

**Comments Template on
Consultation Paper on a Report on Good Practices on individual transfers of
supplementary occupational pension rights**

**Deadline
10 April 2015
23:59 CET**

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| Name of Company: | Name (Sector) (Country) OPSG | |
| Disclosure of comments: | Please indicate if your comments should be treated as confidential: | Confidential/Public |
| <p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Please insert the name of your NCA in the box next to "Name of Company". Please also specify the sector of your business in brackets (Consumer Associations, Training/Education bodies, Industry), as well as your Country; ⇒ <u>Do not change the page numbering</u> in the column "reference" ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row, giving reference to the paragraph number where given. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-15-001@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The page numbering refers to the Consultation Paper on a Report on Good practices on individual transfers of supplementary occupational pension rights.</p> | | |
| Reference | Comment | |
| General Comment | <p>With the adoption of the Directive on the acquisition and preservation of supplementary pension rights, Member States have made a conscious choice not to include transferability and to leave it to Member States to improve transferability for domestic transfers.</p> <p>In terms of cross border transfers, these remain very complex, and a general right to cross-border transfer pension rights or capital would be very problematic for many occupational</p> | |

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pension schemes.

We therefore welcome the fact that EIOPA stresses Good Practices will not be legally binding and we consider this important given the close relationship between cross border transfers and the different social, labour and tax laws within member states. We also welcome that EIOPA remains neutral as regards the topic of transferability of pension rights itself i.e. does not provide any advice or comments as regards whether a transfer may be preferable to the simple preservation of vested rights. Whether it is or not will of course depend on the circumstances of the individual concerned.

A general right to cross-border transfer of pension rights or capital has the potential to be very difficult for some Member States pension systems. Transfers from DC to DC schemes are relatively straightforward compared to DB transfers. For DB schemes for example, differences in life expectancy between Member States are significant, which if not properly taken into account, can result in an imbalance between outgoing and incoming transfers, particularly for DB schemes. Moreover the technical, actuarial, legal and fiscal challenges show the complexity of cross-border transfers. With all these issues still in place, we would not support further regulation of these transfers. As is acknowledged in the paper, there are differences in the treatment of the calculation of transfer values, and equally differences in the conversion of that transfer value back into pension rights in the receiving scheme. This sits on top of differences in taxation, social insurance systems and of course social and labour law.

In the domestic arena, transfer of pension rights from one scheme to another one even within the same country can already be extremely difficult. It can also be very expensive. To take just one example, in France, ARCAF and FAIDER successfully obtained from the French public authorities, the right of transfer for a supplemental pension scheme for public employees (PREFON) and for PERPs (individual pension savings plans) only in 2010. But the other large supplemental scheme for public employees (COREM, 400.000 participants) still does not allow it; and PREFON has introduced high barriers to prevent participants exercising their transfer right, including for example a 10% penalty if the transfer occurs in the first 10 years.

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We also wish to emphasise that workplace pensions are regularly not-for-profit and within occupational pension schemes, some/all of the costs are borne by the employer. If the employers role is taken into account, it is clear that occupational workplace pensions are very different from personal pensions. Workplace pensions are characterized by the triangular relationship between employee, employer and the IORP (with some workplace schemes being managed by insurers). Personal pensions are built on a contract between a provider and an individual. Transfers between workplace pension schemes and personal pension schemes are possible in only a limited number of Member States, due to the different tax arrangements and the different setup of a scheme. For a transfer between occupational pension schemes, the shift in liabilities and its implications, for both the transferring and receiving employers, needs to be taken into account.

The term “supplementary” in the title of the consultation can therefore be misleading as it includes both occupational pensions and individual pensions. The Report should recognize the differences between these systems. EIOPA has suggested the use of “pension rights”. We would suggest instead referring to “occupational pension schemes” which more accurately reflects the role of the employer (or ‘supplementary pension rights’ where both occupational and personal pensions are being considered in the Report).

EIOPA should also consider replacing the term ‘rights’ in the title of the Consultation with the term ‘capital’. For DC schemes, the ‘rights’ are often expressed as capital and this is what is transferred. For DB schemes, the transferring scheme calculates a capital value based on the given pension promise, the receiving scheme then uses this capital value to calculate in turn what kind of pension promise the new scheme can offer based on that. In some jurisdictions there are requirements that the receiving scheme reflects in full the rights earned in the transferring scheme, with any shortfall being met as an additional funding cost. But this is not the case in other jurisdictions (and should not be made a requirement).

A general question, is whether the paper is also aiming to cover pay-as-you-go systems? We

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| | <p>note that this does not seem to be covered, and would have thought transfers between these systems would be wanted by members, as much as between funded arrangements.</p> <p>Lastly, we welcome the fact that EIOPA invites stakeholders to comment on this Report before sending it to the European Commission. However, we don't find the way the Consultation is organized conducive to a good discussion. Posing concrete questions as EIOPA more normally does, or at least structuring the template for response by topic, is in our view a better way to address the impediments and the possible solutions towards overcoming these.</p> | |
| Page 4 | We welcome that EIOPA is neutral as regards the topic of transferability of pension rights, and emphasizes it should be a choice available for individuals based on their own preferences and depending on the detail of the pension arrangements concerned. | |
| Page 5 | | |
| Page 6 | <p>We welcome that the Good Practices mentioned in this report are principle based and that due to the nature of the individual legal framework or the costs and benefits Good Practice observations may not be readily applicable in certain member States.</p> <p>The consultation mentions that all Good Practices may be applied to both DB as well as DC schemes. These two types of pension promise are very different from each other and it will not be possible to replicate exactly from one system across to the other. The issues are much more complex where one or both of the arrangements are DB.</p> | |
| Page 7 | <p>As mentioned above, we would prefer not to use the word 'supplementary' as it could refer to both occupational pensions and personal pensions. There will be considerable additional complexities in transferring cross border as opposed to within State.</p> <p>It is appropriate that bulk transfers may be dealt with differently from individual transfers in some circumstances.</p> | |
| Page 8 | Automatic transfers: Although as the report recognizes it 'may' be disadvantageous to have several small benefits in several pension plans, it may also provide the member with a degree of diversity, and for DB transfers, the transfer may not represent 'good value'. | |

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| | <p>Some Member States have looked into possibilities to transfer pension entitlements automatically ('pot follows member'). However, the risk of detriment to the beneficiary needs to be considered. It could lead to a possible reduction of pension rights for the beneficiary or it could have a negative impact for people when the receiving scheme fails to fit the personal needs of the beneficiary (in particular with regard to the risk cover for invalidity or death that is offered by some schemes and not by others).</p> <p>We would support national/EU wide tracking or tracing services so that former employees can keep track of their pension entitlements in past employments, and it facilitates administration for the pension scheme itself.</p> | |
| Page 9 | | |
| Page 10 | | |
| Page 11 | <p>This shows two employment periods with different employers with a gap in between. We would expect that most employees change jobs without a significant break in between.</p> <p>We question how feasible it would be to develop a European framework for members of occupational pension schemes to have a right to transfer their pension entitlements and capital across border. We conclude this due to the diversity in the EU pension systems and the differences in taxation and social and labour law. We therefore strongly support starting with (1) voluntary transfers and (2) domestic transfers within Member States, before considering the cross border, European level.</p> | |
| Page 12 | | |
| Page 13 | | |
| Page 14 | | |
| Page 15 | <p>Good Practice 1: Voluntary transfer agreements: in the absence of a general statutory rule on transfers EIOPA considers it Good Practice if the scheme providers/sponsors agree on a regime for transfers. Such an agreement should cover as many scheme providers/sponsors as</p> | |

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possible.

We support the suggestion that in Member States where there are not statutory rules, there could be voluntary agreements between schemes where the schemes are relatively similar. One example of this would be transfers between employer and their schemes within industrial sectors or other areas on a national level. The interest of the transferring and receiving IORPs, and the administrative onus and the transferring liabilities of the employers should be duly taken into account, as well as the other members in the scheme and the impact on their pension capital. The agreements would need to cover not only the conversion of pension rights into transfer values, but the forward conversion of transfer values into pension rights.

Even where there are statutory rules, there are examples where these are not applied in practice (e.g. Ireland) where the limit on statutory transfers to two years after leaving is not used in practice and (e.g. both in the UK and Ireland) where a statutory rule permitting reduction in transfer payments to reflect underfunding, can also lead to a reduction in the number of transfers actually taken.

When stating that such an agreement should cover as many scheme providers/sponsors as possible, we consider however that transfers should be limited to 'regulated' institutions, and possibly institutions with the same frameworks. Moreover, we question who should set up such voluntary agreements.

The reference in the 4th paragraph "see also section 3.5 Calculation of transfer value", should be "section 3.6 Calculation of transfer value".

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Good Practice 2: Objective criteria for reasons to suspend a transfer including financial sustainability checks of schemes.

We agree that the effect of the transfer of pension capital on the transferring pension scheme is critical and could in some circumstances provide reasons not to transfer.

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Reasons not to transfer may not be limited to the effect on the funding level of the transferring scheme, but should also take into account the overall risk environment, such as the interest rate environment and biometric aspects, and the interests and security of the remaining, non transferring members of the pension scheme. In the context of cross border transfers between different Member States there is the additional issue of the significant difference in life expectancy within different EU member states which can result in significant imbalance between incoming and outgoing transfers (if this cannot be adjusted for in the receiving scheme 'credit).

The reasons to reduce or not to permit transfers should be applied objectively and disclosed clearly to members who request transfers.

Some Member States have seen the growth of fraud/illegal scams as members are encouraged to transfer out in order to access their pension values: the ability to suspend should include dealing with known fraudulent schemes.

Good Practice 3: Same requirements for receiving schemes for domestic and cross border transfers

We would highlight that indeed it is more difficult in a cross-border context to make a transfer than in a domestic context. The life expectancy issue mentioned in Good Practice 2 is only one of a number of difficult issues which would make a general right to receiving the cross border transfer of pension rights difficult. The receiving IORP has to comply with national requirements so there will be other issues, including differences in legislation, actuarial standards and interest rates, and other laws such as local application of data protection. The receiving scheme would need to be a recognised scheme in the transferring scheme environment, and it can be difficult to verify the status of a receiving scheme in another jurisdiction. The potential for new scams and incentives would also seem to be an issue, and alongside any additional rights or freedoms, methods to protect members against non – bona fide schemes, should also be explored.

In our view it is important to focus first on the domestic level.

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| Page 17 | | |
| Page 18 | | |
| Page 19 | <p>Good Practice 4: Time frames for in – and out – transfers. EIOPA considers it Good Practice if the transferring scheme allows for a sufficiently long period to request an out-transfer, ideally until retirement or other benefits are due. Furthermore, EIOPA considers it a Good Practice if the scheme members are allowed to request an in-transfer of his supplementary pension rights at any time during his membership in the new scheme or the pension institution.</p> <p>Out – transfers: From a members point of view it is clearly attractive to have a long period to request an out-transfer. In some member states (e.g. the UK) members have a statutory right to transfer any time up to a year before normal retirement age. However, the timing (depending on the numbers transferring and the size of the transfer value relative to the funding of the scheme) will effect the financial position of the IORP and possibly the financial security of the remaining members. We would therefore suggest the IORP should be allowed to limit this timeframe to a certain extent or to limit this timeframe by collective agreement. In addition there may be times when it is difficult to transfer out, e.g. if an IORP has an insolvency situation.</p> <p>In-transfers: In the absence of a statutory time limit, it may make sense for the member to be encouraged to take the transfer relatively soon after a job change, particularly if one of the rationales for allowing in – transfers is that mobile workers can collect all their entitlements ‘under one roof’ to have as few IORPS as possible. It has been suggested that it would be helpful to give employers certainty about the liabilities they bear, if there was a time limit of two years between job change and transfer.</p> | |
| Page 20 | <p>We agree with EIOPA that information for members and beneficiaries should be correct, understandable and not misleading. A clear information document specific to IORPs is essential (rather than aKID –type document tailored to investment products). Any information given should be tailored to the specific situation of IORPs.</p> <p>It would help the member if all relevant information were provided initially (albeit with a</p> | |

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| | <p>summary), so that the individual can take advice and reach a decision without protracted (and possibly expensive) correspondence with the scheme administrator/employers.</p> <p>The costs of a transfer should be made available to the member who requested the transfer, so that he/she can make an informed decision.</p> | |
| Page 21 | <p>As this consultation is regarding occupational schemes managed by IORPs or by insurance undertakings, we question the need to mention the PPP here.</p> <p>However, any pension scheme linked to a current or previous employment relationship should be considered as part of workplace pensions, with the involvement of the employer being a key factor to distinguish workplace pension from personal pensions. Workplace pensions have a different setup with different features that should be taken into account when transferring pension capital, such as intergenerational risk-sharing and risk-sharing around death and individuality in some cases. We note that in some countries transfers between pillars are possible, but this is still unusual and would require considerable additional protections in place, particularly for the member.</p> | |
| Page 22 | <p>Good Practice 5: Content of Information to scheme member: EIOPA considers it Good Practice to inform the scheme member about all aspects concerning the transfer needed to reach a decision whether to transfer (e.g. transfer value, transfer options, procedure, time frames (if applicable), impact of the transfer on benefits and other specific risk coverage (if applicable) – including whether any specific risk coverage may be lost as a result of the transfer), as well as the tax implications on transfer. Since the economic consequences of a transfer are arguably the most important for the members all reductions and costs associated with the transfer should be clearly stated.</p> <p>Each IORP should be obliged to give clear information about the transfer in an easy to understand way. In terms of domestic transfers, with the exception of the tax implications (see below) we agree the members will need the information described above. Where appropriate, the information should also include the impact on invalidity protection, survivor's pension,</p> | |

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discretionary benefits and security mechanisms. It could also include where relevant information about the differences between DB and DC, guarantees, effects of solvency margins etc. In relation to risk coverage however while the issue needs to be drawn to the members attention, it is not reasonable for the IORP to have to do for example the analysis of the comparison between the covenant of its sponsoring employer, as against the covenant of the transferring sponsoring employer, or the position on an insolvency of the transferring corporate entity compared to that of a particular receiving insurance company. It should be enough that the members are alerted to the generic issue.

Tax issues equally can be raised with the member, but they cannot be member specific without full information on the member's tax position which the IORP will not have, nor can the transferring scheme comment on any tax implications of payment in the receiving scheme. There is also the issue of not giving unauthorised financial or tax advice. We would suggest therefore that the member be told of the topics, and be encouraged to take his or her own financial advice if necessary.

In terms of cross border transfers, we consider it impossible for the IORP to give accurate information of all potential consequences of a transfer that result from other Member States' jurisdictions. The IORP can only provide information on its scheme. Other issues, such as tax implications are out of the remit of the IORP and when the IORP were to inform its members on possible tax implications this might lead to a situation where the IORP becomes unwittingly liable in the event that the Member States decides to change its tax rules.

Good Practice 6: Systematic delivery of information. EIOPA considers it Good Practice for members to be systematically (i.e. without request) provided with the relevant information upon termination of the employment relationship.

Whether this is efficient and cost effective will depend on how much information (and whether generic or individual) the IORP is expected to provide on termination. If it is extensive, then this should be on request, with basic information as of right. It would be helpful if 'relevant'

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| | information were defined. | |
| Page 23 | <p>Good Practice 7: Online tool /portal with (additional) relevant information concerning scheme members transfer. EIOPA considers it Good Practice to provide the scheme member with access to an online tool/portal with (additional) relevant information concerning his/her transfer.</p> <p>Where possible, transparent on-line information in comparison websites is to be welcomed, if the website is well made including information about costs and charges and can compare the proposed solution with possible alternatives. It may however impose unacceptable costs for small schemes with infrequent transfers. Larger IORPS or ones where an insurance company or institutional pension provider is running the administration may well have this facility. However if for example a member joined and remained in a scheme having left employment 10/15 years ago, the relevant information may not be easily held on-line, even now.</p> <p>It is suggested that if an online platform is provided, members should not need to also be contacted by mail.</p> <p>Good Practice 8: Access to Advice. EIOPA considers it Good Practice for the scheme to offer to the scheme member the opportunity to hire or receive advice.</p> <p>The Scheme can offer information and alert the member to the possibility of obtaining external advice at his/her own initiative and cost, and even refer the member to where he or she might find a list of approved advisers. Members should be able to properly access the risk of transfer and the consumer protection issues around this need careful consideration. We are aware that the UK has introduced a statutory requirement for members to take external advice when making a DB to DC transfer over a certain amount, but usually a requirement should not be necessary.</p> | |
| Page 24 | <p>Good Practice 9: Charges, if any, to reflect the actual work necessary. In cases where the scheme member is charged for the transfer, EIOPA considers it Good</p> | |

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| | <p>Practice to calculate the charges according to the actual work necessary to carry out the transfer and not the transfer amount.</p> <p>We consider that the key is for the IORP to be transparent about the costs and charges, whether it is a flat fee, a fee related to the amount, or a fee related to the amount of work. The latter may not be straightforward as it can depend on for example, complexity of the scheme, the receiving scheme terms, administration costs, changes in funding, tax issues ,any investment platform used. Consideration could be given to a cap related to the amount of the transfer value (e.g. 5%) to protect the individual in the case of a very small amount and a very complex transfer.</p> | |
| Page 25 | None | |
| Page 26 | <p>Good practice 10: Direct communication between the schemes on transfer execution. EIOPA considers it Good Practice if the scheme communicates directly with each other on the practicalities of a transfer execution instead of via the member. Furthermore it is considered Good Practice if the member has to communicate only with one of the two schemes.</p> <p>As far as we are aware this is already normally the case, although it can be challenging for cross border transfers. The information should be the minimum necessary to achieve the transfer, and this is not always the case currently. It is important to note that when two schemes directly communicate with each other they have to do this based on a set of rules in which the technicalities of transfers are addressed. The receiving scheme rules and the conversion of the transfer value back into entitlement to benefits under the receiving scheme, are as relevant as the transferring schemes and would not usually be known in sufficient detail by the member. It would be sensible if the cross border process could be as streamlined as possible by agreement between the Member States.</p> <p>Good practice 11: Reasonable time limits for the execution of transfers. EIOPA considers it Good Practice to define time limits for the processing and execution of transfers. These time limits should be reasonable and appropriate for the process and tasks required, however, without unnecessary delays.</p> | |

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| | <p>Time limits should be reasonable for the processing and execution of transfers. Target timescales would be useful once all the details have been obtained. However delays can arise as a result of external factors such as when tax authorities do not respond in time, when there is a delay from the 'other' pension scheme, when it is a period of legal changes going through. Therefore, the IORP should not be held liable for not meeting deadlines when this is out of their control.</p> | |
| Page 27 | <p>Good Practice 12 is very similar to Good Practice 10. It would make sense to combine these into one Good Practice.</p> | |
| Page 28 | <p>Good Practice 13: Identification of receiving scheme especially for cross border transfers. EIOPA considers it Good Practice if there is a mechanism (e.g. a register) or other practice (e.g. questionnaires) to help the transferring scheme to identify with legal certainty whether the receiving scheme is eligible to receive a transfer, especially for cross border reasons.</p> <p>We would agree that a register of schemes would be helpful, provided there is a mechanism for keeping it up to date and removing schemes where it no longer meets the requirements.</p> <p>Regarding the calculation of transfer value: as mentioned in the general remarks, there are several impediments to transfer of pension capital cross-border related to the calculation of transfer value:</p> <ul style="list-style-type: none"> ⇒ Differences in life expectancy: if there is an intention (which we would not agree with) to impose on receiving schemes an obligation to replicate in full service earned in the transferring scheme, this could have a huge impact on calculating the value of pension rights to be transferred, and on the translating of that value back into rights for the new scheme. Differences in life expectancy are significant, which if not taken into account, can result in imbalance between incoming and outgoing transfers. ⇒ Technical and actuarial problems: the receiving scheme will need to reflect its own local requirements in terms of the calculation of service credit or any additional funding cost. | |

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| | <p>There may also be differences in entitlement with regard to security (whether guaranteed or conditional) and different indexation requirements. It should be taken into consideration that capital funded pension rights, although they are transferable in an actuarial/technical sense, can still be subject to a completely different set of rules. Because of the differences in social labour and tax laws, it will not be possible for the pension promise to remain in exactly the same form as pre-transfer.</p> <p>⇒ Insolvency protection issues: it is complex to compare the protection between member states rules on insolvency, for example if there is a transfer of German pension rights (where there is insolvency protection) to a country where there is none or limited insolvency protections.</p> <p>⇒ It can be difficult to calculate the administration costs of a transfer as there, as mentioned earlier, many issues that should be taken into consideration. However if there was a right to cross border transfers, administration systems would need to be extended (with a cost to be borne by the sponsoring employer). Small changes can produce relatively high additional costs.</p> | |
| Page 29 | <p>The differences between tax treatment of pensions in the Member States are enormous. This complicates transferring pension capital cross-border. For example, when a transfer takes place from an EET or ETT to a TEE system, this could result in double non-taxation when there are not taxation agreements in existence. Whereas in the opposite situation double taxation may be the case. The same is true of social insurance contribution rules</p> | |
| Page 30 | <p>Good Practice 14: Safeguarding the right to transfer over the right to unilateral capital pay out.</p> <p>Capital pay outs are often restricted anyway, where the pension scheme benefits from favourable tax treatment. In some cases however it makes sense to pay out very small amounts at the member's request, to avoid costs instead of transferring the capital, and to avoid the retention of very small pension entitlements within schemes.</p> | |

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| Annex II | None | |
| Annex III | None | |

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