

Summary of Conclusions

Occupational Pensions Stakeholder Group

Third meeting

Date: 10 March 2014

Time: 09:30 – 16:00

Location: EIOPA premises, Frankfurt

Contact: Giulia.Conforti@eiopa.eiopa.eu

List of participants:

OPSG: Benne Van Popta (Chair OPSG), Matti Leppälä (vice-Chair OPSG), Lukasz Budzynski, Charlotta Carlberg, Laure Delahousse, Alberto Floreani, Bruno Gabellieri, Ruth Goldman, Fritz Janda, Thomas Keller, Michaela Koller, Niels Kortleve, Pierpaolo Marano, Hristina Mitreva, Marianne Moscoso-Osterkorn, Ellen Nygren, Manuel Peraita, Guillaume Prache, Joachim Schwind, Ján Šebo, Federica Seganti, Marius Serban, Philip Shier, Klaus Struwe, Douglas Taylor, Martine Van Peer, Chris Verhaegen, Petar Vlaić, Neil Walsh and Allan Whalley.

EIOPA: Peter Braumueller and Sergej Simoniti (Management Board), Gabriel Bernardino, (Chair), Carlos Montalvo (Executive Director), Brendan Kennedy (OPC Chair), Peter Penzes (Chair of the TF on Personal Pensions), Manuela Zweimueller (Director of Regulations), Justin Wray (Head of Policy Unit), Katja Wuertz (Head of cross-sectoral and consumer protection unit), Gabriele Arnoldi (External Relations coordinator), Pamela Schuermans (Insurance & Pensions coordinator), Szabolcs Diszter (Legal), Beata Kaminska, Cees Karregat, Barthold Kuipers, Simona Murariu and Teresa Turner (Experts/ Pensions team).

1. Approval of the draft agenda and 2. OPSG Chair update and report

OPSG members approved the agenda without comments.

3. EIOPA general update [European Commission didn't participate]

Update by EIOPA Chair:

- On the European System of Financial Supervision (ESFS):

The European Parliament Report was voted on 27 February. The report touches on a number of areas: governance, enhanced powers for ESAs and independence. The EP has noted that ESAs have done their job but under the review a 2nd stage is to be initiated.

COM is also expected to issue a report in the coming year and it is expected that many of these recommendations will be taken forward.

- On Cost and Charges:

The Occupational Pensions Committee (OPC) is pursuing a study on costs and charges (to allow future advice to COM on disclosures and its breakdown). This is a fact finding exercise as to Member States' (MS) practice for both Defined Contribution (DC) and Defined Benefit (DB) schemes. The OPSG input and involvement would be welcome.

- On Insurance:

The Delegated Acts (DA) are being finalised by COM. Discussions are on-going with MS representatives. After 26 March, a final draft of DA should be available in April. The actual publication date of the DA is not certain yet, most probably during summer. Then the objection period from the EP will follow => we expect to have DA in place by end 2014.

EIOPA will start consultations on the first wave of Implementing Technical Standards (ITS) and Guidelines (GL) for April-June. Then more GLs are to follow in June and a second wave of ITS will be consulted during autumn of this year.

- Meeting CCPFI with consumer representatives of EIOPA SGs:

The Committee on Consumer Protection and Financial Innovation (CCPFI) has met with the consumer group of the stakeholders on 13-14 February 2014. The main focus was on the Consumer Trends Report. EIOPA is reviewing the methodology for the consumer trends to have a better balance between qualitative and quantitative data. There is difficulty with the data collected at the national level and standardisation is still a long term desiderate. The input from the Stakeholder Groups will help identify the main trends across Europe.

- The first EIOPA ITS in pensions was sent to COM on 17 December and it is now for COM to adoption. When approved, EIOPA will release it through the website.

- Peer Reviews on Pensions: supervisory practices on IORPS, statement of investment policy principles, how is this implemented in the MS. Once the process of peer reviews is closed, EIOPA issues best practices and recommendations to the National Supervisory Authorities (NSAs). EIOPA will invite OPSG to give input on the scope of this peer review.

Update by EIOPA Executive Director:

- EIOPA Work Programme 2015:

EIOPA is in the 2nd phase of the 2015 WP. Management Board will review it and the March Board of Supervisors (BoS) will approve it. Then it will be shared informally for views (in April most probably).

- European ombudsman (EO) letter on the composition of the 2011 Stakeholder Groups:

There were 3 main findings: not enough balance (gender & geography); the OPSG category jointly representing Employers and Employees is not reflected in the Regulations; EIOPA made a misinterpretation of the "users" category – it should be "business to retail" and not "business to business".

The EO also made recommendations, which were already embedded in the 2013 selection procedure. Next step in the process is to provide a response in order to close the file.

- Updates on ECJ rules: the Executive Director announced the outcome on two European Court of Justice (ECJ) rulings that would impact EIOPA's work:

- The "Meroni" doctrine on delegation of power: UK vs. Council/Parliament in relation to short selling –they said that ESMA were given powers. Outcomes:

When is there an obligation to consult => no obligation to consult (or to translate) on Guidelines (but EIOPA will consult).

Obligation to consult on ITS – with Stakeholder Groups (not with public)

- A French company (MAF) lost the case against EIOPA on the translation of preparatory guidelines => no obligation to consult on guidelines, therefore translation is not mandatory either.

4. EIOPA presentation on Personal Pensions

Peter Penzes, Chair of the TF on Personal Pensions, in his [presentation](#) highlights the following aspects, including

- A short chronology of the TFPP work and an introduction to the preliminary report. The preliminary nature of the document is underlined as EIOPA expects further work to be pursued when COM will be sending across a more detailed Call for Advice (CfA).

The report¹ is split as follows:

- Regulatory issues: Definition / borderline cases – GPPs; 1st pillar bis CEE; other / hurdles for development of EU single market / Options for an EU action – Directive & Regulation. On PPP's, even if PRIPS is there, we believe there is more room for disclosure.

Peter then briefly covers the Consumer protection issues.

- The OPSG was presented with the key findings of the EIOPA – TFPP. The mapping provided for a comprehensive view of interactions between the options outlined by EIOPA and the hurdles identified.

The overarching aim for the TFPP is to further prepare for delivering detailed advice to COM and its first practical step is the Bratislava public event. In the interim, the two work streams (WS) on costs & charges and distribution practices have been initiated. It is expected that the outcome of the transparency WS will be finalized by end 2014 while the 2nd WS should be done early 2015.

Peter concluded by emphasizing the importance of the OPSG contribution to their work. Therefore, he offered the OPSG to become even more involved by becoming a platform of discussion for TFPP preliminary results on the two WS.

In general the Report was positively welcome. In addition, the following questions were tabled by OPSG:

- COM has asked EIOPA to look at personal pensions. This is very challenging work when the EU supervisory framework is not in a "twin peak" setting. Do you intend to bring this up to the JC of the ESA's? Because this fully within the remit of ESMA and EBA work?
 - Chair TFPP: we have been up to this stage on preliminary work. So the ESMA involvement was not a key to our work. But the more we go in the details the more cooperation with ESMA and EBA will be needed.
- EIOPA emphasis on the distinction between PPPs and other projects is much welcome. It is important to consider always the "long term nature" of the PPP products. The insurance sector is one of the main providers for the PP market. How is TFPP seeing the interaction of "request for more disclosure in a Directive" and the IMD2?
 - Chair TFPP: agrees that long term aspect is very important and we have identified long-term nature and retirement purpose as key elements of a PPP definition. Re timing with other EU initiatives, it is a valid point. The PRIPs and the IMD initiative were launched some time ago with many products in sight. We believe the PPP's will not be the main targets of these products. Therefore, we believe PPPs need specific rules for transparency and disclosure. We need rules that take

¹ The report has been published in mid Feb 2014 and can be found on [EIOPA website](#).

IMD2 and PRIPs as a starting point and tailor them to the PPP world. We wish to complement the existing rules for the sake of PPP holder protection.

- On the interactions of EU law – it is for COM to ensure that EU legislation is consistent.
- Could you comment on the findings of the Contract law expert group – they say tax and Social Labour Law (SLL) are the biggest hurdles for PPP's being provided cross-border.
 - On insurance contract law: the Expert Group has all the expertise and are better placed to advise on the topic. We have noted full reliance on their specific findings. Their report is listing the contract law is a hurdle and at times a highly significant one.
- Disclosure rules can be very different depending whether MiFiD or IMD2 applies. It was suggested that EIOPA WS covers the difference it makes for the PPP to be an insurance product or an investment product. Another member stressed the risk coming from the fact that the insurance and investment products have different regulations for disclosure and distribution.
 - Chair TFPP: we start from the long term nature of the PPP. We are not focusing particularly on these points and will take your input as contribution to the work of the TFPP.
- What is the "retirement related scope" and does this include lump sum pay-outs?
 - Chair TFPP: most MS tax law regulate the way PPP related retirement is paid and lump-sums are not really the way these sums are released. We will most probably recommend that only products that provide annuities or scheduled redraws can be labeled as EU PPPs.
- On the 2nd regime, this is not the first time we hear of it. To be noted, to date these proposals were not too successful.
 - Chair TFPP: at the TFPP level we are thinking of ways to build a single market for PPPs. The concept came from the industry side and was less addressed at COM level i.e. maybe COM should answer on this question. At this point, it appears that the 2nd regime would be optional. The provider needs to choose between EU and MS requirements. And this is why it is so important to have the OPSG and stakeholders contributing to our work.
- When is the CfA coming?
 - EIOPA: Call for advice is for the next COM to consider.

Conclusion:

- Benne suggested discussing the allocation of the work of stakeholders (OPSG but also IRSG) in the afternoon.

5. EIOPA presentation on the Database on pension plans and products in the EEA

Beata Kaminska, expert on pensions, presented the [database of pension plans and products in EEA](#) (1st publication in April 2013) and also briefly the register of IORPs (1st publication in Dec. 2013).

It was explained that with regard to the database, the information is collected on a best effort basis from national competent authorities and that some simplifications were essential in the database compilation. Both publications received positive feedback.

Conclusions:

- OPSG members were invited to provide an informal feedback (if considered necessary) on both projects via EIOPA External Relations team.

6. EIOPA Occupational Pensions Committee (OPC) work Plan for 2014

Brendan Kennedy presented the work of the OPC. The slides are available [here](#).

OPSG members welcomed the input from the OPC Chair and made the following remarks:

- The impact on EMIR could be severe, therefore the need for OPSG to be involved in the public consultation to be issued by the Joint Committee of the ESAs, between April and June. EIOPA Chair highlighted the important role of the OPSG in the process.
- The OPSG Chair inquired about the stress test for pensions that was announced in the EIOPA' work programme. EIOPA Chair responded that the BoS of end-March will make a decision on the pension stress test. However, EIOPA will likely take a two-stage approach to the stress test encompassing the preparatory work in 2014 and the actual stress test exercise in 2015. The stress test will be comprehensive in nature in order to ensure Europe-wide participation. This implies that the stress test will also include IORPs providing DC schemes. EIOPA Chair proposed to further discuss the pension stress test during the next OPSG meeting.
- On Project 3 (cost and charges) – notification of social and labour law => this is linked with cross-border developments.

Conclusions & Action points:

- EIOPA consultation on EMIR: Niels Kortleve volunteered to lead the OPSG involvement as regards to the EMIR work. EIOPA will send a call for volunteers to support him in the drafting.

7. EIOPA presentation on the Holistic Balance Sheet (HBS)

Remarks: Barhold Kuipers, EIOPA senior expert on pensions, gave a presentation on the holistic balance sheet (HBS) approach based on the [nutshell note](#) that was circulated in advance of the meeting.

- EIOPA proposed the HBS in its advice to the European Commission on the review of the IORP Directive in February 2012. Subsequently, EIOPA carried out a Quantitative Impact Study (QIS) of the HBS approach in seven EEA countries.
- The aim of the HBS is to contribute to creating a common European prudential regime for IORPs, while taking into account the diversity in national occupational pension systems.
- OPC is currently carrying out further work on the HBS in five areas:
 - 1) sponsor support
 - 2) supervisory responses
 - 3) discretionary decision-making processes
 - 4) benefit reduction mechanisms, and
 - 5) cash flow boundaries.
- A consultation paper on these five topics is expected to be published by the end of September 2014.
- EIOPA's overall objective is to present the next European Commission a set of tested technical proposals on the HBS by the end of 2015.

Comments/questions:

- Does EIOPA intend to update the CEIOPS “Survey on fully funded, technical provisions and security mechanisms in the European occupational pension sector”, as referred to in the presentation?
 - EIOPA staff responded that preparing an update of the survey is not an explicit item in the work programme. However, the further work on the HBS includes a mapping of national approaches regarding valuation and funding requirements as well as security and benefit adjustment mechanisms.
- Will all five areas for further work be published simultaneously or will it be possible to split them up in separate consultations?
 - EIOPA staff confirmed that a consultation paper covering all five topics is expected to be published by the end of September. Possibly, the results of the mapping exercise of national approaches will be ready at an earlier stage, but a fact-finding report will not be subject to public consultation.
- When will EIOPA react to the responses to the discussion paper on the valuation of sponsor support that was published in July 2013?
 - EIOPA staff said that EIOPA’s reasoned feedback will be published together with the consultation paper on the further work on the HBS. In that way, the feedback can indicate whether stakeholders’ comments have been taken into account or not.
- Can the QIS results for Sweden be compared with the results in other countries given the differences in national prudential rules?
 - EIOPA staff agreed that member states apply different prudential rules, for example with regard to the discount rate. Sweden already applies a market-consistent, risk-based regime that resembles the HBS approach, which may explain the favourable outcomes for IORPs in that country.
- OPSG members argued against the inclusion of ex post benefit reductions on the HBS, as a supervisory framework should aim to prevent such benefit cuts. The question was raised why EIOPA was recommending benefit cuts of 75%.
 - EIOPA staff explained that EIOPA is not advocating benefit reductions. The figure of 75% refers to expected future benefit reductions calculated by a national supervisor participating in the QIS. The inclusion of reduction mechanisms is currently being discussed as part of the further work. It will also depend on the objective of the HBS. If it is to be used as a transparency tool then expected benefit reductions may provide valuable insight to IORP stakeholders and, hence, stimulate reforms.
- It was argued that the HBS poses the risk of exposing IORPs to short-term volatility instead of taking a long-term approach to the security of pensions.
 - EIOPA staff responded that market-consistent valuation provides a transparent view of the financial situation of IORPs. However, this does not mean that the volatility of financial markets has to translate in volatile supervisory responses. Moreover, many IORPs make use of intergenerational risk-sharing to smooth shocks, which is allowed for by recognising future sponsor payments and benefit adjustments on the HBS.
- Are IORPs providing DC plans included within the scope of the HBS?
 - EIOPA staff answered that calculating the HBS will to a large extent be a trivial exercise for pure DC plans. Liabilities will per definition be equal to assets and most modules of the SCR will be zero as all risks are borne by the plan members. However, some elements of the HBS will be relevant for DC IORPs, such as the SCR capital charge for operational risk.

Concluding remarks EIOPA Chair:

- The HBS is a valuable tool to encourage a market-consistent and risk-based approach. It is essential that stakeholders have a realistic view of the IORP in order to prevent that the necessary measures are deferred.
- It is also clear from last year's QIS that the HBS needs to be refined and enhanced in a number of areas. The discount rate needs to be considered by taking into account the long-term nature of pension commitments as well as the supervisory framework underlying the HBS. It is important in that respect how the HBS will be used in practice.
- The EIOPA Chair emphasised that the input from OPSG would be very important and that he was looking forward to future discussions on these issues.

8. Legislation in the EU and EIOPA's role

By Szabolcs Dispite, Senior legal expert, EIOPA Legal service, held a [presentation](#) with focus on EIOPA Legal Instruments and he covered the new rules of the Lisbon Treaty, introducing the legal systems of the Delegated Acts and the Implementing Acts.

The presentation was welcome by OPSG members and some questions followed as to the nature of the legislative processes. EIOPA Chair explained his legitimate expectations that COM does not deviate on the ITS/RTS. COM can only change if there is fundamental reasons if we break the law on EU level and on proportionality.

9. OPSG subgroups discussion on the way forward and further planning:

- **Solvency issues IORP II** (HBS), Philip Shier:
Not knowing precisely what might be presented by COM next week, SG is in a vacuum. These topics could be covered:
 - Sponsor support
 - Supervisory responses
 - Discretionary decision-making processes
 - Benefit reduction mechanisms
 - Boundaries cash flows included in liabilities
- **Occupational DC**, Matti Leppälä, possible topics to be discussed:
 - Costs and charges
 - Payout phases - Decumulation
 - Investment Options
 - Communications (Risks, costs, benefits...)
 - Guarantees
 - Cross-border issues
 - Governance
- **Consumer Protection issues**, Ruth Goldman and Doug Taylor, possible topics (long list):
 - Information/terminology
 - Transparency
 - Governance/ supervision/ representation
 - Investment returns + cost + charges
 - Transferability of pensions

- Risk
- Conflicts of interest
- Advise
- Decumulation

Conclusions and action points:

- OPSG needs a mandate for each Subgroup, to be approved by the full Group. EIOPA will provide subgroup leaders with templates to be completed by the subgroup members.
- Topics for the next OPSG meeting (19 May):
 - ❖ Decumulation (by DC Subgroup)
 - ❖ IORP II: preparatory work of the most important things in the new IORP Directive
- CP Group: personal pensions report – which issues are in there as key issues and then select which ones can be dealt with by OPSG, be it with CP subgroup or any of the other subgroups. IRSG is currently discussing of what to do on personal pensions: suggested work stream in parallel.
- EIMIR: OPSG members outside the solvency subgroup showed interest on the topic, for which EIOPA is planning a public consultation. A call for volunteers will be sent by EIOPA to join the work stream lead by Niels Kortleve; cooperation with IRSG is also envisaged.
- Chair will liaise with IRSG chair on how to organize the work regarding EMIR/Financial Transaction Tax and Personal Pensions.
- All Subgroup chairs: progress report (oral debriefing) for July-meeting

10. EIOPA fact finding exercise on the impact of low interest rates

The item was presented by Katja Wüertz, EIOPA HoU Consumer Protection Unit. The presentation is available [here](#).

Topic: possible adjustments of pension products to the low IR environment and any potential consumer detriment that may follow from that.

The following comments were made:

- Concerns were raised on the comprehensibility of the benchmark used, in particular as regards to the Occupational Pensions plans data in Belgium. For pension savers: the have fixed interest rates, no idea what the inflation will be. This might create a lot of problems in the future.
 - EIOPA replied that the benchmark used just for illustrative purposes. The issue is that actions need to be taken.
- Another member provided feedback from the situation in the Netherlands. He supported the idea that Benefits can be cut, in particular if the recovery is not happening. On DB to DC: legacy of the accrued benefits. Soft benefits are allowed for. This has been done ex-post. In his view it is more transparent to do it upfront: it is better not giving any extras than not giving something that people feel attached/entitled for. Next, he introduced the three step approach (coverage rate insufficient):
 - Suspend indexation
 - Increase of contributions
 - Haircut on pension benefits

- A member commented the situation in Sweden: Fully funded guarantees – low interest rate –the guarantees need to be lowered to fulfil your promises. If you can't have the investments, then you have to lower your guarantees. You can only change NEW premiums/contributions. The responsibility is shifted towards the consumer: fewer products with guarantees, lower guarantees and more choice the consumer needs to make.
- The situation in Germany was also depicted: 3.2, 3.3 interest rates currently in Germany. Changes to 1.75 is expected. Interest rates above 3 %, supervisors ask to bring them down on the passive side. Earnings that you can afford it. We see raising contributions and increasing focus on market risk and biometric risk. Outcome: cost of guarantees is much increasing.
- Finally, additional concerns were expressed:
 - Not to give the right advise to the people on investments;
 - In some countries (i.e Italy): DB occupational pension funds, funds managed by insurance companies. It is compulsory to add a guarantee. More than 40 funds. Which have this particular feature. Guarantee: to make people more comfortable and make outcomes more comparable.
 - A tendency that asset allocations is given to banks, asset managers, insurers. All the risk given by the guarantee is inside the insurance or banking sector. Approval needed for guarantee=change.
 - Importance to look at real return, not interest rates. Monetary policy – how this could harm what the consumer/beneficiaries are getting in the long-term.

Conclusion:

- Interrelation with financial stability; need to continue monitoring of potential consumer detriment, OPSG continued input is welcome.

10.AOB

It was agreed to prepare an OPSG activity Report by the end of 2014.