

**Comments Template for  
Discussion paper on a possible EU-single market for personal pension  
products**

**Deadline  
16 August 2013  
18:00 CET**

**EIOPA-OPSG-13-10**

Name of Company:	EIOPA Occupational Pensions Stakeholder Groups (OPSG)	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p><i>Please indicate if your comments on this CP should be treated as confidential, by deleting the word <b>Public</b> in the column to the right and by inserting the word <b>Confidential</b>.</i></p>	<b>Public</b>
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in the column "question"; if you change numbering, your comments cannot be processed by our IT tool.</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a question, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <ul style="list-style-type: none"> <li>○ If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.</li> <li>○ If your comment refers to parts of a question, please indicate this in the comment itself.</li> </ul> </li> </ul> <p style="text-align: center;"><b>Please send the completed template, <u>in Word Format</u>, to <a href="mailto:personalpensions@eiopa.europa.eu">personalpensions@eiopa.europa.eu</a>. Our IT tool does not allow processing of any other formats.</b></p>		

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<b>Question</b>	<b>Comment</b>	
General Comment	<p>From an OPSG perspective we have concentrated our responses on issues which are relevant to the area of our mandate.</p> <p>There is broad agreement that in none of the 28 Member States (MS), pillar 1 will be able to finance satisfactory retirement incomes alone. Without doubt, for all MS, pillar 1 will need to be supplemented through capital based retirement provision. To provide people with such a supplementary component means to protect people against a risk of insufficient retirement incomes and age poverty. This is not like selling cosmetics, entertainment industry products etc. With existential risks of the people it is of vital importance that the best possible results at the lowest appropriate costs are provided, especially for those with low incomes. The future development and relationship between efficient occupational pensions and individualized PPP financial products is of major importance for EU citizens in all MS, from an overall efficiency perspective (see EU Agenda 2020) and in an environment of very scarce and limited future availability of any state subsidies in all MS. The real test of the adequacy of the regulatory regime for both IORP and PPPs is the similarity of the outcomes in terms of adequacy of retirement provision for citizens (see further in Q.6.).</p> <p>COM and EIOPA should refrain from anything where enhancing PPPs might lead to disincentivising Pillar 2 occupational pensions which offers Europe's citizens an efficient form of capital based retirement provision. Every MS should encourage and motivate employers, companies and social partners. The member however is less likely to distinguish or be able to distinguish between the different systems. As part of supporting all forms of pension provision, both occupational and PPP it would be useful if MS were to develop retirement educational plans illustrating the risk differences between occupational pension systems and PPP, and explaining how each works.</p>	

<b>Comments Template for Discussion paper on a possible EU-single market for personal pension products</b>		<b>Deadline 16 August 2013 18:00 CET  EIOPA-OPSG-13-10</b>
	It is not the task of the COM nor the Authority to support or promote direct or indirect EU-wide future product marketing campaigns of the insurance or finance industry for PPP financial products which might have the effect of undermining the extension of highly efficient occupational pension concepts in the MS. So by way of example were tax incentives to be introduced to facilitate PPP or a 28th regime, the implications for occupational pension systems will need careful consideration. However we recognize that the prudent utilization of individualized PPP concepts is important where the efficient “mainstream” of occupational pensions is not available, for instance because of a missing employment relationship etc.; where people prefer the ability to individually self-invest; for the self-employed; or because of any unwillingness or inability of an employer to offer an occupational pension.	
Q1	Other features which would be relevant for comparative analysis of consumer protection is that for most PPPs there is usually (although not always) an underlying contractual arrangement between the consumer and the commercial provider. Most PPPs provide for a contractual claim against assets, and most consumers enter into the contract for an explicit retirement objective. Normally (though not always) the consumer can choose between commercial arrangements. PPPs are currently governed by consumer law, prudential financial law, tax legislation. However even where the regime separates them from occupational pensions, we should be very conscious of the fact that members themselves will not always see the difference between a trust based and a contractual based offering, between a product governed by consumer law, or one governed by social and labour law. They are not consciously “opting” for a weaker level of governance, this is an incidental and for the consumer a “cost” of seeking a particular retirement objective. But it is not a cost they are likely to consciously choose or prefer. So any weakness in protection as compared to the occupational regime (e.g. governance) should be avoided.	

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<p>Q2</p>	<p>The concepts “Defined Contribution (DC)” and “Defined Benefit (DB)” are not adequate when trying to analyse and classify PPPs. In this regard what should be clearly specified (and clearly understood by the PPP holder) is “who is going to bear what risk?”. There are three main classes of risks: financial risks, mortality/survival risks and expenses/administration risks. PPPs should be classified regarding where risks lie rather than using DB/DC terminology that can mislead. For example a DC occupational scheme with an underpin will be a totally different product from an employer branded group DC PPP – but probably look the same to the consumer.</p> <p>EIOPA should focus more on cases where either financial risk involved in the product is transferred to the PPP provider or where the member takes all the risk. EIOPA should make sure that the PPP provider has the technical capacity and the financial strength to support the risks that it is covering. In relation to PPP provision and there should be prudential regulation around investment options and communication.</p> <p>From a consumer point of view the prudential risks should also be managed by regulation and supervision. The scheme risks will include quality, costs, charges, governance, investment choice and transfer risks. All these should be taken into account.</p>	
<p>Q3</p>	<p>Yes, to reflect the “retirement objective” of pension provision as compared to other consumer products. For example where a provider is offering a group personal pension contract to an employer which is deemed “suitable” for the workforce population, that suitability test needs to be reviewed over time to maintain suitability for retirement. There may be lessons to be considered here from the US 401(K) regime.</p>	

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Q4	<p>See General remarks. While we would not object to creating or improving a single market for PPPs, we are not aware there is a pent-up demand for these products. We would be concerned however, that in a climate where there are already hurdles and barriers in terms of understanding and obtaining sufficient clear and transparent information, the additional burdens for example of explaining tax implications and/or the value of capital transfers in relation to a single market, might be a hurdle too far. However if the tax and transparency/information issues can be got around, it would seem a reasonable aim.</p> <p>If it led to an improvement and ratcheting up of consumer protection and transparency across the whole pensions industry, it could be an attractive option.</p>	
Q5	<p>The OECD definition is comprehensive, and is useful insofar as it does not exclude but rather recognises, the concept of employer involvement or sponsorship. However, it could be expanded to reflect the fact that a PPP can be established with wider involvement of employers, for example where employers facilitate, contribute to, and in some cases (e.g. UK) also, brand a collection of individual contracts with a specific occupational branding. In addition to group PPP arrangements, the definition of mandatory PPS could be widened to account for 'quasi – mandatory' systems where for example the mandatory arrangement is in place <i>unless</i> the individual then opts out for an alternative arrangement.</p>	
Q6	<p>The test for the appropriate regulatory regime, may best be defined by “outcomes”. The outcome needs to be a quality pension product which is sufficiently good to meet the needs of the individual. So the appropriate regulatory regime should be able to adequately address issues of e.g. quality, governance and possibly also of coverage. Again the US models for 401(K) may be useful here. Many of the actions to operate a 401(K) Plan involve fiduciary decisions and fiduciary status applies to the performance of those functions. These fiduciary responsibilities cover the process (rather than the end result) and include acting solely in the interests of members and beneficiaries; carrying out duties with due care, skill, prudence and</p>	

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	<p>diligence.</p> <p>A personal pension contract which is selected by the employer may technically satisfy the regime for personal pensions within the definitions but insofar as they are arrangements where the member is the ultimate beneficiary but customer selection element is missing, the ultimate beneficiaries should be able to benefit from the same degree of protection as IORP members do. In arrangements such as the UK Group Personal Pensions (“UK GPPs”), the employer is the customer although not the ultimate consumer. The requirements for the provider to ensure that the product meets the need of its target market, the transparency and information issues, the investment and cost issues, would all seem very similar. But the regulatory regime for consumer financial services fails to provide the same level of good governance present in the IORP regulatory regime.</p> <p>If consumer services regulation is to remain for these products, many areas need clarifying including for example: ensuring that the correct and accurate information is passes in a timely way between the employer and the provider; that there is full disclosure of all costs at point of sale; that there is sufficient indication to members as to the adequacy of the level of contributions for any particular level of retirement income.</p> <p>Where an employer chooses the contract as the customer (e.g. UK GPPs) there are further questions as to whether employers are able to exercise proper demand side pressures in the market. For example: whether they have the appropriate skills to choose in an informed way; or whether there are conflicts of interest. Applying IORP-style governance requirements would alleviate this. In the absence of governance requirements along these lines it may be that there needs to be defined quality standards and customer panels to represent member interests satisfactorily.</p>	
Q7	See General remarks. COM and EIOPA should first of all concentrate energies and capacities on efficient institutions and occupational schemes under the IORP Directive. Passporting and	

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	transferability of capital for collectives and individuals - this field is yet unsolved but worth moving forward.	
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**Deadline  
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**EIOPA-OPSG-13-10**

<p>Q26</p>	<p>Transparency and information disclosures should be equivalent and up to the same standard for all types of pension scheme, primarily to protect the beneficiaries of the arrangement. But in addition to avoid employer regulatory arbitrage in the purchase of DC products. We would support the principles of the EIOPA recommendations on Good Practices on Information Provision for information provision for DC schemes, and believe there are useful principles in there which could be used in the PPP environment. However in the pure PPP world, much of the governance and all of the fiduciary and 'not-for-profit' protections of the occupational system are absent, and so the customer may be more vulnerable. For example as compared to the occupational DC environment the missing protections will include: the pre purchase choice and screening of products by an employer; the reputational concerns of the employer; ensuring that communications are of a good standard; the review of DC provision over time and the responsibility taken by informed individuals on basis of advice. This increases the need for high levels of consumer protection and clarity of communication and transparency.</p>	
<p>Q27</p>	<p>We would expect the best outcome to combine the principles of pre contractual information from for example the PRIP KIID, together with the principles of the advice (and behavioural context) suggested in the EIOPA advice on good practices on information provision for DC schemes. It is not clear that pensions or annuities will fall under the future PRIPS regime .We would suggest that this should not be a matter for national discretion , but there need to be clear harmonised minimum standards of consumer protection. However, note that if a MS already requires minimum quality standards, care should be taken not to have these reduced or undermined by a move to harmonised standards.</p> <p>It would be very useful if a matrix could be provided setting out the comparison of the disclosure requirements for the main types of retail plus DC occupational products. This could helpfully compare the protection/disclosure/transparency provisions for the main retail and DC occupational products, in order to ensure PPPs are either covered by or will have a replacement</p>	



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provision established under a new regime.

In terms of format, the PRIP principles are useful: e.g. being fair, clear and not misleading; short; using plain language; consumer friendly.

In terms of content, this should include:

- what the product is and how it works;
- what contributions currently are; what are to be paid in the future; what is likely to need to be paid for what pensions income from this product;
- what additional contributions may be paid (e.g. employer);
- duration of the contract;
- the nature and limits of the features of the contract and any guarantees; including e.g.
  - how does it work;
  - can contributions be reduced/changed;
  - what happens if the consumer can no longer afford to contribute;
- the risk/reward proposition – both qualitative and quantitative, e.g. can the consumer afford to take this risk – what could this mean in retirement planning terms and how does this vary across time horizon?
- the costs and charges (in both the accumulation and payment stages);
- expected benefits (with a wide explanation of the tipologies of annuities the customer can choose among) and options;
- any track record on performance;
- tax regime;
- other rights and obligations of the contract;
- practical information including value information and where to find additional information, where to complain.
- If unregulated investment options are to be available, there needs to be full disclosure

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	to the consumer and in good time.	
Q28	<p>We would be supportive of layering along the lines of EIOPA recommendations for DC occupational pension schemes and also for similar types of information. For the first layer see above. Other imported practices from the occupational regime should include:</p> <ul style="list-style-type: none"> <li>- regular individualised benefit statements;</li> <li>- clear benefit projections under prudent assumptions;</li> <li>- possibility of raising contributions or later retirement;</li> <li>- access to comparative information on costs and performance.</li> </ul> <p>There is also an issue around disclosure information, and updates on default funds and default investment strategies. Although the consumer is effectively helping to ‘design’ his or her own scheme by choosing these options, there should be clear lines of responsibility. The provider should review the offering to make sure the options and their charges remain appropriate, even if they were originally a ‘voluntary’ choice. As there is a contractual relationship between customer and provider, the provider has to ensure the product is fit for purpose for that market. The investment options (if any) will also need on-going monitoring.</p>	
Q29	<p>We would be supportive of layering along the lines of EIOPA recommendations for DC occupational pension schemes and also for similar types of information. For the first layer see above. Other imported practices from the occupational regime should include:</p> <ul style="list-style-type: none"> <li>- regular individualised benefit statements;</li> <li>- clear benefit projections under prudent assumptions;</li> <li>- possibility of raising contributions or later retirement;</li> <li>- access to comparative information on costs and performance.</li> </ul>	

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Q30		
Q31		
Q32		
Q33	There should be full, transparent disclosure of all costs at all points. In particular, there must also be full disclosure of charges. But for a DC product currently, individual charges can vary as between members. The preferred consumer position would be that all deferred member penalties should be prohibited. In the event that the charging structure does continue to differentiate between active employees and early leavers, first this should be made clear to the member but more importantly it would suggest that someone needs to represent the interests of the deferred member, who is likely to be disadvantaged by this type of charging structure. It raises the wider question of who represents in these group arrangements, the interests of members who are individual consumers but not active employees.	
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**EIOPA-OPSG-13-10**

Q40	See Q28/9.  It would be helpful if there was also a positive responsibility on providers to actively engage with the consumer e.g. to keep customers regularly informed about contribution levels, fund size, the availability of increasing contributions, and the importance of saving.	
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Q52	Yes, there should be disclosure requirements to make the consumer aware of the various retirement options so that they have a chance of maximising their retirement outcome – even if this is limited to annuity purchase or drawdown.  There must be regulation around any advice aspect of this.	
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Q56	<p>Fundamentally, there should:</p> <p>(i) be a regulatory body protecting practice in the distribution process; and</p> <p>(ii) this should be transparent to the individual consumer.</p> <p>It does not seem to us to be critical that this is the same entity which also regulates occupational schemes (although it could be), but it should be equally robust.</p> <p>We would expect the usual financial services rules which bite on provider firms to also apply: e.g. the requirements to hold capital; the need for controls to manage/mitigate service provider risk; demonstrable effectiveness and monitoring of systems and controls ; risk assessments; audits; adequate business continuity and disaster recovery planning in place; monitoring of supervisory processes, follow up on ORSAs etc.</p>	
Q57		
Q58		
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Q60	<p>In IORP, there are requirements that those running schemes have to act in the best interests of all beneficiaries. For a PPP, the providers are commercial and ultimately have a profit motive. There clearly is therefore potential for conflict between corporate interests and the best interests of the individual consumers.</p> <p>To some extent this may be alleviated by e.g. regular reviews of customer offerings to ensure the charges and any default options remain appropriate – and that the provider is acting honestly, fairly etc. The current consumer and financial services protections are in some areas less ‘broadly defined’ than the occupational pension scheme obligations which include the very wide “catch – all “ fiduciary obligations of acting in the best interest of members. So it is even more important to make sure there is a detailed and very comprehensive list of the principles</p>	

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	and responsibilities of the provider. Good governance and publication of best practice initiatives could also be useful here. There may also be scope for a prudent pension rule for providers within any PPP regulatory regime, or a fiduciary concept as with the US 401(K) Regime.	
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