing useful data for comparing the estimated costs across several products, their use could assist with acting as a natural depressant on costs themselves.
382. Subsequent layers should provide information which is important but not essential (i.e. information that PPP holders should know) and information which is nice to have. Consumers who are overwhelmed with information tend to neglect information; layering is a way to overcome this problem.
383. The Joint Committee of the 3 ESAs is currently working on the PRIPs regulation with the aim of preparing delegated acts. Discussions at joint Committee level have shown that investment products composed of a wrapper and several underlying funds (such as certain types of unit-linked life insurance contracts) present particular challenges, when policyholders can mix and match a number of underlying funds during the life of the contract, thereby modifying the risk profile or the cost profile substantially. In such instances the kind of information that can be given to the investor has to be determined carefully (for instance, whether it can be provided in generic terms). This particular challenge shall be taken into account when developing a KID for PPP which have a similar 2-level structure.

#### Pre-contractual information

384. In EIOPA's Advice to the European Commission on the review of the IORP Directive 2003/41/EC, EIOPA stated (p. 494 – 502) that a KIID like document could be appropriate for members of occupational DC schemes where members bear the investment risk and have choices to make. EIOPA explored which elements of the KIID from the UCITS Directive could be used for IORPs as regards pre-contractual information. The following items were regarded as appropriate for members of occupational DC schemes: 1) identification of the IORP 2) objectives and investment policies 3) performance scenarios 4) costs and charges 5) risk/reward profile and/or the time horizon 6) contributions 7) practical information 8) cross-references.

385. In recommending the above elements of a KIID like document, EIOPA recognised that it would need some tailoring to apply in a personal pensions context. EIOPA believes that these items remain relevant in the PPP context although heightened emphasis on different aspects would be appropriate given the additional risks and other considerations that apply. In the report on Good practices on information provision for DC schemes of 24 January 2013, EIOPA further built on this Advice. EIOPA argued on p. 61 that the format of the pre-enrolment information and annual statement should support (potential) members to make decisions. The starting point for policymakers should be to decide what the 'behavioural purposes' of the information are i.e. what consumers need to 'do' with the information.

386. Specific consideration can also be given to pre-retirement information, where different benefit payment options are available.

387. Pre-contractual information should enable PPP holders to assess whether the product fits their personal needs and preferences and to compare different PPPs. The key issues that the PPP holder will be seeking to assess in the pre-contractual phase include whether they are being offered a good pension product that will then provide outcomes that fit their personal needs and preferences.

388. Pre-contractual disclosure rules need to contribute to consumers making sensible decisions based as far as possible on standardised comparable key information. There are various examples of formal disclosure requirements in the form of Product Information Sheets, Key Investor Information Documents (KIID) and Key Information Documents (KIDs). These set requirements that the format and language have to be consumer-friendly and presented in a manner that allows for the comparison of different products. Information should be presented in such a way that it is clear, fair and not misleading to the PPP holder.

389. For pre-contractual information - KID and KIID will be used as starting point for developing pension specific disclosure document to members  
Ongoing or accumulation phase

390. The decisions PPP holders make with regard to their pension benefits in the lead-up to retirement can have a significant impact on the adequacy of their retirement income.

391. Information needs to be useful in order to make decisions with regard to the different choices that are available: contribution rates, switches between providers and investment options. Changes in life circumstances that will inevitably occur over a typical pension savings period need to be considered. Risk appetite changes, potential shortfalls or over-provisioning could occur, along with other changing circumstances, all of which need to form part of the monitoring and decision-making process. The critical consideration for the PPP holder is whether the pension is on track to meet future perceived needs, and if not what can be done to rectify the situation.

392. For the on-going pension investment phase there is no EU benchmark available and EIOPA will need to develop this from scratch.

### Point of Retirement/Post Retirement

393. At the point of retirement the PPP holder must decide which way to take the retirement benefit within the constraints of national arrangements, which often relate to tax treatments of different options. Specific benefit payment options such as annuity, lump sum payment, variable payout, programmed withdrawal, etc., may be available in the market and should be communicated to PPP holders at the

appropriate time. Clearly the PPP holder needs to consider the options in advance of retirement, possibly in the preceding few years, depending on personal circumstances, taxation considerations, interrelationships with the other pension pillars and so on.

394. While information provision in the case of annuities is considered less challenging, more detailed disclosure may be warranted for the other pay out methods such as programmed withdrawals.
395. In particular, the PPP holder should be advised, where relevant, of the right to purchase an annuity in the open market rather than believing that it can only be obtained from the pension provider. The different costs of the available options also need to be disclosed. As already outlined for the on-going pension investment phase there is no EU benchmark available for the pre-retirement phase either and EIOPA will need to develop this from scratch.

### Consideration of pension charges

396. Various studies, including the Oxera report "Study on the position of savers in private pension products" which was prepared for the DG Internal Market and Services of the European Commission and the Financial Services User Group, and which was issued on 25 January 2013,<sup>91</sup> have shown that charges structures for pensions products tend to be complex. Costs can be spread across combinations of providers, intermediaries, fund managers, custodians, accounting and audit providers. Furthermore, they can vary greatly, and can apply at inception, in the continuing contribution phase and on exit.
397. Because of this complexity, and the lessons drawn from behavioural economics, we know that many people do not understand these charges, but more importantly their impact on their pension. The impact on pension capital can be extremely sensitive to changes in charges. A further factor is that when markets are booming there is little focus on charges so that it only sporadically tends to be a topic of focus.
398. Indeed, this lack of appreciation of the effect of charges can lead to a situation where a seemingly efficient market with plenty of providers is characterised by sub-optimal switching by PPP holders with consequent high exit and entry fees. This scenario is a good argument for the need to have strong consumer protection requirements in place, particularly selling and distribution requirements.
399. Fixed costs have the advantage of being transparent but tend to penalise lower paid workers by diverting a greater proportion of their income away from the pension investment. Variable costs can be based on different metrics but do overcome the disproportionate charge on lower paid workers. A concern is that some charge bases can generate conflicts of interest as contributions are invested in assets that are not aligned to maximising returns consistent with the members demographics but in a way that favours maximising charges income for the firm.
400. The most common approach to charging is where members pay a fixed percentage of their total pension fund per year to the provider; this charge is typically referred to as the Annual Management Charge (AMC).

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<sup>91</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/docs/fsuq/papers/oxera-private-pensions-study\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/fsuq/papers/oxera-private-pensions-study_en.pdf)

401. The AMC typically covers the following elements of the provider's administration costs:
- the initial set-up costs of the product and initial marketing efforts;
  - the ongoing administration of the products;
  - servicing (including communications to members);
  - fund management costs;
  - overheads including IT costs, building maintenance costs and salaries;
  - commission or any other payments to an adviser
402. Other member charging structures are possible, for example, charges may be levied as a percentage of the members' total contributions (contribution charging).
403. Disclosure too can be an issue as many ways of stating charges are not transparent to the PPP holder. Acknowledging that it is not always easy to state charges and costs in pure monetary terms it must be recognised that this is the most easily understood metric for individuals.
404. Even where PPP holders understand the overall and constituent charges, comparisons are difficult. Common measures such as Reduction In Yield (RIY) and Total Expense Ratio (TER) generally do not capture all the charges that can accrue, both directly and indirectly, to a pension investment.
405. RIY is a commonly used, relatively simple measure of the effect of charges on the investment. While it covers many charges it does not capture investment transaction costs which are often realised through the bid/offer spreads.
406. The TER is a method of measuring the total costs associated with managing and operating a pension fund. These costs include management fees (i.e. the basic AMC), plus any additional expenses such as legal fees, auditor fees and other operational expenses. It does not however include all costs/charges such as initial and exit fees, brokerage fees, bid/offer spreads, interest on borrowing.
407. It is also worth mentioning that charges tend not to be explicit with DB schemes, as the costs of providing the pension are incorporated into the resultant guaranteed benefits and any surplus.
408. Finally, even with full meaningful disclosure of charges, together with a good understanding on the part of the individual, there remains to be determined what represents value for money for the charges incurred.

#### *Disclosure of the effect of charges on real returns*

409. Over the past decades consumers have been confronted with financial products, including PPPs, which did not meet their needs or expectations. High charges and low real returns often resulted in disappointing capital sums being available at retirement. Providers of these products, certainly in some Member States where the PPP market is well developed, have in some cases been compelled to pay considerable compensation to PPP holders who suffered detriment. An increased level of disclosure to consumers of charges and real returns on assets can help prevent the marketing of detrimental products.
410. Providers offer PPPs in the form of Defined Benefit and Defined Contribution products, or a combination of both. Depending on the type and structure of the

product, the associated charges can have differing effects on the amount of capital invested and consequently the final outcome. The number of DB plans/products in the personal pensions space appears to be very small. For Defined Contribution products there can be significant impacts on capital invested<sup>92</sup>; these impacts tend to be more extreme in personal pensions, where the lack of economies of scale and other factors have greater impact. For products that combine elements of the foregoing structures, there are of course varying impacts depending on the proportion of guaranteed benefit compared to the defined contribution.

411. In case of DC PPPs costs (i.e. marketing costs, costs of administration - contributions collecting, keeping records of accounts, sending information to members and investment management ) of PPP providers are covered through the fees charged to members. The structure of charges across countries is fairly complex.

412. A study by Oxera entitled "Study on the position of savers in private pension products"<sup>93</sup> prepared for COM DG Markt provides a comprehensive overview and explanation of costs and charges structures found in 14 different countries.

413. The total costs incurred by a provider usually include:

- Distribution costs: such as commissions charged by intermediaries to sell PPPs, marketing costs
- Administrative costs: typically include set-up and administration of schemes (typically, this includes setting up new members, processing member contributions, any fund switches, administration regarding departing members, and the associated communications to members) as well as the cost of communication and adhering to regulations.
- Fund management costs: brokerage, trading and post-trading costs (e.g. clearing costs, custodian fees)
- Fixed costs: such as IT systems, building maintenance, regulatory fees, Audit costs

414. As noted in the Oxera report (pg. 66), trading and post-trading costs can be significant and have been 'hidden' from consumers as a reduction in the value of assets, and not explicitly stated in charges to consumers. Oxera estimates that trading and post-trading costs for passive funds amount to approximately 0.03% of the total asset value of portfolio and 0,14% for active funds. (pg. 68).

415. All of these costs are passed onto the PPP holder in the form of charges. Charges can be direct or can be indirect. From the Oxera report, the examples of charges levied by PPP providers include:

- Fees or commissions payable to a financial adviser
- Member joining fees: a once-off joining fee may be charged when a new member joins the scheme. This may be levied by providers to cover some of the administrative costs associated with setting up their membership

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<sup>92</sup> The Financial Services Authority (FSA) calculated that charges and fees reduced the value of pension pots by 31 per cent – other experts such as David Pitt-Watson in a report for the RSA put the reduction at as much as 40 per cent. Source: <http://www.consumerfocus.org.uk/files/2011/07/Consumer-Focus-media-factsheet-FSA-Retail-Distribution-Review-RDR.pdf>

<sup>93</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/docs/fsug/papers/oxera-private-pensions-study\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/papers/oxera-private-pensions-study_en.pdf)

- Charges for specific fund choices or fund switching: certain fund choices may result in additional charges for members that choose them. Under certain circumstances, some schemes may also charge for switching between funds.
- Charges for transfers in or out of the PPP - Charges for a member transferring their entire pension pot either out of or into a scheme
- Fee on profit share (DB), performance fee (DC): these can apply where there is an incentive to encourage providers to seek higher investment returns.
- Administration/account management fees.
- Charges for the purchase of annuity at the end of the accumulation phase.

416. Although not strictly speaking a charge, the presence of commissions including trail commissions should not be overlooked. The FSA noted in the context of its Retail Distribution Review" (RDR) that "Pension providers pay independent financial advisers (IFAs) an on-going fee, known as trail commission, of around 0.5 per cent of the pension value every year." During the RDR process they conducted research among policyholders and found that many of them got little or no service in respect of the trail commissions the advisers were receiving from pension providers. Indeed, the FSA as part of its RDR decided to ban trail commissions.

417. When considering DB PPPs it is worth considering whether it is more effective to disclose charges or alternatively to enable PPP holders to compare premiums for the various PPPs offered by different providers.

418. When disclosing charges it is relevant to consider whether charges should be disclosed in a detailed manner (where every sub cost is disclosed) or should the PPP holder only be informed about aggregated charges. An alternative might be to disclose charges in aggregated groups, e.g. provider charges, investment transaction charges, third party charges,..)

419. In this regard it is important to note that determining the charges of a financial product (especially indirect charges) may prove to be difficult.

420. Having considered the PPP structure in relation to charges the PPP holder must also be considered. Research in this area shows that it is questionable whether a PPP holder will fully understand the significance of charges, if cost is the only element that has to be disclosed by a provider. For example, if a provider communicates that annual charges are 1% of the accumulated capital, this may seem a negligible cost to the PPP holder. However, according to a 2008 OECD study the effect of an annual 1% deduction on accumulated capital is very significant, reducing the value of the pension by about 20%. The challenge then is in making the effect of charges clear to PPP holders while also facilitating them in assessing whether or not their PPP can still deliver their current expectations The crucial information for the PPP holder is the capital/income they can look forward to at retirement and whether it will meet their current understanding of their future needs.

421. The only way to achieve this critical need is to combine the disclosure of charges with the disclosure of actual real returns on investments, along with some projections about capital accumulation. Real returns can be shown by comparing contributions paid to the actual capital accumulated to that point in time. If the periodic actual returns are consistently low, and the information requirements follow a well thought out layering approach, there is a good chance that the PPP holder will question the link between the charges (which are disclosed at the same time) diverted from premiums paid, and the low returns. Combining the disclosure of charges and actual real return may have a further effect. It will hopefully make the PPP holder aware of the effect of charges on final capital and by extension

retirement income. This could bring pressure to bear on providers and act as an incentive for them to lower excessive charges if yields on investment are disappointing over prolonged periods of time.

422. Low charges do not automatically mean that a product is the best product for the consumer. Low charges may for example inhibit the investment appetite and options of PPP providers and thus lead to inefficient portfolio management.
423. Furthermore, high or low real returns at a certain moment in time do not guarantee high or low returns in the future. However, uncertainty is an integral part of a DC PPP. Every projection (future) or disclosure of returns (past) is bound to be inaccurate as a means of predicting the final pension capital for an individual. This should not be a reason however to opt for not disclosing these elements.
424. The issues with charges and their impact often leads the discussion to consideration of putting a cap on these charges. There are several schools of thought on the matter but for the purposes of this report it is worth mentioning the pros and cons of such a measure.
425. The pros of a cap on charges can be summarised as follows:
- Greater competition on price in the pensions market would be encouraged
  - Greater competition encourages efficiency in provider operations
  - PPP holders would know what the overall cost of charges is
  - It would be easier to inform PPP holders of the effect of charges if a cap is in place
431. On the other hand the cons of a cap on charges can be set out as follows:
- Great care is needed in setting the cap to ensure it is at an appropriate level
  - A cap can result in all providers setting charges at or just below the maximum permissible level thus stifling competition and reducing efficiency
  - Providers may leave the market if the cap is perceived by them to be too low
  - Where providers leave the market the level of choice for PPP holders can be curtailed as competition is reduced
  - Defining charges covered by a cap can be very challenging if it is to be effective; otherwise charges are introduced in a different form
  - The quality of products and services can suffer if a cap is set too low
  - There will be demand for specialist services above the charges cap which needs to be considered
432. Building on the findings of EIOPA's Good practices on information provision for DC schemes report, of 24 January 2013, (consumers are not homo economicus) and EIOPA's Advice on the review of the IORP Directive it is questionable whether consumers are equipped to make an in depth analysis of PPPs to determine which products are suitable for them. Accordingly, information should be provided with the primary aim of supporting retirement planning for the individual rather than a primary focus of selling the product. In the pre-contractual phase there is a strong need for detailed cost disclosure, including entry/enrolment charges, management fees, early redemption penalties, transfer charges. Information regarding the nature of the charges, for instance whether they are incidental or recurrent, or indeed fixed or variable needs to be disclosed. In addition, where charges are presented as a percentage the base amount used for the calculation needs to be



provided and explained. In presenting the information, harmonisation of charges structure and terminology is also considered desirable.

433. Disclosure of past performance is not an ideal metric for potential PPP holders as the link between past performance and future performance is weak. Nonetheless, some indicator of performance is helpful to the PPP holder and in this context: EU-wide standardisation is desirable. Standardisation could take the form of gross or net, time horizon, or based on a computation formula.
434. An accurate future projection would be a considerable benefit to PPP holders and can be useful in the pre contractual phase in order to understand the workings of the PPP product. However, it is important that projections are used as purely for provision of neutral information and do not become part of the product selling argument. No more than past performance, future projections can never be accurate but nevertheless such a projection is necessary to give PPP holders some sense of what they are considering. A clear warning that the projection is not a guarantee should be provided.
435. A further critical disclosure is the product risk profile. Interrelated with this are the time horizon and the investment policy. The time horizon can have a critical bearing on the product performance as unknowns can multiply with time so that it is very important that the time horizon chosen in presenting the risk profile is clearly disclosed. Where standardisation applies the PPP holder can only judge the risk profile based on a time horizon close to his/her own anticipated plans.
436. In the accumulation phase it is important for a consumer to know how the PPP performs and if he/she is still capable of realising their personal expectations. Clearly in this phase a contract is in place so that more detail of an individual nature is available thus permitting provision of individualised information to the PPP holder. Individualised information should be given about contributions made, charges paid or deducted, net returns over certain periods of time (in the current year and from the beginning of the contract until the moment of calculation of the net return). Furthermore, projections of expected pension income at retirement, based on three scenarios should also be provided and should use the actual contributions and accumulated capital up to the time of preparation of the projection. If the need arises the use of known altered or additional information may be necessary, e.g. in life cycle products the moment of transition from one life cycle to another could alter the projection. The real return becomes more critical towards the pay-out phase. Care also needs to be taken with projections in the early accumulation phase as there is scope for irrational behaviour leading to frequent transfers, which in turn can exacerbate the situation as more contributions are diverted towards fees as a result.
437. Finally, it is also important to note that charges of DB schemes are less apparent to the consumer as they do not directly affect the 'defined benefit' returns of the scheme although they will affect any surplus in relation to the guarantee.

#### **Main Findings:**

438. The risk/reward question is a very difficult and complex area. There are many variables to contend with, both market-driven and related to the PPP holder. An alternative to consider is to label investment options according to the recommended time horizon.
439. As charges permeate several areas of the pensions question they need to be considered in a broad fashion. There is a need for disclosure as a basic requirement but charges also have a dramatic impact on capital accumulation

over the life of a pension. The whole area of policy in relation to charges needs to be considered, especially the mechanisms that might be used to minimise charges for the average PPP holder. It is essential that PPP members are put in a position to select products characterised as good “value for money”. Areas for consideration in this regard include product standardisation. In conjunction with this, there is scope also to consider, given the complexity of the pension decision, those situations when and if independent professional advice should be a requirement in the pension decision-making process.

440. Another element of the consideration of charges disclosure is whether there is benefit in detailed disclosure or there should be some other mechanism such as a synthetic cost indicator. The use to which the user puts the cost information is crucial to this consideration of how much detail should be given but so also are the findings of research in the area of behavioural economics.

441. With the complexities involved there is a clear need to use a layered approach to providing information, including for ongoing information, with the emphasis on the right information at the right time in the right format.

442. Another complexity lies with the complexity of the products’ financial structure which could render comprehension of the cost structure and risk structure more challenging. Therefore, information on the PPP may be distinguished from information on the underlying financial instruments, where applicable.

443. There is a need to specify uniform information requirements so that PPP holders can be better informed and protected, but also to promote cross-border accessibility. However, Member States need to have scope to develop additional information requirements to reflect specific considerations related to their domestic market. Consequently, prescriptive information requirements on core areas could be developed with the option for MS to augment these with additional requirements focused on addressing national considerations.

## 10. Distribution requirements

### 10.1. Background

#### Selling practices

442. The table below shows the importance of different distribution channels (i.e. number of products distributed through channels mentioned in the EIOPA database)

	Distribution channel to members				
	Predominant	Important	Limited	Nil	To be allocated
Workplace					
Personal	2	7	5	55	
Occupational and Personal	3	4	2	2	
<b>Total</b>	<b>5</b>	<b>11</b>	<b>7</b>	<b>57</b>	
External sales network					
Personal	29	34	3	1	2
Occupational and Personal	2		4	4	1
<b>Total</b>	<b>31</b>	<b>34</b>	<b>7</b>	<b>5</b>	<b>3</b>
Internet					
Personal	2	38	22	5	2
Occupational and Personal	2		3	5	1
<b>Total</b>	<b>4</b>	<b>38</b>	<b>25</b>	<b>10</b>	<b>3</b>
Other					
Personal	3	4	15	45	2
Occupational and Personal	1		3	6	1
<b>Total</b>	<b>4</b>	<b>4</b>	<b>18</b>	<b>51</b>	<b>3</b>

443. The distribution channel for PPPs can take a number of forms but generally it is either provided directly to PPP holders by a pensions provider or it is provided through an intermediary who provides advice to the PPP holder on the most suitable product. From work carried out by EIOPA it is clear that personal pensions are predominantly distributed through the intermediary channel.

444. A person who is looking to commence pension savings in a personal capacity will usually seek advice from an intermediary. This intermediary can be authorised to distribute pension products under one or more of a number of directives. In the main the intermediary will be authorised to do so under the Insurance Mediation Directive or MiFID.

445. The CEPS-ECMI report "SAVING FOR RETIREMENT AND INVESTING FOR GROWTH" has this to say about advice. "For retirement solutions, given their relevance for the income security of individuals and the cumulative impact of costs on end benefits, any assessment of suitability should be based on broad market coverage and take full account of charges and costs.", while also stating "While financial advice can help individuals make well-informed choices, the embedded costs ultimately reduce net returns and act as a barrier for small investors to enter the market. Actions to both moderate complexity and guide choices are needed to facilitate access to long-term investment and retirement solutions."

446. Distribution requirements are common in existing directives such as the Insurance Mediation Directive (IMD) and Market in Financial Instruments Directive (MiFID).

447. In IMD the provisions are articulated in the context of the provision of advice to the customer. Where an intermediary gives advice to the customer as part of the sale there is a requirement to inform the customer of the basis on which the advice is provided, in other words whether it is based on a fair analysis of the market, and whether or not the intermediary is under any contractual obligations with insurance companies.
448. Where advice is given on the basis of a fair analysis, the intermediary is obliged to base it on an analysis of a sufficiently large number of insurance contracts available on the market. This will enable him to make a recommendation, in accordance with professional criteria, regarding which insurance product will meet the customer's needs. Before concluding a contract, the intermediary will collect information from the customer, and this information must be used to identify the demands and the needs of that customer. The intermediary is also obliged to give the underlying reasons for any advice given to the customer on a given insurance product. The level of detail in the information collected has to be modulated according to the complexity of the insurance contract being proposed.
449. In MiFID there is a general principle to act honestly, fairly and professionally in accordance with the best interests of clients. There are requirements in advised sales to obtain information about the client's knowledge and experience of investments, his financial situation, and investment objectives so that the firm can assess the suitability of the financial instruments for the client. Where insufficient information is provided or particular financial instruments are not assessed as suitable, the firm must not advise client on any financial instruments. However, a trade is still possible on a non-advised basis. An overarching concept is that firms must only advise customers on those instruments the client understands, are deemed affordable for the client, and meet the client's objectives: only then is a product considered to be "suitable". On the other hand, it is worth noticing that, in the MiFID context, attention to costs and "value for money" (very important in the case of pension products) is not explicitly contained in the definition of suitability.
450. In the MIFID II proposal, before giving advice there is a requirement to inform the client of the basis on which that advice is given, principally whether it is given on an independent basis, and whether it is a broad or more restricted analysis of products. To provide independent advice, the firm must assess a range of instruments from a range of suppliers. The firm also may not retain any fees etc. from third parties in relation to a transaction.
451. Under MiFID, firms are obliged to mitigate conflicts of interest to the extent possible. There is a requirement to carry out a client categorisation for each client (which informs the level of protection provided to the client), as well as requirements in relation to safeguarding of client assets, and so on.
452. There are obligations, often referred to as best execution, to achieve the best possible result for the client in terms of speed, price, costs among other considerations.
453. Firms are required to collect specific information to enable them to assess suitability and appropriateness of products and services for the client.
454. There are a number of provisions in relation to advertising and promotional material dealing with accuracy, balancing information on risks and rewards, comprehensibility, revealing key facts and assumptions, past and future performance, information sources, appropriate warnings and so on.
455. In the UCITS Directive there is a requirement that unit-holders are treated fairly. There is an obligation to prevent undue costs being charged to the UCITS

and unit holders. There are also requirements similar to MiFID to deliver best execution for the UCITS.

456. MiFID also contains provisions on inducements, where certain types of fees, commissions and benefits are prohibited or allowed only after meeting certain requirements.
457. Rules on advertisement should also be taken into account. While there are no specific EC advertising rules, the 2005 Unfair Commercial Practices Directive has set out requirements in respect of the promotion, sale or supply of a product to consumers.
458. It covers any act, omission, course of conduct, representation or commercial communication – including advertising and marketing – which is carried out by a trader.
459. The Directive targets both misleading and aggressive commercial practices. An unfair commercial practice occurs where it is contrary to professional diligence requirements, and it could distort the average consumer's economic behaviour. The latter occurs where the practice is used to interfere with the ability to make an informed decision.
460. Where the practice is aimed at a specific target group the average consumer test is applied only to the target group.
461. In particular, this Directive does not supersede unfair commercial practices in EU sector specific legislation.
462. MiFID information provisions contain some requirements that apply also in the context of advertising or promotional material.
463. In addition to the above, several countries have independently developed financial promotions and advertising rules and requirements to protect consumers. In some cases these requirements apply also to personal pensions.
464. In the UK, The Financial Conduct Authority (FCA) applies rules to firms that communicate financial promotions (including direct offer financial promotions) for designated investments including personal pension schemes. The main aim of these rules is to ensure that financial promotions, and other client communications, are fair, clear and not misleading.
465. The application of the rules varies depending on the recipient of the promotions. In particular, when firms communicate with retail clients, information must:
- include the name of the firm;
  - be accurate and not emphasise any potential benefits without also giving a fair and prominent indication of any relevant risks;
  - contain sufficient and understandable information for the target audience; and
  - not disguise, diminish or obscure important items, statements or warnings.
466. Additional rules apply depending on the type of product or service promoted, and the content of the communication or financial promotion. For example, if a promotion compares the performance of pension products, it must satisfy particular conditions (to avoid cherry-picking data) and include a warning that past performance is not a reliable indicator of future results.
467. In Ireland, the Central Bank of Ireland has set out specific advertising requirements in its Consumer Protection Code 2012. These requirements apply also to personal pensions.

- Advertisements must be clear, fair, accurate and not misleading. Ambiguity, exaggeration and omission must be avoided so as not to influence the consumer's attitude to the product advertised. This requirement effectively extends beyond the product to cover required information about the entity itself.
- Key information must be displayed prominently and small print should only contain supplementary information while still remaining legible. Qualifying criteria in respect of minimum price or maximum benefit must be included in the main body of the advertisement. Expiry dates for promotional or introductory rates must be clearly shown.
- Relevant assumptions for e.g. a promise or projection must be clearly shown.
- Advertisements for multiple products must clearly set out the key information for each in a clearly distinguishable way.
- Where third party recommendations or recommendations are incorporated they must be complete, fair, accurate and not misleading, and must not be used without the consent of the author.
- An intermediary tied to a single provider must disclose this when advertising that provider's products.
- A product or service can only be described as free if it is entirely free of charge to the consumer.

468. The Belgian FSMA has also introduced requirements concerning announcements and advertising related to open-ended Undertakings in Collective Investments (UCI).

- All announcements, advertisements, and other items that concern a public offer of units in a UCI must provide the information correctly and must not be misleading. Potential benefits must not be presented without also presenting clear information about the inherent risks.
- All information contained in the announcements, advertisements, and other items must correspond with the information in the latest prospectus, in the most recent KIID, or in the latest periodic report, or is at least drawn up on the same basis in cases where it refers to more recent information.
- More specific information in marketing material on the investment policy specified in the prospectus and, where applicable, in the KIID, does not comply with the aforementioned provision.
- Marketing material must be immediately recognizable as such.
- Furthermore BE also intends to apply similar rules to insurance products.

469. EIOPA is conscious of the need to consider advertising and promotional material in the PPP context. Here the requirements in a small number of countries have been outlined but other countries may have similar or additional requirements. There is a need to further explore this issue.

### Professional Requirements

470. Article 4 of the Insurance Mediation Directive (IMD) contains provisions concerning professional requirements that apply to insurance intermediaries. The directive requires that "Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary." In cases where an insurance undertaking assumes full responsibility for the actions of an intermediary, the insurance undertaking may be

required to verify that the knowledge and ability of such intermediaries are in conformity with the obligations that otherwise apply to intermediaries and, if need be, shall provide such intermediaries with appropriate training.

471. These requirements apply to a reasonable proportion of the persons within the management structure of such undertakings and to anyone directly involved in insurance mediation.
472. Furthermore, intermediaries must be of good repute. As a minimum, they must have a clean police record in relation to serious criminal offences, particularly crimes related to financial activities, and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.
473. The professional requirements must be fulfilled on permanent basis.
474. IMD gives home Member States some flexibility to adjust the requirements depending on activity carried out and products distributed, with the result that different requirements have evolved across Member States. Indeed some Member States have introduced national requirements that include insurance undertakings as well as intermediaries within their scope.
475. In 2012 the European Commission published a proposal for a recast IMD. In this IMD2 proposal as currently drafted, the requirements of insurance mediation would apply to insurance undertakings as well as intermediaries. The proposal strengthens IMD in a number of ways. It links the requirement to demonstrate appropriate professional experience to the complexity of the products they are mediating. In addition there is a new requirement to update knowledge and ability through continuing professional development in order to maintain an adequate level of performance.
476. The Commission would be empowered to adopt delegated acts stipulating what constitutes adequate knowledge and ability, setting appropriate criteria for determining in particular the level of professional qualifications, experiences and skills required, as well as the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.
477. The emphasis in MiFID with regard to professional requirements is on corporate governance at management level rather than at sales staff level. In the European Parliament's MiFID II proposals contain a requirement that investment advisors possess the necessary knowledge and competence to fulfil particular obligations and that the criteria used to assess knowledge and competence be published.
478. The UCITS Directive contains a provision that management companies employ personnel with the skills, knowledge and expertise necessary to discharge their responsibilities.
479. As part of the RDR, the UK has decided to impose a high level of professional requirements on investment advisers, including in respect of pension services. From 2013, "all investment advisers will be qualified to a higher level, regarded as equivalent to the first year of a degree."

## **10.2. Stakeholders' view**

480. There was broad consensus that there are already rules that cover at least some of this area although opinions differed widely about the extent to which the existing rules are sufficient. Most respondents gave UCITS, IMD2 and MiFID as examples of relevant rules, although there was not consensus about which of these, if any, should be extended to personal pensions. A few respondents also

mentioned Solvency II. Respondents agreed that they would not want to see alternative requirements where there are existing rules in place. Some respondents stated that there were also domestic rules that covered suitability and information requirements and a number of respondents were keen that member states should be able to adjust rules to suit national specificities.

481. A number of respondents provided examples of where rules could be enhanced. These examples included the resolution of conflicts of interest, costs of administrative requirements and information on how to complain. The majority of respondents believe that it is important that disclosure of costs is transparent.
482. Another suggestion was that EIOPA and the other ESAs should review selling and distribution requirements to ensure that all products and situations are covered.
483. Respondents emphasise that any new professional requirements should take existing requirements into consideration. The majority of the respondents suggested the IMD regime as the appropriate regulation for the distribution process of PPPs, although some respondents mentioned that provisions in IMD and MiFID (or other) should be aligned and specificities of PPP should be taken into consideration.
484. Some comments stated that there is no reason or need for further rules on professional requirements for the sale of pension products; it would mean duplication of requirements, increased administration and costs, without bringing added-value. Others believe that professional requirements should be regulated through high-level principles and not specific details.
485. Most participants agreed that knowledge of the taxation rules is an important factor in determining the level of knowledge required, further advisers shall have the knowledge on the tax rules and the different pension pillar systems of the Member States. Respondents agreed that legal regulations could change rapidly, so in order to adjust to changing circumstances professional requirements should apply on a continuous basis with provision for regular update.
486. The existing professional requirements shall be used, however current regulations should be aligned and specificities of PPP should be taken into consideration. Advisers and distributors of personal pension products shall be able to demonstrate to customers all the relevant product information, including taxation and the essential information of different pillar systems of the Member States. In order to adjust to changing circumstances professional requirements shall apply on a continuous basis with a regular update.

### **10.3. EIOPA view**

487. The purpose of selling and distribution rules is to contribute to distributors giving appropriate information and advice to PPP holders and to ensure that actual or potential conflicts of interest do not lead to consumer detriment. Distribution rules ensure protection of PPP holders by setting requirements for the sale of products, making sure these are in the best interests of the consumer. For personal pensions, it is also important to consider what advice standards should apply to ensure that the service/product is the most suitable choice for the PPP holders based on their demands and needs.
488. Selling requirements are a cornerstone of consumer protection in the financial services environment. When we consider PPPs many of the characteristics of the sale may be similar to other financial product transactions where the consumer is dealing on their own with a financial services professional. For financial products, there are well developed selling protections for consumers both through national



requirements and EU directives. In particular, the MiFID and the IMD 2 proposal with its extension to insurance undertakings/providers are particularly relevant.

489. However, certain aspects of PPPs deserve specific treatment. In particular, suitability/appropriateness concepts need to be adapted. On the one hand, a rigid application to PPPs of the principle “buy only what you understand” may discourage participation in PPPs, given the complexity of many pension products, and may ultimately contradict public policies in favour of the diffusion of supplementary pensions. On the other hand, the issue of costs and of receiving “value for money” should be made central to any assessment of suitability advice/appropriateness. Other areas that may require similar adjustments in the selling context of PPPs include advertising, conflicts of interest, and complaints handling.
490. Ideally, given the complexity of the pension decision, considering the inter-relationship with other pillars, taxation legislation and the evolution of personal situations over a protracted timescale, the PPP holder should only be sold a product with the benefit of independent professional advice. However, this argument becomes less convincing when dealing with standardised products. Depending on the level of standardisation involved it may not be necessary to receive advice at the time of sale although in most cases some level of advice is desirable, even if it is only to ensure that standardised products are appropriate for the PPP holder. However, it may be possible to develop generic advice suitable for the vast majority of citizens that could be disseminated through government or public agencies. Web-based solutions for both dissemination of information and contributing to standardised products could be envisaged. There may also be scope for automated solutions for the selection of annuity providers. These mechanisms would help to keep costs low for the average PPP holder and ensure contributions to the capital or pension pot are maximised.
491. Professional requirements are essential in the selling and distribution process of personal pensions in cases where the sale involves an advice dimension. The aim is to ensure that those parties involved in the distribution process (providers and advisors) have the required knowledge and ability to deal with these products to ensure a positive outcome for the consumer.
492. The current EIOPA view in advised sales would incline towards the current IMD2 and MiFID position. Professional requirements should ensure that the sales force is knowledgeable enough to inform on all aspects of PPP and not just investment but also on the pensions environment, etc.
493. Consideration of professional requirements, however, is different in situations where there is a high level of standardisation or automation. To a large extent the professional requirements will depend on the individual and the suitability of standardised products for their needs. A further consideration in this regard will be the level of safeguards built into the standard or automated pension solutions, and the extent to which they can be aligned with the generality of potential PPP holders.
494. EIOPA has recently completed a consultation process on a **Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products**.<sup>94</sup> In the Report EIOPA sets out its views on

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<sup>94</sup> 1. N.B. the Report is in draft form and has yet to be submitted to BoS (Nov) for final approval.

appropriate professional requirements for insurance distributors. EIOPA considers that, where it is relevant to the role being carried out by the individual, appropriate knowledge and ability requirements include:

- applicable legal aspects, especially as regards general principles of contract law (in particular, insurance contract law), and underlying tax regime,
- relevant regulatory and supervisory standards, consumer protection requirements,
- knowledge of the market, including market participants (e.g. producers and distributors, professional associations, consumer representatives) and products
- ethical and professional conduct at all times
- ability to communicate effectively with the customer

495. The draft report further considers it good supervisory practice to ensure there is appropriate oversight of a distributor's knowledge and ability and suggests using an external body to assess whether a distributor possesses knowledge and ability which fulfils relevant legal and regulatory requirements.

496. Continuous Professional Development (CPD) should be carried out to ensure knowledge and ability evolves with the changing market environment. CPD should cover not only professional knowledge, but also ability and ethics. CPD should be undertaken regularly. Evidence of completion of CPD should be kept by distributor and there should be appropriate oversight of it.

#### **Main findings:**

497. As set out above PPP distribution is predominantly realised through intermediary channels. Therefore, it is clear that, in common with other selling and investment situations, distribution requirements need to be in place to protect PPP holders. However, the unique elements of pension products should be taken into account. The concepts of suitability/appropriateness should be adapted to reflect the complexity of pension products, particularly considering the objective of increasing the level of investment by citizens across Europe, and the need to ensure that PPP holders receive "value for money". Indeed, there is a proportionality consideration insofar as there is a trend towards product standardisation. The selling and distribution protections for PPP holders would not need to be as strong in these situations as for non-standard pension sales. In addition, selling and distribution requirements should be calibrated to reflect the level of advice that is being given.

498. The market efficiency benefits that can flow from reduced costs through economies of scale are an important consideration in the context of the effect costs have on pension capital. The scope also for default investment options to feed into this efficiency through potential for reduced risk is also a factor in considering the appropriate level of selling and distribution requirements.

499. There are reasons to consider keeping professional requirements at a relatively high level with MS discretion. Each MS has its unique pensions environment and as such, professional requirements that cater for the market specificities will be probably the most efficient way of safeguarding PPP holder interests. COM may wish to consider whether there is a need for more prescriptive professional requirements.

500. Consistent with the previous PPP holder protections there is an argument for calibrating the level of professional requirements to the level of advice given to the PPP holder. Professional requirements in the case of product standardisation

scenarios need to be carefully considered to ensure that the appropriate balance between cost and protection is achieved.

## **11. Product regulation**

### **11.1. Background**

501. Product regulation can take a number of forms. In some cases product regulation is used to mean a process where products require pre-approval by a competent authority before they may be sold on the market. More recently, product regulation has been practiced through the mechanism of product governance whereby the competent authority requires the product producer or provider to ensure that proper systems and controls are in place before a product is launched. Typically these requirements cover such areas as product development and testing, proper and appropriate sign off, and periodic review after launch.

#### Product Governance

502. A number of Member States have introduced product governance or product intervention arrangements<sup>95</sup>. The emphasis of the initiatives varies across these Member States but all are designed to reduce the scope for consumer detriment at an early stage either through product governance requirements prior to issue of a product or an early intervention process where detrimental issues come to light after a product has been sold.

503. In general, product governance means that firms should place the consumers' best interests at the centre of every stage of product design and marketing by having a balanced consideration of customers' interest in their product development process. With product governance, firms are required to have robust consumer-oriented procedures and practices typically in relation to design of products; establishing a target market for the product; adequate testing of potential products; selection of appropriate distribution routes; identifying and managing risks for the target market; and reviewing products after launch to make sure they are not reaching the wrong customers.

504. Product intervention tends to occur after a product has been sold for some time in the market and so tends to concentrate on a range of specific tools that can be used to address issues with certain products or types of products. These interventions can include product bans; banning or mandating certain product features; limiting the sale of products to certain consumers; imposing price caps; or issuing product warnings.

#### Product standardisation

505. Product standardisation can take a number of forms. There are already examples in different financial markets such as the basic bank account. Sometimes these products result from legal requirements, such as third party motor insurance products. In the context of pensions the level of product standardisation can vary and can usually be measured in terms of price, investment risk, availability and understandability. A high level of standardisation can be achieved when a basic investment product is used. Another form of standardisation which still offers flexibility in the investment options over a period of time is a product following the life cycling concept. In any event a standard

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<sup>95</sup> See Annex 6 for summary examples of product governance initiatives from Belgium, Netherlands and the UK.

product will tend to be reasonably widely available, based on fixed pricing, and with a relatively low risk profile.

506. The 2008 IOPS Working Paper No. 5 September 2008 entitled "Information for Members of DC Pension Plans: Conceptual Framework and International Trends" (Ambrogio I. Rinaldi and Elisabetta Giacomel (COVIP, Italy) makes the following observations about product standardisation and competition. "An important role may also be played by the standardisation of plan characteristics, such as their risk/return profiles or their fee structure. This regulatory approach is typical of systems that are based on personal pension plans, provided by a range of financial firms, and usually offered directly to individuals, (though in some cases an employer, and employee representatives, are involved in the selection of a sponsored plan). In these cases, emphasis is placed upon product comparability, and competition between providers. The interaction of these factors with the need for information to be given to members is more complex. For on one view, product standardisation can be seen as an information (and education) substitute, reducing complexity and easing comparison, making choices simpler. But in order to make competition work effectively and foster market discipline, information and education are essential complementary ingredients."

516. Furthermore, the CEPS-ECMI report "SAVING FOR RETIREMENT AND INVESTING FOR GROWTH", makes the following observations on this topic. Standardisation of «default» solutions would help retail access by raising visibility, mitigating complexity and the burden of choice, and focusing competition on quality and costs. Such regulated solutions could hence be sold on an execution-only basis". It goes on to say "In a related vein, the large share of individuals who can hardly afford investment advice should be given the option to access cost-effective and high-quality «default solutions» on an execution-only basis. The words «default solutions» refer here to standardised solutions subject to product rules and available for purchase on an execution-only basis or within a pension plan, as described in this Report.

507. It is worth mentioning that some product standardisation would be put in place if a second regime is introduced. Such an introduction might have far-reaching consequences for the approach to be followed for consumer protection issues. Many difficult issues could be overcome, such as suitability/appropriateness (2<sup>nd</sup> regime products could be considered suitable by definition, maybe subject only to a "value for money" test).

### Life cycling

508. Life cycling, otherwise known as life styling, refers to a type of default investment option whereby the investment decision is determined by the stage of the life cycle that the pension contract has reached. In the early stages of the pension lifetime the investment will be in somewhat riskier products designed to achieve capital growth. As the contract nears its final stages, i.e. when the pension holder is close to retirement, the investment strategy will switch to a more conservative approach designed to consolidate the capital growth already achieved and avoid market volatility. In reality, this life cycling move to less risky investments is usually a gradual process with incremental change over a number of years leading up to the end of the accumulation phase.

509. EIOPA has considered the question of default options in the context of its Advice to the European Commission on the Review of the IORP Directive. The advice to COM states " *Taking stock of principles, guidelines and papers produced*

by different international organizations (OECD, IOPS), the best practices regarding investment options currently in place for DC pension plans provide for:

- a) The offer of a number of investment options, with at least one low-risk option;
- b) The introduction of life-styling of the investment,
- c) The introduction of default options for the members not making the choice."

510. The Advice states: *EIOPA recognises the importance of multi-funds, default options and life-styling as features that help risk control and sound development of supplementary pensions when members bear the investment risk. EIOPA encourages the identification and diffusion of best practices in this regard. Subsequently, subject to political discussion some aspects of these features might be made mandatory and/or regulated by European legislation. EIOPA believes that supervisory authorities will inevitably be involved in ensuring an orderly diffusion of these features within MS; the degree of involvement will depend on the way these features are going to be developed within every MS and/or regulated by European legislation.*

511. The above considerations also hold true in the context of personal pension products.

512. The 2008 IOPS Working Paper No. 5 September 2008 entitled "Information for Members of DC Pension Plans: Conceptual Framework and International Trends" (Ambrogio I. Rinaldi and Elisabetta Giacomel (COVIP, Italy) has the following insight into default options: *"The remaining listed policy instrument that of default options, is especially interesting. In our view, it should be seen as a cost-effective way to provide information and even advice to members. Providing a default option can signal the choice that should best suit members in "normal" conditions, and for the majority of plan members may act as an efficient substitute for the processing of complex information. However, default options do not remove the need to offer details on all other options available; for if they wish, members should always be able to check whether other options are better suited to their specific needs and preferences.*

*In some cases, default options play an important role through the imposition of a "duty of care" on fund administrators that are obliged to make the relevant choices on behalf of members, unless they take over the responsibility for the investments."*

### Product Certification

513. Product certification, another means to achieve product standardisation, is a process for recognising products that meet pre-determined criteria such as reasonable price and charge structure, investment policy and other main characteristics low risk, wide availability, and easily understood. In this way potential PPP holders are reassured as to the suitability of the product for the average pension investor and the need for advice is dramatically reduced. This in turn should lead to reduced cost in the market as economies of scale take effect and in turn more of the contribution paid by the PPP holder is invested in the capital available downstream for retirement purposes.

514. A

#### **11.2. Stakeholders' view**

515. Opinions on product regulation were strongly divided. About half of the respondents considered certification of products to be useful, while the remainder do not support product certification or product authorization. Some respondents stated that certification of products may help in promoting better quality products, while an EU certification scheme would provide an EU passport to the PPP, allowing

it to be marketed across Europe. PPPs should be authorised as products by Home State competent authorities and these authorities should have powers to supervise the providers, including withdrawing their authorisation or banning their distribution.

516. Some respondents do not support product certification, as it could imply standardisation, which hinders product innovation and open competition to the detriment of consumer-oriented, individual and flexible solutions. Furthermore they believe that product certification may introduce additional bureaucracy and added cost for providers while there is a risk that consumers would consider that certification offered some form of guarantee.

517. Prior product authorisation could be a possible but not the only solution for providing PPPs across Europe. The advantages of a "European brand" approach at product level would be as follows:

- uniform criteria would apply to the pension products on EU level
- based on the standards pension products could be easily assessed
- uniform criteria would facilitate distribution of such products on a cross-border basis
- on the provider level: existing providers could distribute the product
- on the distribution level: there would be clear standards for distribution.

### **11.3. EIOPA view**

#### Product governance

518. In recent years, consumers in Europe have been confronted with financial products that did not meet their expectations. Different national approaches and initiatives have been taken to address this issue. For example, national regulation on product development processes has been introduced to ensure that appropriate procedures and policies are put in place. These rules have to ensure that balanced consideration will be given to the interests of consumers during the development phase of products. Therefore they relate to the product development process of product manufacturers and do not require any prior product approval by regulators/supervisors.

519. At a European level, several initiatives by the European Commission and the European Parliament are in progress to introduce rules for product development and product banning in specified circumstances, for example in proposals for MiFID II and PRIIPS.

520. The ESAs Joint Committee Sub Committee on Consumer Protection and Financial Innovation is currently working on a set of Product Oversight and Governance principles. These principles cover product development, testing, regular review, sign off at the appropriate level, etc., and once finalised will be used by the individual ESAs should they decide to propose product oversight and governance requirements in individual sectors within their competence.

#### Product certification

521. In the context of PPPs, product standardisation may also have a positive role in order to encourage the development of "critical mass" and economies of scale (for instance in the context of the 2nd regime).

522. Across the EU MS initiatives have been taken to introduce certified (or standardised) products. These products have to meet specific criteria before they are able to be classified as a standardised product. An authority (government,

regulator or industry) has to approve or accredit standardised products. The COM also referred to the possible certification of personal pensions products in its **White paper on pensions**. Meanwhile the Joint Committee of the ESA's is aiming to develop high level principles for product development. In any event "value for money" should also be considered in the case of certification of particular products.

**Main Findings:**

523. Product Governance arrangements within pension providers need to reflect the complex nature of the product and the scope to cause considerable detriment to PPP holders where poorly developed and tested products are sold. In view of this future requirements for pensions, whether by way of Directive or 2nd Regime, should include product governance requirements. However, when considering product governance, EIOPA is not advocating prior approval regimes for products.
524. Product standardisation and product certification can offer a mechanism for providing cost effective pension solutions to many in normal situations. The role of regulation in these products would need to be carefully examined.



## Annex 1: Examples of (pure) Personal Pension Plans/Products in EU Member States

(source: EIOPA Pensions Database)

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
BE	BE 3	Branche 21 life insurance operated by an insurance company	BE 3.1	LAD		P	not available	114.300
		Branche 23 life insurance operated by an insurance company	BE 3.2	LAD		P	not available	16.334
	BE 4	<i>Fonds d'épargne-pension</i> Pensioenspaarfonds	BE 4	NEL	UCITS	P	not available	11.269
BG	BG 2	<i>Пенсионно-осигурително дружество</i> Voluntary pension funds	BG 2	NEL	NEL	P	595.287	291
	BG 3	<i>Пенсионно-осигурително дружество</i> Universal pension funds	BG 3	SSR		P	3.144.808	1.815
	BG 4	<i>Пенсионно-осигурително дружество</i> Professional pension funds	BG 4	SSR		P	247.333	243
CZ	CZ 1	<i>Transformovaný penzijní fond</i> Transformed pension fund	CZ 1	NEL	UCITS	P	4.580.000	9.597
	CZ 3	<i>Doplňkové penzijní spoření</i> Supplementary pension savings	CZ 3	NEL	UCITS	P	not available	not available
	CZ 4	<i>Důchodové spoření</i> Retirement savings	CZ 4	NEL	UCITS	P	not available	not available
	CZ 5	<i>Soukromé životní pojištění na důchod</i> Private life assurance on pension	CZ 5.1	LAD		P		
			CZ 5.2	LAD		P		
DE	DE 6	<i>Lebensversicherungsunternehmen</i> Riester-Rente - private Rentenversicherung - Riester pension - private pension insurance	DE 6.1	LAD		P	10.882.000	not available
		<i>Kreditinstitut</i> Riester-Rente - Banksparplan - Riester pension - bank savings plan	DE 6.2	CRD		P	750.000	not available
		<i>Kapitalanlagegesellschaft, Investmentgesellschaft</i> Riester-Rente Investmentfondssparplan - Riester-pension - investment fund savings plans	DE 6.3	UCITS		P	2.953.000	not available

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
		<i>Bausparkassen</i> Riester-Rente Bausparvertrag mit lebenslanger Leistung - Riester-pension - home loan and savings contract	DE 6.4	CRD		P	not available	not available
		<i>Genossenschaften</i> Riester-Rente Sparplan mit weiteren Geschäftsanteilen einer Genossenschaft - Riester-pension - Saving plan with additional shares in a cooperative	DE 6.5	NEL	NEL	P	not available	not available
	DE 7	<i>Lebensversicherungsunternehmen</i> Basisrente - private Rentenversicherung - Basispension - private pension insurance	DE 7.1	LAD		P	not available	not available
		<i>Kapitalanlagegesellschaft, Investmentgesellschaft</i> Basisrente-Fondssparplan - Basis pension - investment fund savings plan	DE 7.2	UCITS		P	not available	not available
	DE 8	<i>Lebensversicherungsunternehmen</i> Kapitallebens- und Rentenversicherungsprodukte - individual life insurance products	DE 8.1	LAD		P	not available	not available
			DE 8.2	LAD		P	not available	not available
EE	EE 1	<i>Vabatahtlik pensionifond</i> Voluntary pension fund	EE 1	NEL	UCITS	P	50.154	84
	EE 2	<i>Kohustuslik pensionifond</i> Mandatory pension fund	EE 2	SSR		P	708.439	1.131
	EE 3	<i>Elukindlustusselts</i>	EE 3.1	LAD		P	42.648	103
			EE 3.2	LAD		P	19.118	50
ES	ES 2	<i>Fondo de Pensiones personal</i> Personal pension fund	ES 2	NEL	IORP	P	8.481.802	52.554
	ES 5	<i>PPA</i> Prevision Plan Assured	ES 5	LAD		P	911.782	8.522
FR	FR 9	PERP	FR 9	LAD		P	2.125.000	6.550
	FR 10	Schemes under Article L.441-1 of Insurance Code, L.932-24 of Social Security Code, L. 222-2 of Mutual Code	FR 10	LAD		P	813.000	27.576
HU	HU 1	<i>Magánnyugdíjpénztár</i> Private pension fund	HU 1	SSR		P	99.000	780
	HU 2	<i>önkéntes nyugdíjpénztár</i> Voluntary pension fund	HU 2	NEL	NEL	P	1.267.000	2.910
IE	IE 2	Personal pension	IE 2	LAD		P	not available	not available
	IE 3	Personal Retirement Savings Accounts	IE 3	LAD		P	198.038	3.030

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
IS	IS 3	<i>Séreignasparnaður</i> Personal pension scheme	IS 3	NEL	NEL	P	62.251	1.964
IT	IT 3	<i>Piani pensionistici individuali (Pip)</i> Personal retirement plans implemented through insurance policies	IT 3.1	LAD		P	451.570	2.288
			IT 3.2	LAD		P	1.000.425	4.908
LI	LI 3	<i>Versicherungsunternehmen, direkte Lebensversicherung</i> Insurance company	LI 3.1	LAD		P	not available	25.234
			LI 3.2	LAD		P		
LT	LT 4	<i>Valdymo įmonė; pensijų kaupimo sutartis</i> Pension accumulation schemes	LT 4	NEL	UCITS	P	852.652	988
	LT 5	<i>Gyvybės draudimo įmonė; pensijų kaupimo sutartis</i> Pension accumulation schemes	LT 5	NEL	UCITS	P	201.745	194
	LT 6	<i>Valdymo įmonė ; papildomo savanoriško pensijų kaupimo sutartis</i> Supplementary voluntary pension schemes	LT 6	UCITS		P	26.430	27
	LT 7	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis, kai investavimo rizika tenka draudėjui</i> Life assurance contracts when all the investment risk is borne by the policyholder	LT 7	LAD		P	not available	not available
	LT 8	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis</i> Life assurance contracts providing cover against biometric risks and/or guarantee either an investment performance or a given level of benefits	LT 8	LAD		P	not available	not available
LU	LU 5	<i>Contrat de prévoyance-vieillesse</i>	LU 5.1	LAD		P	51.506	517
			LU 5.2	LAD		P		
LV	LV 2	State funded pension scheme State social security scheme	LV 2	SSR		P	1.156.743	1.251
MT	MT 2	Personal Retirement Scheme	MT 2.1	NEL	IORP	P	126	49
			MT 2.2	NEL	IORP	P		
NL	NL 3	<i>Kapitaalverzekering</i> Insurance company or insurer	NL 3.1	LAD		P	not available	356.000
			NL 3.2	LAD		P		
	NL 4	<i>Banksparen</i>	NL 4	NEL	CRD	P	464.000	7.080
NO	NO 3	Individual pension schemes	NO 3.1	LAD		P	99.300	1.643

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
			NO 3.2	UCITS		P	not available	not available
PL	PL 5	<i>Otwarty fundusz emerytalny</i> Open pension fund	PL 5	NEL	NEL	P	15.493.373	50.878
	PL 6	<i>Indywidualne konto emerytalne (IKE)</i> Individual retirement account	PL 6	UCITS, LAD, CRD		P	814.449	626
	PL 7	<i>Indywidualne konto zabezpieczenia emerytalnego (IKZE)</i> Individual retirement savings account	PL 7	UCITS, LAD, CRD		P	301 448	1
PT	PT 3	<i>Adesões individuais a fundos de pensões abertos</i> Individual membership of open pension funds	PT 3	NEL	IORP	P	49.732	231
	PT 5	<i>Planos poupança-reforma</i> Retirement saving schemes Insurance contracts	PT 5.1	LAD		P	2.447.603	12.898
		<i>Planos poupança-reforma</i> Retirement saving schemes Pension funds	PT 5.2	NEL	IORP	P	71.085	350
		<i>Planos poupança-reforma</i> Retirement saving schemes Investment funds	PT 5.3	NEL	UCITS	P	267.584	1.047
RO	RO 1	<i>Societate de administrare a unui fond de pensii administrat privat</i>	RO 1	NEL	NEL	P	5.516.038	1.486
SK	SK 1	<i>Dôchodková správcovská spoločnosť</i> Retirement pension savings	SK 1	SSR	UCITS	P	1.445.000	4.590
UK	UK 2	Group Personal Pension [GPP]	UK 2	LAD		P	6.400.000	337.302
	UK 3	Personal pension scheme [LAD]	UK 3	LAD		P	10.800.000	236.783

\* Latest available data

Please note that in table above the following are Pillar 1 bis products: BG3, CZ4, EE2, HU1, LT4, LT5, LV2, PL5, RO1 and SK1.

LAD – Life Assurance Directive

NEL – No European Legislation

SSR – Social Security Regulation

CRD – Capital Requirements Directive

UCITS – Undertakings for Collective Investments in Transferable Securities Directive

## Annex 2: Overview of 1st pillar bis products

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSIION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS		EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
									MEMBERS CONTRIBUTION	EMPLOYER CONTRIBUTION			WORKPLACE	EXTERNAL NET SALES	INTERNET	OTHERS			
BG	BG 3	Пенсионно-осигурително дружество Universal pension funds	BG 3	SSR		P	P	DC with guarantees	Mandatory	Mandatory	Other	Workforce of many employers	Nil	Important	Limited	Important	No investment options	3.144.808	1.815
BG	BG4	Пенсионно-осигурително дружество Professional pension funds	BG4	SSR		P	P	DC with guarantee	Mandatory	Mandatory	Other	Workforce of many employers	Nil	Important	Limited	Important	No investment options	247333	243
CZ	CZ 4	Důchodové spoření Retirement savings	CZ 4	NEL	UCITS	P	P	DC	Mandatory	Not possible	Full exposure to investment risk	Individuals	Nil	Predominant	Important	Nil	Multiple investment options	Not available	Not available
EE	EE 2	Kohustuslik pensionifond Mandatory pension fund	EE 2	SSR		P	P	DC	Mandatory	Not possible	Full exposure to investment risk	Individuals	Nil	Predominant	Predominant	Nil	Multiple investment options	708.439	1.131
HU	HU 1	Magánnyugdíjpénztár Private pension fund	HU 1	SSR		P	P	DC with guarantees	Mandatory	Not possible	At least capital guarantee	Individuals	Nil	Missing	Missing	Missing	Multiple investment options	99.000	780

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS		EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
									MEMBERS CONTRIBUTION	EMPLOYER CONTRIBUTION			WORKPLACE	ESTERNA NET SALES	INTERNET	OTHERS			
LT	LT 4	Valdymo įmonė; pensijų kaupimo sutartis Pension accumulation schemes	LT 4	NEL	UCITS	P	P	DC	Not possible	Not possible	Full exposure to investment risk	Individuals	Nil	Predominant	Important	Nil	Multiple investment options	852.652	988
LT	LT 5	Gyvybės draudimo įmonė; pensijų kaupimo sutartis Pension accumulation schemes	LT 5	NEL	UCITS	P	P	DC	Not possible	Not possible	Full exposure to investment risk	Individuals	Nil	Predominant	Important	Nil	Multiple investment options	201.745	194
LV	LV 2	State funded pension scheme State social security scheme	LV 2	SSR		P	P	DC	Mandatory	Not possible	Full exposure to investment risk	Individuals	Nil	Important	Limited	Predominant	Multiple investment options	1.156.743	1.251
PL	PL 5	Otwarty fundusz emerytalny Open pension fund	PL 5	NEL	NEL	P	P	DC	Mandatory	Mandatory	Other	Individuals	Nil	Nil	Important	Predominant	No investment options	15.493.373	50.878
RO	RO 1	Societate de administrare a unui fond de pensii administrat privat	RO 1	NEL	NEL	P	P	DC with guarantees	Mandatory	Not possible	At least capital guaranteed	Individuals	Nil	Limited	Limited	Predominant	Multiple investment options	5.516.038	1.486

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS		EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
									MEMBERS CONTRIBUTION	EMPLOYER CONTRIBUTION			WORKPLACE	ESTERNA NET SALES	INTERNET	OTHERS			
SK	SK 1	Dôchodková správcovská spoločnosť Retirement pension savings	SK 1	SSR	UCITS	P	P	DC with guarantees	Mandatory and voluntary both possible	Not possible	At least capital guaranteed	Individuals	Nil	Important	Nil	Important	Multiple investment options	1.445.000	4.590

\* Latest available data

### Annex 3: Overview of borderline cases where the same scheme can be used both for personal and occupational pensions.

(Note: This includes GPPs but also may include other types of pensions that are already under a clear classification under EU legislation – art. 4 IORP Directive)

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS		EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
									MEMBERS CONTRIBUTION	EMPLOYER CONTRIBUTION			WORKPLACE	EXTERNAL NET SALES	INTERNET	OTHERS			
AT	AT 2	<i>Betriebliche Kollektivversicherung</i>	AT 2.2	LAD		O	O&P	DB	Voluntary	Voluntary	No exposure to investment risk	Workforce of many employers	Nil	Predominant	Limited	Nil	No investment options	Not available	Not available
AT	AT 3	<i>Lebensindividual und Gruppenrentenversicherung</i>	AT 3	LAD		O & P	O	DC with guarantees	Voluntary	Voluntary	At least capital guaranteed	Both workforce and individuals	Nil	Predominant	Limited	Nil	No investment options	Not available	Not available
DK	DK 2	<i>Livsforsikringssselskab</i> Occupational schemes	DK 2.1	LAD		O	O	DC	Voluntary and mandatory both possible	Mandatory and voluntary both possible	Other	Both workforce and individuals	Predominant	Limited	Limited	Nil	Multiple investment options	3.422.291	130.670
		<i>Livsforsikringssselskab</i> Personal schemes	DK 2.2	LAD		P	P	DC	Voluntary	Not possible	Other	Individuals	Limited	Important	Limited	Nil	Multiple investment options		
HU	HU 3	<i>Nyugdíjbiztosítás</i> Pension insurance products of life assurance companies	HU 3	LAD		O&P	O&P	DB	Voluntary and mandatory both possible	Mandatory and voluntary both possible	No exposure to investment risk	Both workforce and individuals	Limited	Missing	Missing	Missing	No investment options	513	NA
IT	IT 2	<i>Fondipensioneaperti</i> Open pension funds	IT 2.1	IORP**		P	P	DC	Voluntary	Voluntary	Full exposure to investment risk	Individuals	Nil	Predominant	Nil	Nil	Multiple investment options	675.871	6.414
			IT 2.2	IORP**		O	O	DC	Mandatory	Mandatory and voluntary both possible	Full exposure to investment risk	Workforce of many employers	Predominant	Limited	Nil	Limited	Multiple investment options	205.440	1.950



MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS	EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €	
									MEMBERS CONTRIBUTION			EMPLOYER CONTRIBUTION	WORKPLACE	EXTERNAL NET SALES	INTERNET				OTHERS
LT	LT 6	<i>Valdymo įmonė ; papildomo savanoriško pensijų kaupimo sutartis Supplementary voluntary pension schemes</i>	LT 6	UCITS		P	O&P	DC	Voluntary	Voluntary	Full exposure to investment risk	Both workforce and individuals	Important	Important	Important	Nil	Multiple investment options	26.430	27,20
LT	LT 7	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis, kai investavimo rizika tenka draudėjui Life assurance contracts when all the investment risk is borne by the policyholder</i>	LT 7	LAD		P	O&P	DC	Voluntary	Voluntary	Full exposure to investment risk	Both workforce and individuals	Important	Important	Limited	Nil	Multiple investment options	Not available	Not available
LT	LT 8	<i>Gyvybės draudimo įmonė; gyvybės draudimo sutartis Life assurance contracts providing cover against biometric risks and/or guarantee either an investment performance or a given level of benefits</i>	LT 8	LAD		P	O&P	DB Contribution-based	Voluntary	Voluntary	No exposure to investment risk	Both workforce and individuals	Important	Important	Limited	Nil	No investment options	Not available	Not available
LV	LV 1	<i>Privātaispensijufonds</i>	LV 1.1	IORP		O & P	O & P	DC	Voluntary	Voluntary	Full exposure to investment risk	Both workforce and individuals	Important	Limited	Predominant	Limited	Both possible (no and multiple investment options)	198.575	171
			LV 1.2	IORP		O & P	O & P	DB	Voluntary	Voluntary	No exposure to investment risk	Both workforce and individuals	Important	Limited	Predominant	Limited	No investment options		

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS		EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
									MEMBERS CONTRIBUTION	EMPLOYER CONTRIBUTION			WORKPLACE	EXTERNAL NET SALES	INTERNET	OTHERS			
SE	SE 1	Livförsäkringsaktiebolag Proprietary life insurance company	SE 1.1	LAD, IORP ART. 4		O	O	DB	Not possible	Mandatory	No exposure to investment risk	Workforce of many employers	Predominant	Nil	Nil	Nil	No investment options	164.000	4.628
			SE 1.2	LAD, IORP ART. 4		O	O	DC with guarantees	Not possible	Mandatory	At least capital guaranteed	Workforce of many employers	Limited	Limited	Limited	Important	Both possible (no and multiple investment options)	1.020.000	7.992
			SE 1.3	LAD, IORP ART. 4		P	P	DC with guarantees	Mandatory	Not possible	At least capital guaranteed	Individuals	Nil	Important	Limited	Limited	Both possible (no and multiple investment options)	377.000	3.192
			SE 1.4	LAD, IORP ART. 4		O	O	DC	Not possible	Mandatory	Full exposure to investment risk	Workforce of many employers	Limited	Limited	Limited	Important	Multiple investment options	4.194.000	36.820
			SE 1.5	LAD, IORP ART. 4		P	P	DC	Mandatory	Not possible	Full exposure to investment risk	Individuals	Nil	Limited	Important	Limited	Multiple investment options	791.000	6.061
	SE 2	Ömsesidiga Livförsäkringsbolag Mutual life insurance company	SE 2.1	LAD, IORP ART. 4		O	O	DB	Not possible	Mandatory	No exposure to investment risk	Workforce of many employers	Predominant	Nil	Nil	Nil	No investment options	2.776.000	50.425
			SE 2.2	LAD, IORP ART. 4		O	O	DC with guarantees	Not possible	Mandatory	At least capital guaranteed	Workforce of many employers	Limited	Limited	Limited	Important	Both possible (no and multiple investment options)	11.592.000	73.009

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS		EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
									MEMBERS CONTRIBUTION	EMPLOYER CONTRIBUTION			WORKPLACE	EXTERNAL NET SALES	INTERNET	OTHERS			
			E 2.3	LAD, IORP ART. 4		P	P	DC with guarantees	Mandatory	Not possible	At least capital guaranteed	Individuals	Nil	Important	Limited	Limited	Both possible (no and multiple investment options)	1.734.000	27.497
			SE 2.4	LAD, IORP ART. 4		O	O	DC	Not possible	Mandatory	Full exposure to investment risk	Workforce of many employers	Limited	Limited	Limited	Important	Multiple investment options	624.000	2.896
			SE 2.5	LAD, IORP ART. 4		P	P	DC	Mandatory	Not possible	Full exposure to investment risk	Individuals	Nil	Important	Important	Limited	Multiple investment options	22.000	86
SI	SI 1	<i>Pokojninskadružba Pokojninskina črtpo ZPIZ-1</i>	SI 1	IORP		O & P	O & P	DC with guarantees	Voluntary	Voluntary	At least capital guaranteed	Both workforce and individuals	Predominant	Nil	Nil	Nil	No investment options	153.435	631
	SI 2	<i>Zavarovalnica Pokojninskina črtpo ZPIZ-1</i>	SI 2	IORP ART. 4		O & P	O & P	DC with guarantees	Voluntary	Voluntary	At least capital guaranteed	Both workforce and individuals	Predominant	Nil	Nil	Nil	No investment options	126.626	389
	SI 3	<i>Vzajemni pokojninski sklad - Pokojninskina črtpo ZPIZ-1</i>	SI 3	IORP		O & P	O & P	DC with guarantees	Voluntary	Voluntary	At least capital guaranteed	Both workforce and individuals	Predominant	Nil	Nil	Nil	No investment options	257.700	816
	SI 4	<i>Sklad obrtnikov in podjetnikov (SOP)- Poklicnopokojninsko zavarovanje</i>	SI 4	NEL	NEL		O & P	O & P	DB contribution based	Not possible	Voluntary	Other	Individuals	Important	Limited	Limited	Nil	No investment options	15.666
SK	SK 2	<i>Doplunkovádôchodkov áspoločnos Supplementary retirement pension saving</i>	SK 2	IORP		O & P	O & P	DC	Voluntary	Voluntary	Full exposure to investment risk	Both workforce and individuals	Limited	Predominant	Nil	Limited	Multiple investment options	862.000	1.175

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) EIOPA Definition	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	DC VS DB	POSSIBILITY TO RECEIVE CONTRIBUTIONS		EXPOSURE TO INVESTMENT RISK FOR MEMBERS	TARGET GROUP	DISTRIBUTION CHANNELS TO MEMBERS				INVESTMENT OPTIONS	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
									MEMBERS CONTRIBUTION	EMPLOYER CONTRIBUTION			WORKPLACE	EXTERNAL NET SALES	INTERNET	OTHERS			
UK	UK 2	Group Personal Pension [GPP]	UK 2	LAD		P	O & P	DC	Voluntary	Mandatory and voluntary both possible	Full exposure to investment risk	Both workforce and individuals	Predominant	Limited	Nil	Nil	Multiple investment options	6.400.000	337.302

\* Latest available data

\*\* Open pension funds can be instituted by undertakings subject to LAD, UCITS, CRD.

## Annex 4: Overview of cases where national law applies only (with reference to a EU framework ).

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
BE	BE 4	<i>Fonds d'épargne-pension</i> Pensioenspaarfonds	BE 4	NEL	UCITS	P	not available	11.269
BG	BG 2	<i>Пенсионно-осигурително дружество</i> Voluntary pension funds	BG 2	NEL	NEL	P	595.287	291
	BG 3	<i>Пенсионно-осигурително дружество</i> Universal pension funds	BG 3	SSR		P	3.144.808	1.815
	BG 4	<i>Пенсионно-осигурително дружество</i> Professional pension funds	BG 4	SSR		P	247.333	243
CZ	CZ 1	<i>Transformovaný penzijní fond</i> Transformed pension fund	CZ 1	NEL	UCITS	P	4.580.000	9.597
	CZ 3	<i>Doplňkové penzijní spoření</i> Supplementary pension savings	CZ 3	NEL	UCITS	P	not available	not available
	CZ 4	<i>Důchodové spoření</i> Retirement savings	CZ 4	NEL	UCITS	P	not available	not available
DE	DE 6	<i>Genossenschaften</i> Riester-Rente Sparplan mit weiteren Geschäftsanteilen einer Genossenschaft - Riester-pension - Saving plan with additional shares in a cooperative	DE 6.5	NEL	NEL	P	not available	not available
EE	EE 1	<i>Vabatahtlik pensionifond</i> Voluntary pension fund	EE 1	NEL	UCITS	P	50.154	84
	EE 2	<i>Kohustuslik pensionifond</i> Mandatory pension fund	EE 2	SSR		P	708.439	1.131
ES	ES 2	<i>Fondo de Pensiones personal</i> Personal pension fund	ES 2	NEL	IORP	P	8.481.802**	52.554**
HU	HU 1	<i>Magánnyugdíjpénztár</i> Private pension fund	HU 1	SSR		P	99.000	780
	HU 2	<i>önkéntes nyugdíjpénztár</i> Voluntary pension fund	HU 2	NEL	NEL	P	1.267.000	2.910
IS	IS 3	<i>Séreignasparnaður</i> Personal pension scheme	IS 3	NEL	NEL	P	62.251	1.964
LT	LT 4	<i>Valdymo įmonė; pensijų kaupimo sutartis</i> Pension accumulation schemes	LT 4	NEL	UCITS	P	852.652	988
	LT 5	<i>Gyvybės draudimo įmonė; pensijų kaupimo sutartis</i> Pension accumulation schemes	LT 5	NEL	UCITS	P	201.745	194

MEMBER STATE	CODE OF THE PLAN/PRODUCT (level 1)	PENSION PLAN/PRODUCT NAME	CODE OF THE PLAN/PRODUCT (level 2)	APPLICABLE EU LAW	APPLICABLE EU LAW TAKEN AS INFORMAL REFERENCE BY NATIONAL LEGISLATION	OCCUPATIONAL VS PERSONAL (level 2) OECD Definition	NUMBER OF ACTIVE MEMBERS*	ASSETS/TECHNICAL PROVISION* million €
LV	LV 2	State funded pension scheme State social security scheme	LV 2	SSR		P	1.156.743	1.251
MT	MT 2	Personal Retirement Scheme	MT 2.1	NEL	IORP	P	126	49
			MT 2.2	NEL	IORP	P		
NL	NL 4	<i>Banksparen</i>	NL 4	NEL	CRD	P	464.000	7.080
PL	PL 5	<i>Otwarty fundusz emerytalny</i> Open pension fund	PL 5	NEL	NEL	P	15.493.373	50.878
PT	PT 3	<i>Adesões individuais a fundos de pensões abertos</i> Individual membership of open pension funds	PT 3	NEL	IORP	P	49.732	231
	PT 5	<i>Planos poupança-reforma</i> Retirement saving schemes Pension funds	PT 5.2	NEL	IORP	P	71.085	350
		<i>Planos poupança-reforma</i> Retirement saving schemes Investment funds	PT 5.3	NEL	UCITS	P	267.584	1.047
RO	RO 1	<i>Societate de administrare a unui fond de pensii administrat privat</i>	RO 1	NEL	NEL	P	5.516.038	1.486
SI	SI 4	<i>Skladobrnikov in podjetnikov (SOP)-Poklicnopokojninskozavarovanje</i>	SI 4	NEL	NEL	O & P	15.666	123
SK	SK 1	Dôchodková správcovská spoločnosť Retirement pension savings	SK 1	SSR	UCITS	P	1.445.000	4.590

\* Latest available data

Please note that in table above the following are Pillar 1 bis products: BG3, BG4, CZ4, EE2, HU1, LT4, LT5, LV2, PL5, RO1 and SK1.

## **Annex 5 - Technical analysis of the Life Assurance Directive and its impact on cross border activities**

This annex<sup>96</sup> discusses examples of prudential obstacles to the cross-border provision of life insurance PPPs.

### **Solvency 1**

In this subpart, the issues presented apply to the case that accumulated capital is being transferred (DB and DC product with guarantees) between two different insurance providers situated in two different MS.

#### ***The maximum rate applicable: its impact on the commitment:***

With respect to contracts that contain an interest rate guarantee, the maximum rate that may be used could differ from one MS to another. In a single market and in the same currency area, this might qualify as a cross-border obstacle, especially if people have the opportunity to transfer their provisions. Indeed, people may subscribe in the most attractive MS (with the highest rate of interest) and ask to transfer their contracts in the MS where they want to retire. This, it might be argued, might lead to interest rate arbitrage.

Example: Let's consider a MS A with a higher maximum rate applicable than in MS B.

A consumer subscribes in MS A with the maximum rate applicable guaranteed. A few years later, this person decides to move to MS B. If there is no change in this contract that means the person may have a contract which does not respect the local law. How could we avoid this situation?

Possible way forward:

- Define one maximum rate applicable for all the contract in the same currency area.
- Decide that transferability is an option that may have a cost for the consumer and may imply some changes in the contract if the option is used.

#### ***Impacts on the provisions / benefits:***

In the body of the directive (LAD), the technical specifications may create some limits for the transferability of provisions. As provided in article 20 of the Life Assurance Directive, the amount of the technical provisions shall be calculated by a sufficiently prudent prospective actuarial valuation, taking account of all future liabilities as determined by the policy conditions for each existing contract. In the directive it is stated that the technical provisions shall be calculated separately for each contract, which means that we can identify for each contract the amount of provisions. Nevertheless it's not enough to ensure the transferability of the contract and its provisions.

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<sup>96</sup> The aim of this annex is to outline some of the actuarial issues that may arise in relation to creating a single market for PPPs. The analysis is not meant to be comprehensive.

### ***Issues related to the rate of interest on the provisions:***

The rate of interest that has to be chosen shall be determined in accordance with the rules of the competent authority in the home MS (the MS in which the head office of the assurance undertaking covering the commitment is situated). To compute the provisions, the rate used is (most of the time) the rate of the commitment.

Once again, we take the example of two MS, A and B, where MS A applies a higher maximum rate than MS B. For a contract subscribed in MS A with the maximum rate tolerated there, the amount of provision will depend on this rate. If the consumer asks for a transfer of his contract and provisions to MS B, the amount of technical provisions shall be calculated at least with the maximum rate applicable in MS B. Otherwise, the insurance undertaking which receives the commitment will not be compliant with the law of its MS. Also, the amount of provisions needed, will be higher under the legislation of MS B. Who shall pay for this difference?

Remark: In many MS, the maximum rate applicable is calculated from the rate on bonds issued by the MS in whose currency the contract is denominated.<sup>97</sup> In the case of MS using the same currency, insurance undertakings may find the same opportunities on the financial markets. Also, they shall be able to use the same rate.

### ***Issues linked to the use of actuarial tables<sup>98</sup>***

There may also be issues linked to the actuarial tables, which are most of the time based on the MS' mortality statistics and, possibly, on their expected trends. If you transfer a commitment from one MS to another, the new company will most probably continue to use its own actuarial table. That means that the actuarial table used to calculate the technical provisions will not be related to the underlying risk of that specific contract. For one contract, this will not really be significant. Nevertheless, if we consider the transfer of a large portfolio or various customers who ask for transfer to the same provider, this may create issues.

In case of annuities, a change in the mortality table may have a significant impact on the amount of technical provisions calculated.

### ***Issues linked to other assumptions used in the calculation of the provisions:***

Especially in DB plans, other assumptions may be relevant to define benefits provided by the PPP (salary expected trend, social security law,..) and therefore have an impact on the calculation of the technical provisions. In case of a capital transfer there might be a lack of consistency in rules and assumptions to be used in different MS. Therefore, this aspect also needs to be considered in case of a capital transfer because they might have an impact on the final benefit deriving from the PPP.

### ***How could we transfer provisions between two States with different currencies?***

Matching rules may create issues with regard to the transfer of technical provisions from one MS to another, when both MS do not have the same currency. These rules are very important to protect the consumers from currency risks. Nevertheless in order to create a single market, these kinds of transfer need to be taken into account.

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<sup>97</sup> Please note that in some MS the maximum rate is prescribed by regulation.

<sup>98</sup> The discussion in this paragraph applies only to cases where the MS prescribes the mortality tables to be used by insurance companies



## **Solvency II**

Under Solvency II, the discount rate shall be defined by EIOPA for each currency. So for the same contract technical provisions between two MS, using the same currency, shall not differ. Nevertheless it seems that the issues linked to the maximum guaranteed interest rate used for the PPP contract and the actuarial table will still remain.

## **Annex 6: Short overview of EU work to date regarding pensions transferability**

- i. On 20 October 2005, the Commission adopted a proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights. This initial proposal proposed the following definition of portability: "the option open to workers of acquiring and retaining pension rights when exercising their right to freedom of movement or occupational mobility;"
- ii. As explained by EFRP<sup>99</sup>, in defined benefit plans employees obtain 'pension rights' to future retirement income as a percentage of wages. The aim is to take away impediments to labour mobility that feature in some occupational pension plans:
  - ✓ Pension plans in some countries may provide for vesting periods. This means that workers are not entitled to any pension until they have been employed for several years. Employees thus have an incentive to stay with their employer until the vesting period is over.
  - ✓ Pension plans in some countries treat deferred and active members' pension rights differently. It becomes unattractive to change employment if accrued pension entitlements are – for example – no longer increased in line with inflation.
- iii. The original proposal afforded employees the right to transfer accrued pension rights. But transfer was too complex with regard to the valuation and taxation of pension rights. Pension contributions are often exempt from taxation and pension benefits are taxed. So, member states with high retirement wealth – and a high future tax claim – would face a substantial loss in tax revenue with cross-border transfers of pension capital.
- iv. In May 2013 a revised proposal of this Directive was tabled under name "Proposal for a directive on the minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights"<sup>100</sup>.
- v. The newly proposed legislation limits the scope of the Directive to cross-border mobility by defining an "outgoing worker", for the purposes of the Directive, as a worker who engages in employment in another Member State within 2 years. At the same time, Member States are encouraged to ensure equal treatment of workers exercising mobility within a single Member State.

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<sup>99</sup><http://www.efrp.org/KeyIssues/Portability.aspx>

<sup>100</sup><http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0603:FIN:EN:PDF>

## **Annex 7. - An overview of Product Governance in a number of Member States**

### **Introduction**

TFPP members from three countries have provided information regarding product oversight and governance in their jurisdictions.

This paper summarises the arrangements in these three countries.

### **7.1. Product Intervention & Governance – a UK perspective**

#### *Background*

The Financial Services Authority (FSA) introduced an early intervention strategy in 2010 to complement their traditional focus on point of sale issues such as advice, distribution and disclosure. This was a new approach focusing on looking across the entire lifecycle of the product but using the existing powers given to the FSA by the Financial Services and Markets Act 2000. It had become clear that consumers could be harmed by bad product design as well as bad sales practices. The strategy of intervening earlier and addressing bad products before they reach the consumer has continued to be a key part of the regulatory approach for the Financial Conduct Authority (FCA).

#### *Characteristics of the system*

Product governance means that firms should place the consumers' best interests at the centre of every stage of product design and marketing. So firms with good product governance are likely to see a reduced risk of other product interventions (e.g. product bans).

The purpose of early intervention is to pre-empt and prevent widespread harm to consumers and ensure firms deliver good outcomes for consumers throughout the life cycle of a product. The system has two main strands.

The first stage of the UK approach is **product governance**, whereby firms are required to have robust consumer-oriented procedures and practices in relation to:

- design of products;
- establishing a target market for the product;
- selection of appropriate distribution routes;
- identifying and managing risks for the target market; and
- reviewing products after launch to make sure they are not reaching the wrong customers.

#### *Supervision in practice*

Supervision of firms from a product governance perspective looks at the performance of firms against these requirements outlined above. A product can come to the FCA's attention in a number of ways, including through regular supervisory discussions with firms, whistleblowing or consumer alerts. The new pre-emptive approach will also allow the FCA to make forward-looking judgements about firms' business models, product strategies and how firms run their businesses. This will enable the FCA to intervene earlier before widespread detriment occurs.

The next stage of the UK approach is **product intervention**: a range of specific tools that can be used to address issues with certain products or types of products. These interventions include:

- product bans;

- banning or mandating certain product features;
- limiting the sale of products to certain consumers;
- imposing price caps; or
- issuing product warnings.

It is important to note that product intervention is not just about product banning.

As part of this approach, the FCA also has the power to make emergency temporary product intervention rules before consultation. These emergency rules will have a maximum duration of up to twelve months. The FCA will consider the use of this power where it sees a threat to consumers which requires prompt action.

#### *Use of the available powers*

The most significant example of use of the available powers is work carried out on the sale of Unregulated Collective Investment Scheme (UCIS) products. UCIS are complex and potentially risky products which involve investing in esoteric products like teak farming and classic cars. In June 2013, the FSA made rules restricting the promotion of UCIS to ordinary retail consumers. Although the powers can be applied to pension products the expectation is that the focus will be foremost on complex products.

## **7.2. Product oversight in the Netherlands**

### *Background*

On January 1, 2013, The Netherlands introduced legislation setting out requirements for financial institutions to include a balanced consideration of customers' interest in their product development process. This legislation, which also covers personal pensions, aims to prevent widespread consumer detriment resulting from defective products by setting standards for the product development process of financial institutions and the products originated by them.

The quality of products often only becomes evident in the long term.

Prior to January 1, 2013 conduct of business rules mainly relied on transparency and the quality of selling processes. While point-of-sale rules are essential, they have proven insufficient to prevent widespread consumer detriment. Intervention earlier in the business process is needed. During the development of a product adequate consideration should be given to customers' interests.

The regulation is principle-based and calls for a good product design process and good quality products. The main characteristics of the regulation are:

- balanced consideration given to the interests of consumers, during the development of a product
- the product is demonstrably the result of this consideration of interests.
- procedures and regulations shall be recorded
- target customer has been defined on the basis of an analysis of and description of the target investor's intended objective
- testing to establish how the product performs under various scenarios
- the product information and distribution are both suitable for the target investor
- regular checks, and updates if required, of the procedures and other measures
- where the interests of consumers are harmed adjust the product as quickly as possible, or cease to offer the product

### *Supervision in practice*

AFM is actively supervising product development processes and products, employing

two principle methods:

- A 'Radar' project that monitors, analyses and prioritises potential problems
- An 'Intervention' project that intervenes concerning the prioritised problems.

#### *Radar project*

The Radar project is responsible for identifying potential problematic products and preparing proposals for further investigation by the intervention team (see below).

These proposals are based on short studies into a

- product
- product feature
- product group,
- process
- financial institution

The short studies are based on

- signals from consumers and institutions,
- interviews with market experts,
- desk research (i.e. discussions on forums, newspapers, and internet sites),
- discussions with institutions
- AFM product monitoring system which gathers data on all products available to Dutch retail customers

The studies can encompass a broad range of work from looking at the terms & conditions of a product to calculating expected returns in different scenarios.

Following completion of studies, proposals are submitted for decision and prioritisation by a AFM Steering Committee comprising representatives of the Board, head of departments and a delegate from the Dutch Central Bank.

#### *Intervention project*

After approval by the Steering Committee, the intervention team starts the actual investigation. This can include

- interviewing relevant employees of the financial institution
- gathering information about products, processes etc.
- performing extensive in-depth stochastic scenario analyses of potential outcomes. The financial institution is invited to simultaneously carry out their own analysis on a similar basis and their results are compared to the AFM results. This comparison of results is the starting point for a discussion on potential flaws in the product design process and the resulting product

The work of both the Radar and the Intervention project teams has a cross-sector scope. This means that project members need in-depth knowledge of a wide range of products.

#### *Use of available powers*

Use of the formal powers has not been invoked to date with financial institutions responding positively to AFM intervention with the result that it has not been necessary to take more formal action.

### 7.3. Product Oversight in Belgium of particularly complex structured products (Belgian Moratorium)

#### Background of the Moratorium

Following the financial crisis, a Special Committee of the Belgian Parliament was tasked with investigating the crisis. They concluded that it should be possible to impose restrictive conditions on certain products, particularly where their *complexity* renders them unsuited to the average retail investor. They also concluded that power to impose *transparency requirements* should be available in respect of pricing and cost structures, given that the aim is to draw up rules that are the same for all instruments and products with a view to creating a level playing field. On 2 July 2010, the Belgian Parliament passed a law giving the FSMA the competence to issue regulations that may impose a ban or restrictive conditions on trading in retail investment products, or that may enhance transparency in the pricing and administrative costs of such products. Pension products are covered provided they meet the criteria which are detailed below.

#### Use of the available powers

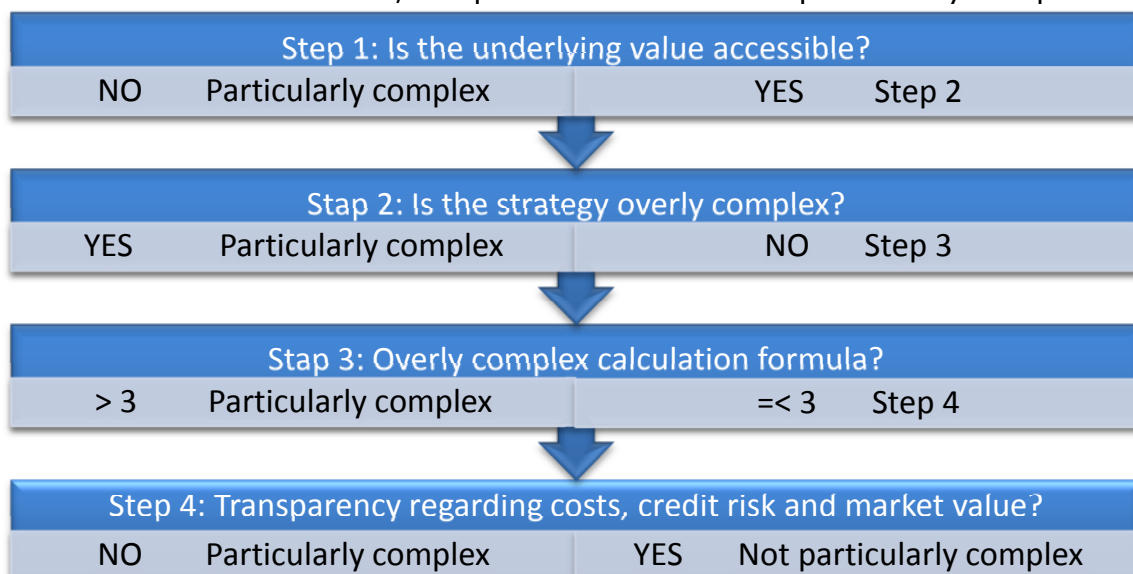
The FSMA had initially, while awaiting the explicit legislative powers, requested the financial sector on a voluntary basis not to distribute structured products that are considered particularly complex to retail investors. Distributors that sign on to the voluntary moratorium commit themselves not to distribute structured products that do not meet the criteria that have been established. Participating distributors will be placed on a list kept by the FSMA. This voluntary moratorium is a first step in a process that is intended to lead to a more transparent and simpler product offer. The specific legislative powers are now in place to move beyond a voluntary regime where this is required.

#### Criteria of the Moratorium

FSMA has established various criteria for establishing whether or not an individual structured product is to be considered complex.

The moratorium applies to the distribution to retail investors, by the distributor, of structured products that are considered particularly complex.

For the purposes of the moratorium, a structured product is considered particularly complex for retail investors if it does not pass the test of the following four criteria. If one of these criteria is not met, the product is considered particularly complex:



### *Supervision in practice*

The aforementioned complex products can take the form of a CIS, a note insurance product or a deposit. The supervision of those products is the following:

#### **Undertakings for Collective Investment (CIS)**

The organization, product rules, disclosure and marketing requirements are governed by the Law of 3 August 2012, implementing royal decrees and Regulation 583/2010/EC.

The supervision of public undertakings for collective investment has a dual nature in Belgium:

- in the first place the supervision of the *quality of the information* takes the form of (i) *ex ante* supervision of the prospectus, the KIID and the marketing material produced for CIS; (ii) *ongoing* supervision of the CIS, for instance their periodic reports but also prospectus changes, corporate actions, ,....
- second is the supervision of the *organization and operation of a CIS*. The FSMA monitors whether the CIS itself or through the appointment of a management company – has the appropriate administrative, accounting, financial and technical organization. At the same time, the CIS is required to have adequate management structures to ensure that it is managed autonomously and in the exclusive interest of the investors.
- Furthermore, FSMA approves the choice of the depository and the accredited auditor of the CIS.

Structured CIS are captured by the voluntary moratorium and within that specific context supervised by the FSMA.

#### **Securities and other investment instruments**

Disclosure rules and marketing requirements are governed by the Law of 16 June 2006 on public offers of investment instruments and on the admission of investment instruments to trading on regulated markets (implementing the European Prospectus Directive) and regulation 809/2004/EC as supplemented.

The Law of 16 June 2006 prescribes the obligatory *ex ante* approval by the FSMA of advertisements relating to a public offer of notes ; the FSMA has issued guidelines on advertisements, in particular regarding the requirement not to be misleading.

Further, the FSMA has issued communications with regard to:

- the policy in effect as from 1 July 2012 for the treatment of dossiers relating to public offers and admissions to trading on a regulated market
- the public offer of corporate bonds (good practices) and
- the public offers and admission to trading of bonds on a regulated market and establishment of an accelerated procedure for approving prospectuses.

The FSMA sees to it that financial institutions that offer investment services with regard to securities or other investment instruments comply with the rules of conduct.

Structured notes are captured by the voluntary moratorium and within that specific context supervised by the FSMA.

#### **Insurance products**

Insurance contracts and advertisements about insurance contracts have to comply with certain provisions of the Law of 9 July 1975 on the control of insurance

undertakings, the Law of 15 June 1992 on terrestrial insurance contracts and with the applicable implementing royal decrees.

FSMA's control of the conditions of the life insurance contracts and of the publicity is carried out ex post on a non-systematic basis. FSMA is exercising this control occasionally, especially in case of a complaint.

Nonetheless, structured insurance contracts are captured by the voluntary moratorium and within that specific context supervised by the FSMA.

Moreover, an identical alignment is foreseen in Belgian law: according to article 28ter of the Law of 2 August 2002, MiFid rules of conduct can by royal decree be made applicable to a.o. insurance undertakings.

### **Deposits**

The FSMA approves a-priori marketing material and the KIID of a.o. regulated saving accounts according to the Royal Degree of 18 June 2013.

Structured deposits are captured by the voluntary moratorium and within that specific context supervised by the FSMA.