

**Occupational Pensions Stakeholder Group meeting  
22 November 2011**

**Venue: EIOPA Headquarters, Germany;**

**Conclusions and Action points**

10.00	Welcoming by Ms Chris Verhaegen, OPSG Chair	Type
1.	Approval of the draft agenda ➤ <i>Doc: EIOPA-11-201 : Draft agenda OPSG mtg.</i>	Decision
<p><b>Remarks:</b> OPSG Chair welcomed Members to their 5<sup>th</sup> statutory meeting and introduced the CfA items to be covered through the meeting.</p> <p>OPSG Chair also noted that the extension the European Commission has granted to EIOPA for delivering its advice on the Revision of the IORP Directive also allows the OPSG to have a further meeting in December 2011 so as to deliver the OPSG opinion within the new 02 January 2012 consultation deadline.</p> <p>Upon request, OPSG Chair provided an update as to working method for delivering on the OPSG advice including as to Steering group work undertaken to date. Furthermore, presentations during the meeting will be delivered by the Steering Group members as per their area of agreed division of work.</p> <p>Further procedural details regarding adoption of OPSG opinions were also provided based on approved Rules of Procedure<sup>1</sup></p> <p><b>Conclusions/Action points:</b> Draft Agenda was approved without amendments</p>		
2.	Approval of the 19.10.2011 meeting conclusions and action points ➤ <i>Doc:EIOPA-11-202-Draft-conclusions-action-points-OPSG-20111019</i>	Decision
<p><b>Remarks:</b> OPSG Chair submitted the minutes of the 19.10.2011 for the Group's approval and invited amendments, if any.</p> <p><b>Conclusions/Action points:</b> Conclusions and action points of 19.10.2011 were approved without amendments.</p>		
3.	EIOPA Consumer Day – 6 December 2011 <i>OPSG members are invited to provide Chair with input for discussions to be held panel: Consumer Protection – Fostering protection of policyholders and pension fund beneficiaries</i> ➤ <i>Conference Programme</i>	Input from OPSG members
<p><b>Remarks:</b> OPSG members were informed in detail as to the "EIOPA Consumer Day" event that will be organised by the Authority on 06 December 2011 and in which, OPSG Chair will attend in panel: Consumer Protection – Fostering protection of policyholders and pension fund beneficiaries.</p> <p>In preparation for this participation, OPSG members were invited to provide their views as to</p>		

<sup>1</sup> <https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/index.html>

main messages that the OPSG Chair is to convey during the panel discussion on behalf the members of OPSG.

The following main points were noted by the OPSG members:

- Occupational pensions beneficiaries are not the same as regular consumers since being employees – also self-employed in some MS – they are socially insured individuals. The occupational pension scheme is also governed by Host State (i.e. MS specific) social & labour law (SLL). Work councils are part of information and protection system towards of occupational pensions scheme members. Caution against combining “general” consumer protection with SLL in occupational pensions since it may cause over-regulation.
- Enhanced information disclosure requirements need to be adequately investigated including in terms of cost and benefit analysis and tailored to 2<sup>nd</sup> pillar pensions.
- Clear and understandable information is to be made available, including cross-border options if appropriate or relevant.
- Emphasis on quality of information, not the quantity.
- Therefore, information disclosure requirements should match the profile of the member/beneficiary meaning following questions need to be answered prior to establishing the amount of information to be disclosed:
  - What are the levels of personal responsibility that individuals are expected to exercise or level of risk they are taking ?
  - What are the purpose and the scope of the info to be provided?
  - What are the limits of information (i.e. capability to use) and to what extend can members/beneficiaries control his/her individual situation ?
- Financial education is necessary but it is likely to be insufficient. Ensuring adequate understanding of the risk profile of the scheme as well as adequate representation of the beneficiaries in the pension fund management bodies will prove also of essence towards safeguarding beneficiary interests.

EIOPA-Executive Director thanked OPSG members as to their keen interest to ensure adequate levels of beneficiary protection, including by way of ensuring adequate levels of information disclosure. The points identified above will be used on December 6 – Consumer Day to identify the most important areas that require further work at legislative level aimed at enhancing protection levels for those who are members/beneficiaries in an IORP.

**Conclusions/Action points:** OPSG Chair to convey messages above during attendance in EIOPA Consumer Day panel.

4.	Discussion on 2 <sup>nd</sup> Consultation Paper on EIOPA Response to the Call for Advice. ➤ <i>CfA 5, 6, 8</i>	Discussion
----	--	------------

**Remarks:** OPSG Chair invited Steering Group members – Niels Kortleve and Philip Shier to present the main messages proposed for OPSC endorsement with regard to **CfA’s 5, 6 and 8 (quantitative requirements)**.

Steering Group members introduced OPSG members to the concept of **holistic balance-sheet**; key issues for both liability and asset side of the HBS, capital requirements, and introduced the main messages to be conveyed by the OPSG opinion as to these items:

- Recognition of need for future IORP Directive to strike balance between affordability, adequacy and level of security (holistic approach Green Paper). At the same time the revised IORP Directive should be flexible enough to accommodate MS specificities as well as future developments and innovation of pension systems and pension contracts
- Quantitative impact study (QIS) and impact assessment (IA) are essential before making any decision at Level 1 (note the QIS foreseen in 2012). IA should include effects on employers and sponsoring companies as well as wider economic impact having regard to current economic outlook.
- Revise Art. 17 and allow room for new hybrid schemes

- The revised IORP Directive should not pile prudence on prudence In line of reasoning of holistic balance sheet, capital buffers are not the only security mechanism of IORPs.
- Level of security up to Member States (and employers/employees). Uniform security level is unwarranted; security level is part of the pension promise
- Different pension promise leads to difference in valuation of liabilities. Sponsor guarantee and security mechanisms are assets that lower upfront solvency capital requirements
- Experience with risk based supervision clearly indicates that supervisory flexibility is of utmost importance for sustainability
- The revised IORP Directive should allow for sufficiently long (and flexible) recovery periods
- Proportionality critically important for small pension funds as to quantitative requirements

EIOPA OPC Chair clarified in relation to the HBS usage that it is a political tool and a theoretical framework. It can be used in multiple cases and noted that it is important to distinguish between the HBS and the level of security. HBS cannot automatically be understood as immediately followed by a similar or harmonised level of security as the HBS is just a device that allows each MS to decide on the level of security it wants to achieve in the context of each national pension system. The framework is an option to the current IORP provisions and aims to offer a possibility to introduce risk based supervision also in relation to occupational pension funds. He further considered that the reduction of benefits, for example, is not possible in every MS and thought it would be difficult to take it into account on the assets side of the HBS.

OPSG members welcomed the Steering Group members proposals including the analysis of pro's&con's for using the HBS and noted the following main points:

- Generally there seemed to be some scepticism on the practicality and ultimate effects of HBS. Too many uncertainties prevent OPSG members to have a clear view on how the financial position of IORPs – and their sponsors (employers), contributing members and beneficiaries– may be affected.
- Therefore, adequate impact assessment both at EC and EIOPA level is needed in order to fully establish the benefits and negative consequences of introducing the HBS concept into pension fund prudential supervision. The IA should extensively consider whether maintaining the current approach in the IORP Directive is more beneficial to the IORPs than the proposed HBS approach.
- Concerns as to methodology for evaluating the sponsor supports when recognising it on the asset side of the HBS. Also strong concerns as how to use a single EU framework for IORP solvency regime when MS can continue to set the level of security and the pension promise is subject to national variances embedded in SLL.
- With regard to **CfA-5 valuation**: OPSG members expressed concern that under the current proposals the pension fund would need to establish and communicate ex ante the actions it intends to undertake in case of adverse economic context/ becomes underfunded. This would lead to a “complete pension contract” that would eliminate the freedom of social partners and trustees as well as the current flexibility that allows for direct discussions with the pensions supervisor.
- With regard to **CfA-8 procyclicality**: OPSG members noted that experience to date with risk based supervision clearly indicates that supervisory flexibility is of utmost importance for sustainability. Discounts rate can be used to counter otherwise procyclical effects and should not be harmonised at EU level.
- Caution should be exerted when trying to implement a prudential framework that is similar to SII to IOPRs as in the area of quantitative requirements and concern was expressed as to the HBS ultimate result or impact.

**Conclusions/Action points:** OPSG members broadly endorsed the main messages proposed by the Steering Group re CfA 5, 6 and 8.

11.30	Coffee break (15 minutes)	
5.	Discussion on 2 <sup>nd</sup> Consultation Paper on EIOPA Response to the Call for Advice ➤ CFA 7	Discussion

**Remarks:** OPSG Chair invited Vice-Chair and Steering Group member – Benne van Popta to present the main messages proposed for OPSC endorsement with regard to **CFA's 7 (investment rules)**.

He presented the group three questions to be raised :

- Is a prudent person principle sufficient?
- Do MS need an option for quantitative restrictions?
- Should there be a difference between DB, DC and hybrid schemes?

Members further were provided with an overview of the current IORP Directive provisions regarding the "prudent person" principle applicable to investments of occupational pension funds i.e.

- Best interest of the members
- Security, quality, liquidity, profitability of the portfolio as a whole
- Appropriate to the nature and duration of the expected future retirement benefits.

It was noted that the current IORP Directive provisions match the Solvency II – art. 132 requirements although the SII Level 1 text is much more detailed.

With regard to quantitative restrictions to be embedded in the investment rules applicable to the IORPs, members noted the following:

- At international level (OECD) there are some quantitative restrictions advised (to avoid concentration risk, to "help" in young markets that have emerged in areas that did not have a long history of financial services)
- They have a cost in terms of performance of the pension funds and stifle innovation and competition.
- Quantitative restrictions do not sit well with the prudent person principle; quantitative restriction on self-investment is accepted.
- Removing quantitative restrictions on investments needs to be done simultaneously with solid governance requirements – allowing national specificity – and qualitative management and qualitative supervision.
- Quantitative restrictions, if left as a MS competence, may stifle some more the already reduced number of cross-border IORPs.
- Question was raised whether the 'duty of loyalty' should be written into the IORP Dir. and reference was made to Australia (i.e. DC environment).

Related to quantitative restrictions, some OPSG members noted that while quantitative restrictions pre se are not desirable, experience has proven that "default investment options for DC schemes" are quite useful as they seem to pool the majority of pension fund members that are not clearly focusing a specific risk profile in their pension fund choice.

With regard to the difference between DB and DC schemes, **EIOPA OPC Chair** clarified that DC schemes should be seen as only those schemes that provide no promised benefit at retirement age. All other schemes, either pure DB or a DC scheme with a DB component are all seen as DB schemes. He thought there is general consensus on prudent person rule for DB schemes but less in relation to DC schemes.

Among the OPSG members there was support for differentiating between DB and DC schemes for investment rules yet keeping in mind that the liabilities of the scheme – or none – are the starting point for developing the investment policy and the consequential supervision of the fund.

In relation to the questions set forward in the EIOPA Consultation Paper the Steering Group

proposed OPSG the main messages re Question 47 to Question 51.

**Conclusions/Action points:** OPSG members agreed with the main messages proposed by the Steering Group re CfA 7.

13.00	Lunch (1 hour)	
-------	----------------	--

6.	Discussion on Consultation Paper on EIOPA Response to the Call for Advice ➤ CfA 23 ( <i>Information to members/beneficiaries</i> ) and CfA 9-12 ( <i>supervision</i> )	Discussion
----	---	------------

**Remarks:** OPSG Chair noted that the discussion of the second half of the OPSG meeting will focus on the Steering Group main messages proposal as to the following CfA elements:

- CfA 23 – Information to members/beneficiaries
- CfA 9, 10, 11 and 12 – supervision

Steering Group member, Giuseppe Rocco presented the OPSG the main proposed messages regarding **CfA 23 – Information to members/beneficiaries** noting the following:

- Agreement with EIOPA that retirement planning is one of the most difficult issues for common people and that saving for retirement is already, and, more and more becoming one of the principal elements of life time financial planning.
- There is no real awareness of the pension gap yet and an insufficient knowledge about how a pension fund works (i.e financial mechanism, annuities, tax benefits )
- simple and good information about pension plans will also improve the number of people who is going to join pension savings schemes
- Level of harmonization of information: a minimum level of harmonization is useful but the competence must be left to host country (EIOPA proposed Option 2 = a minimum level of harmonization with host state add-ons) to be adapted to the specificity of occupational pensions in Host States.
- Information to be provided to members/beneficiaries information should be correct, understandable and not misleading
- Information should be made available both by using traditional means (for ex. paper printed documents) but should also make use of digital channels of communication as most used by current generation.
- The DB/DC character of schemes should lead to different approach to establishing the nature/volume of information to be provided to members/beneficiaries. For example, DC schemes pre-enrolment information plays an important role and having a KIID like document could be useful but some caution for overload
- An annual statement should be delivered to each member with specific information on benefits accrued and, if possible, also for DC schemes a personalised projection. Sweden was cited as an example where first and second pillar pensions were linked up in an annual information sheet
- It is neither necessary nor useful to extend to IORPs the Solvency II framework dealing with the disclosure to the public of financial and solvency conditions of insurance companies as IORPs have a different nature than insurance companies.

OPSG members welcomed the Steering Group proposals and noted the following main points:

- Regulatory initiatives should focus on the quality of data provided to members/beneficiaries rather than on the quantity.
- Financial education needs to be further defined in the context of IORPs to take into account the specificities of this sector. Financial education has its limits and therefore it makes sense that representatives of beneficiaries/members are involved in the governance of IORPs and that they are trained so that they can provide “good quality” participation. Participation in a pension fund cannot be assimilated to an investment decision because the choice of the scheme (DB, DC or hybrid) and the funding vehicle is made by the employer/sponsoring company. Costs and tracking of costs is probably more relevant in context of DC schemes.

- In DC schemes there is an absolute need to clarify the risk burden and to explain investment risk. In DB schemes focus must be on the pension promise and the strength of the sponsor's covenant.
- In DC schemes, information needs to be comparable and consistent especially in the pre-enrolment phase to and ensure an informed enrolment decision if and when members have to make a choice. Furthermore, OPSG members noted that a pension fund member is not just a consumer of financial services, he/she primarily is a beneficiary of protection provided under SLL and this should be observed when establishing the content of any KIID like document.
- IT tools are already available that provide members with information as to their future pension. These tools should be encouraged further as they are simple, straight forward and able to cope with various levels of consumer sophistication in terms of financial literacy.
- A KIID like document can be developed for the pre-enrolment stage but this should not limit the pension fund management decision to provide more information. Furthermore, consideration is also to be given to information provision during on-going membership in the pension scheme.

\*

\*       \*

Steering Group Chair, Chris Verhaegen presented the OPSG the main proposed messages regarding **CfA 9, 10, 11 and 12 – supervision** noting the following:

- Supports EIOPA's analysis where it points to wide variety of supervisory approaches & practices reflecting the different histories and historical approaches to regulation & supervision.
- Agreement on EIOPA recognition of importance of applying supervisory requirements in a proportionate manner to IORPs where the differences across the EU are much higher than in the insurance sector
- Agreement that that substance of art. 29 and 31 Solvency II may in part and to the extent feasible be introduced into IORP Dir. making current implicit requirements explicit while allowing for diversity of IORPs across Member states.
- Agreement to include stress testing for IORPs in IORP Dir. based on material elements from art. 34(4) Solvency II subject to proportionality EU-wide and within Member states. (Proportionality to be set out in Level 1 text).
- Disagreement with EIOPA's view that art. 26 Reg. 1060/2009 (Credit rating agencies) provides a good basis for reinforcing the sanctioning regimes in Member states and noted that the topic requires further analysis.
- Disagreement with EIOPA's recommendation to give all powers necessary to the Host supervisor with the ability to intervene directly without a priori advising the Home supervisor (art. 20 (10), IORP Dir.).
- Advises that the current supervisory review process be retained (option 3 EIOPA) whereby Member states determine the most appropriate supervisory powers enabling a diversity of approach that bet reflects the diversity of the type, size, complexity and legal form of IORPs across Member states.
- Is of the opinion that capital add-ons are not appropriate in the context of the IORP Dir. and refutes at this stage of the debate to accept that the capital requirements in a revised IORP Directive will probably be similar to those in Solvency II. If capital add-ons in IORP Directive then specific attention needs to be given to DC schemes where members/beneficiaries bear the risks.
- It is important for IORPs to be able appointing service providers outside EU/EEA without having to notify a priori their home supervisor (relevant for investment processes).

OPSG members emphasised the importance of applying proportionality as to supervisory approach to IORP supervision. From EIOPA side, **OPC Chair** noted that application of the proportionality principle aims to take into account the size/structure/risk profile of the IORP and reduce intensity of supervisory demands but nevertheless cannot be seen as a way to "escape"

requirements of IORP II and that size would not be the sole proportionality factor.

OPSG members took various positions regarding publication of supervisory penalties. The prevalent view was that penalties should be made public as a matter of transparency.

For cross-border matters there should be cooperation between Home and Host supervisors who could in this context exchange information on penalties issued.

In relation to supervision of outsourced functions, some OPSG members noted that this is a case where the IORP II and SII frameworks should be consistent in their requirements.

**Conclusions/Action points:**

- OPSG members agreed with the main messages proposed by the Steering Group re CfA 23
- OPSG members agreed with the main messages proposed by the Steering Group re CfA 9, 10, 11 and 12 except for the penalties (should be made public).

15.45	Coffee break (15 minutes)	
7.	Discussion on 2 <sup>nd</sup> Consultation Paper on EIOPA Response to the Call for Advice – <i>cont'</i> – <ul style="list-style-type: none"> <li>➢ CfA 13, 17, 18 (governance) and 14 (Fit and proper) and CfA 1 (scope)</li> </ul>	Discussion

Steering Group Chair, Chris Verhaegen presented the OPSG the main proposed messages regarding **CfA 13, 17, 18 – governance** noting the following:

- Solvency II Directive should not be the starting point of any modification of the IORP Directive although some principles of the second pillar of the Solvency II regime may be adequate for IORPs
- Agrees that an adequate governance framework will further advance the decision making processes of IORPs
- Supports that some governance elements of the Solvency II framework could reasonably and in a proportionate manner be used as a basis for developing a governance system for IORP

OPSG members underlined in their comments the need for proportional application of the future supervisory regime as there is a real threat of overburdening a large number of small pension funds in terms of supervisory reporting/required structure & governance under IORP II. The Steering Group to the OPSG will revisit the slide 30 first bullet to reflect comments made.

Steering Group Member, Ruth Goldman, presented the OPSG the main proposed messages regarding CfA 14 – fit and proper

- Agreement with the importance of the principles of fitness and probity. Nevertheless, “Fit and proper requirements” should not preclude participation of members’ representatives in the governance of IORPs
- IORP Specificities need to be taken into account i.e. IORPs are heterogeneous to a much larger extend than life insurance undertakings; appropriate application of the proportionality principle is required; substantial number of IORPs do not employ own staff but rather use the staff from the sponsoring undertaking; “Fit and proper requirements” should not preclude participation of members’ representatives in the governance of IORPs

**EIOPA chair** noted that this is an area where proportionality cannot be applied as it refers to quality decision making within the pension fund.

\*

\*            \*

Steering Group Chair, Chris Verhaegen presented the OPSG the main proposed messages regarding **CfA 1 – scope**, noting that since the meeting of 19.10.2011, EIOPA proposal regarding revision of IORP Directive scope has changed as currently to Option 1 – Leave the IORP Di-

rective unchanged i.e. "EIOPA [...] proposes to maintain the current exclusions. Irrespective of these exclusions, Member States have the power to apply the directive on a voluntary basis to those institutions which currently fall out of scope.

The main messages argued in favour of:

- Clarification of the division between first, second and third pillar pensions – work entails policy choices but necessary to enhance consistent application of EU level legislation.
- Initiation of a broad EU policy debate with all relevant stakeholders to determine level of harmonisation in pensions legislation and structure of EU pension systems
- Encouraging EC to review of Regulation 883/2004 to identify statutory schemes and their corresponding financing vehicles while noting the concerns expressed by some OPSG members that this process would further delay the revision of the IORP Directive.
- Asking the EC to clearly review the policy objectives and consequential scope of the current revision it wishes to pursue as this will impact directly the entire subsequent legislative work towards a new supervisory framework for IORP supervision.

8.	AOB <ul style="list-style-type: none"> <li>▪ Approval of additional 2011 meeting of the OPSG</li> </ul>	Discussion
----	---	------------

**Remarks:** As stated in the opening remarks, OPSG Chair noted that the extension the European Commission has provided to EIOPA for delivering its advice on the Revision of the IORP Directive also leaves OPSG some more time than initially planned. Therefore an additional meeting of the OPSG can be planned before end 2011.

**Conclusions/Action points:**

- OPSG members agreed to organise an additional meeting on 19.12.2011, 10.00 CET to 17.30 CET, focused only on finalising and adopting the OPSG opinion re EIOPA Advice to the Commission regarding the revision of the IORP Directive. The draft opinion will be provided by the Steering Group to the OPSG within 1 week before the meeting (DL=12.12.2011)
- EIOPA Secretariat to carry out as soon as practicable the procedure for organising this new meeting (registration forms, etc.)
- OPSG meeting scheduled for 20 January 2012 is cancelled.

17.30	End of the meeting	
-------	--------------------	--