



EUROPEAN COMMISSION
Directorate General Internal Market and Services
FINANCIAL INSTITUTIONS
Insurance and pensions

CALL FOR ADVICE
FROM THE EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS
AUTHORITY (EIOPA)
ON THE DEVELOPMENT OF AN EU SINGLE MARKET FOR PERSONAL PENSION
PRODUCTS (PPP)

23 July 2014

Introduction

1. The aim of this initiative is to support the development of personal pension products (PPP) in Europe. An EU-wide framework for PPP's can contribute to meeting the challenges of an aging economy, the sustainability of public finances, an adequate retirement income and long-term investment.
2. In July 2012, the Commission Services requested the European Insurance and Occupational Pensions Authority (EIOPA) to provide technical advice to develop an EU Single Market for personal pension schemes. In February 2014, EIOPA delivered the preliminary report 'Towards an EU-single market for personal pensions: An EIOPA preliminary report to COM'. In March 2014, the Commission issued a Communication on Long-Term Financing of the European Economy where it announced that it will send a further Call for Advice (CfA) to EIOPA on personal pensions¹.
3. This CfA builds on the EIOPA preliminary report and seeks to obtain further advice from EIOPA in particular on the cross-border, prudential regulation and consumer protection measures required to develop an EU-wide framework for the activities and supervision of PPP's. Taking into account EIOPA's answer to this CfA, the Commission will examine whether a legislative initiative for PPP's is necessary, and if so, which measures should be proposed.
4. There are several main reasons for considering an EU-wide framework for PPP's. First, it can address the principal-agent problems and information asymmetry between PPP providers and PPP holders (where incentives are unaligned and PPP holders do not have the information needed to make sound decisions about their schemes)². It is essential to ensure that consumer protection, disclosure requirements and product comparability are appropriately dealt with in all pension schemes throughout the EU, including PPP's³.
5. Second, with a view to enhancing complementary savings as outlined in the White Paper on pensions⁴, it can contribute to the goal of multi-pillar diversification, especially in those Member States where second pillar pensions are underdeveloped. As such, private retirement savings can help address the pension gap in the future as long as they will ensure adequate level of revenue to the scheme beneficiaries.

¹ Commission Communication on Long-Term Financing of the European Economy, COM(2014) 168, 27.3.2014, p.6.

² One of the main findings of the Commission public consultation on consumer protection in third-pillar retirement products showed the shortcomings from information asymmetry at the detriment of consumers, section 4.4, see http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_thirds_pillar_pensions_summary_replies_en.pdf -

³ For instance, see the Final report (2010) on 'Consumer Decision-Making in Retail Investment Services: a Behavioural Economics Perspective', which emphasizes that consumers are often confused about the true nature of their investment due to a lack of sufficient knowledge and understanding - http://ec.europa.eu/consumers/archive/strategy/docs/final_report_en.pdf.

⁴ "An Agenda for Adequate, Safe and Sustainable Pensions", COM(2012)55 final, 16.02.2012

6. Third, improved transparency and comparability of PPP's in different Member States should enable cross-border activity and reduce obstacles to cross-border labour mobility, thus furthering the Single Market⁵. Developing untapped private retirement savings can further efficiency gains through scale economies, risk diversification, better governance, increased competition and innovation. In this respect, a key issue is to ensure safe and transparent switching between PPP providers, notably across different financial institutions⁶.
7. Fourth, PPP's are covered by many sectoral EU-laws, or none (21 out of the 80 PPP's surveyed in the EIOPA database have no EU legislation applicable). It is a question whether the current rules applying to PPP's are appropriate, or whether PPP's should have their own regulatory approach.
8. The Annex of this CfA sets out more detailed guidance and specific instructions. It seeks to contribute to the EIOPA advice in two ways. First, it provides for each topic an introduction about what new rules should be there for. Second, it lists the main references in international, EU or national acts over the past years.

Scope of the advice

9. This CfA should include the PPP's that meet the main common characteristics identified by EIOPA in its preliminary report in section 2.3. In addition, at this stage, the Commission Services invite EIOPA to consider a large scope, which would include PPP's in the form of life insurance products, group pensions/contracts (referred to in section 3.1 of the preliminary report) and Pillar 1bis schemes (referred to in section 3.1 of the preliminary report), as well as other types of PPP's such as annuity products and in particular reverse mortgages (or equity release schemes).
10. As far as Pillar 1bis schemes are concerned, the Commission Services are seeking more details from EIOPA on the nature and functioning of those schemes.

Legal approach

11. In its response EIOPA should consider that the Commission Services will continue to consider at least the following legal approaches:
 - A Directive on product features, information disclosure requirements and conduct of business rules providing financial institutions with a "passport" to operate across the EU;
 - A Regulation on product features and information disclosure requirements (2nd regime), as well as a Directive on conduct of business rules providing financial

⁵ The 10th edition of the consumer Market Scoreboard presents the performance of the market of "Investment products, private pensions and securities" among the poorer in the EU. See p. 9 of http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/10_edition/index_en.htm

⁶ Among the main findings of the Commission public consultation on consumer protection in third-pillar retirement products, consumers require clear transparency provision to switch among service providers, see section 4.3 of http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_thirds_pillar_pensions_summary_replies_en.pdf

institutions with a "passport" to operate across the EU. EU rules in a 2nd regime do not replace national rules but are an alternative to them;

- A Regulation on product features, information disclosure requirements and requirements for the financial institutions that sell them (2nd regime).

Further guidance on the CfA modalities and deadlines

12. The aim is to attain a level of harmonisation where EU legislation does not need additional requirements at the national level.
13. EIOPA should also consider whether its advice needs to be formulated in the form of several policy options with an explanation of their respective merits.
14. EIOPA should carry out its work in consultation with the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) where necessary and consult stakeholders before submitting its advice to the Commission Services.
15. For each section of the specific advice in the annex, EIOPA should consider the proportionality of the measures and where relevant suggest amendments in order to ensure that the advice is commensurate to the nature, scale and complexity of PPP's.
16. EIOPA should provide the Commission Services (DG MARKET, Insurance and Pensions Unit) with its final advice **by 1 February 2016**.
17. In the interests of transparency, the Commission Services will publish this CfA on their website.

Annex – Detailed guidance and specific instructions

1. Scope

Introduction

The EIOPA preliminary report describes a number of main characteristics that are common to PPP's, including (but not limited to) the following:

- Individual membership (in particular employers do not play a role in establishing or sponsoring a PPP);
- Payment of contributions (by the PPP holder or on behalf of the PPP holder e.g. by the employer) to an individual account;
- Other than public and occupational pensions;
- Based on a contract between provider and an individual;
- Recognition by national law as having the primary purpose of providing the individual with an income during retirement;
- Limited or no early withdrawal of accumulated money;
- Restrictions may apply to the use of accumulated capital;
- All PPPs are funded;
- The PPP provider is a private financial institution.

References

- **International**
 - OECD definition of private pensions
- **European**
 - Future PRIIPS Regulation as agreed by the Parliament and Council in April 2014

Specific advice

The Commission Services would like EIOPA to advise on at least the following topics:

1. Are the main common characteristics of PPPs described above comprehensive enough for the development of a PPP definition for regulatory purposes, including group pensions/contracts and annuity products such as reverse mortgages? If not, how should the main common characteristics be amended or complemented?

2. Using as a starting point its pension database⁷, EIOPA should provide data, broken down at Member State level, for the following (end 2013 or latest available):

- number of PPP's in the EU per type of EU legislation they are subject to;

⁷ See <https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html>

- assets managed by PPP's (in EUR)⁸;
- number and assets of PPP's broken down by defined benefit (DB) and hybrid schemes on the one hand and defined contribution (DC) schemes on the other hand;
- number of PPP scheme holders per type of EU legislation⁹;

3. EIOPA should provide detailed and specific advice on Pillar 1bis schemes describing in particular the current situation across the EU for the following topics:

- The mechanisms of solidarity in the Pillar 1bis schemes, such as intergenerational transfers, or any other form of solidarity;
- The mandatory or voluntary participation in a Pillar 1bis scheme;
- The party that takes the initiative to join a Pillar 1bis scheme, and the possibility for prospective scheme holders to choose amongst various providers;
- The party paying contributions into the Pillar 1bis scheme (e.g. individual, employer or both);
- The ownership of the assets under management;
- The economic nature of the provider (e.g. for profit or non-profit organisation);
- The role of the scheme holders in the decision making of the scheme;
- The possibility for providers to use marketing tools (e.g. advertising);
- The value of assets managed by Pillar 1bis schemes at the end of 2013 (in EUR), or latest data available;

4. Should a PPP definition for regulatory purposes be more specific in case of a 2nd regime, and if yes, how?

⁸ See category 5.5.2 of the EIOPA pension database (see <https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html>).

⁹ See category 5.4.2 of the EIOPA pension database (see <https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html>).

2. Governance of the financial institution

Introduction

Customers of PPP's pay contributions over very long periods of time with the aim of ensuring an adequate retirement income. Fund managers should manage the funds accumulated by PPP providers in the best interest of the final beneficiaries to ensure the adequacy of the revenue.

PPP's should therefore be produced and sold by service providers that operate in accordance with high professional standards and clear rules. This requires a robust system of governance that ensures that risks are properly managed and that decisions are taken and implemented by skilled and experienced individuals.

References

- **International**
 - OECD Recommendation on the Core Principles of Occupational Pension Regulation, 7 July 2009
 - OECD guidelines for pension fund governance, 7 July 2009
 - OECD/IOPS Good Practices for Pension Funds' Risk Management Systems, 11 January 2011
- **European**
 - Directive 2009/138/EC (**Solvency 2 Framework Directive**)
 - Proposal for a Directive of the European Parliament of the Council on the activities and supervision of institutions for occupational retirement provision (recast) of 27.3.2014, COM(2014) 167 final: **IORP 2 proposal**.
 - Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (**UCITS**), including the proposal for a Directive of the European Parliament of the Council amending Directive 2009/65/EC as regards depository functions, remuneration policies and sanctions of 3 July 2012 (**UCITS V**), as adopted by the European Parliament on 14 April 2014.
 - Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (**CRD IV**)
 - Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC [MiFID] and its proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories [MiFIR]

Specific advice

The Commission Services would like EIOPA to advise on at least the following topics:

1. What should be the requirements for:

- Fit and proper management
- Functions for risk management, actuarial tasks, internal control, compliance and audit
- Remuneration policy
- Risk self-assessment and documentation
- Depositories (appointment and responsibilities)
- Outsourcing
- Other aspects of the overall governance system (if any)

2. Are the requirements in point 1 necessary equally for PPPs offered by "passporting" and for PPPs offered as a 2nd regime? If there are material differences, the advice should explain those differences.

3. Are the existing EU-level governance requirements applicable to financial institutions suitable for PPP's? EIOPA should consider at least the EU-level acts applicable to insurance undertakings, IORPs, asset management companies and credit institutions (see references).

4. Are differences in EU-level sectoral regulation material and a problem?

5. Can one of the EU-level sectoral acts (or a combination thereof) be used as a starting point to develop proper rules for PPPs?

6. What powers do the supervisory authorities need in order to adequately protect the interest of the final beneficiary?

7. Other advice, if any.

3. Pre- and postcontractual information to PPP holders

Introduction

Information disclosure aims to ensure that consumers have sufficient information to make informed decisions about their pension product/investment product/insurance product which, in the eyes of the consumer, are often substitutable products. Furthermore, it can help raise the consumers' awareness of their prospective retirement income, in particular where it is likely to draw on multiple pillars and products, and to enable them to take timely action to achieve the desired income level.

The Commission Services are of the view that increased transparency and comparability, in particular on all the costs during the accumulation and the de-cumulation phases, will result in increased consumer protection and satisfaction¹⁰ as well as adequacy of retirement income.

Recent financial sector legislative initiatives can be separated into three different types. As regards financial instruments and structured deposits for example, MiFID II regulates the conduct of business

¹⁰ The Final Report (2010) on 'Consumer Decision-Making in Retail Investment Services: a Behavioural Economics Perspective' highlights that simplification and standardisation of product information enable consumers to make better quality investments decisions - http://ec.europa.eu/consumers/archive/strategy/docs/final_report_en.pdf .

rules relating to how financial instruments and structured deposits are distributed or sold, whereas the PRIIPS Regulation lays down the format and content of the document that the investor must be provided with before he or she enters into a transaction. Other instruments, in particular the Distance Marketing of Financial Services Directive¹¹ regulate the way products, where they are sold at distance, are distributed to consumers.

MiFID II regulates information disclosure regarding financial instruments and structured deposits. Investment firms have to meet stricter standards to ensure that investors can trust that they are being offered products which are suitable to them and that their assets are well protected. Investors will also be able to rely on a strengthened framework for investment advice and fee and remuneration structures must not conflict with the requirement to act in the best interest of the client. MiFID II not only introduces the concept of independent advice (no commissions and other requirements), but will also reinforce the rules applicable to investment advice in general (information to clients about the type of advice, the range of products assessed, enhanced info about products, etc).

The PRIIPS Regulation lays down the standardised Key information document (KID) that must be provided to investors prior to the conclusion of a contract, but does not lay down selling rules¹². The KID informs consumers in a format easy to understand by applying a common standard.

The Distance Marketing of Financial Services Directive guarantees that even where means of distance communications are used the consumer can make a well-informed choice. It therefore lays down the requirements needed to ensure that an appropriate level of information is provided to the consumer both before and after conclusion of the contract. In case of e-commerce the rules of the e-Commerce Directive¹³ would have to be applied.

For pension products specifically (including personal pension products), information disclosure can be divided into a pre-contractual phase, an accumulation phase and a decumulation phase.

¹¹ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC, Official Journal L 271 , 09.10.2002, p. 0016 – 0024 (Distance Marketing of Financial Services Directive).

¹² Under Article 2(2) of the PRIIPs Regulation (Regulation (EU) No. .../2014 (not yet published in the Official Journal) of the European Parliament and of the Council on key information documents for packaged retail and insurance based investment products, not yet published) four years after the entry into force of the PRIIPS Regulation the Commission will assess either an amendment of the PRIIPS Regulation or a legislative proposal to guarantee appropriate disclosure of product information requirements for individual pension products (as defined in Article 2(1)(f) herein). The measures may not reduce standards of disclosure in Member States that already have disclosure regimes for such products. Article 2(2) obliges the Commission to base on the work of EIOPA.

¹³ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, Official Journal L 178, 17.07.2000, p. 1-16 (Directive on Electronic Commerce)

In this respect, the IORP2 proposal already makes a distinction as regards the information to be provided for the different pension stages, and the rules relating to financial instruments and structured deposits deal with pre-contractual information as well as with ongoing reporting obligations (including periodic communications to clients on the services provided). Also, where the firm provides portfolio management or had informed the client it will carry out a periodic assessment of suitability, the periodic report shall include an updated statement on how the investment meets the client's preferences, objectives and other characteristics of the client.

The Pension Benefit Statement or "PBS" as laid down in the IORP2 proposal is designed for members of occupational pension funds in a standardised format for the active accumulation phase.

Specific information requirements apply to pension stages other than active membership, for example for prospective members (i.e. before joining the pension scheme), deferred members and beneficiaries or at pre-retirement or the beneficiary phase.

The Directive on supplementary pension rights¹⁴ lays down the right of active members to information about the impact of potential job mobility on their pension rights, as well as the right of deferred beneficiaries to the information about their dormant rights.

Further to the eventual legal framework for PPPs, information disclosure standards can facilitate the tracking of individuals' pension rights earned in various pension pillars and products across Member States, for instance through a European tracking service or a similar instrument.

Therefore, it must be examined whether PPP products should follow the information disclosure rules and content similarly to investment products (for pre-contractual information disclosure), or if they should follow the disclosure and content under the PBS (for the accumulation phase), or a combination of both. It should also be examined whether a new information disclosure regime should be developed for PPPs if the existing rules do not meet the requirements of PPPs. However, in any case a right balance between the consumers' needs to have sufficient information enabling them to take an informed transaction decision and possible information overload needs to be found. The information should be targeted at the real information needs of the consumers without overburdening them.

References

- **International**
 - IOPS Working Paper No. 5, "Information for Members of DC Pension Plans: Conceptual Framework and International Trends", September 2008.
 - OECD Recommendation on the Core Principles of Occupational Pension Regulation, June 2009
 - OECD roadmap for the good design of defined contribution pension plans, June 2012

¹⁴ Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights.

- "Point of sale disclosure in the insurance, banking and securities sectors", The Joint Forum, April 2014
- **European**
 - Proposal for a Directive of the European Parliament of the Council on the activities and supervision of institutions for occupational retirement provision (recast) of 27.3.2014, COM(2014) 167 final (**IORP 2**).
 - Regulation on a new Key Information Document for insurance and investment products (**PRIIPS**) (not yet published in the Official Journal)
 - Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC [**MiFID**] and its proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories [MiFIR]
 - Proposal for a Directive of the European Parliament and of the Council on Insurance Mediation (**IMD2**) (COM (2012) 360/2)
 - Outcome of the public consultation on "Consumer protection in third-pillar retirement products", 05/03/2014¹⁵
 - Study conducted by Oxera for the Financial Services User Group, 2014¹⁶
 - ESMA Opinion on MiFID practices for firms selling complex products, 7/2/2014¹⁷

Specific advice

The Commission Services would like EIOPA to advise on at least the following topics:

1. What type of information should be provided during the pre-contractual, accumulation and decumulation phases (e.g. personal details, balance, contributions and charges, taxation, pension projections, investment profile, risks, past performance)? In particular, please provide a breakdown of which information should be provided for the past (e.g. past performance) and for the future (e.g. pension projections).
2. About charges applied by PPP providers: Charges are one of the important elements that determine the size of the pension pot at the end of the accumulation phase (specifically with regard to DC PPPs). What information should be provided to PPP holders in order for them to understand the effect of charges on their pension pot and to enable them to take appropriate steps if the investment results of their PPP are lower than expected or desired? In what way, including which charge elements, should charges be disclosed to the PPP holders (e.g. joining fee, asset management fee, any other relevant)? Would it be beneficial to provide consumers with a

¹⁵ See

http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_thirds_pillar_pensions_summary_replies_en.pdf

¹⁶ See http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/papers/oxera-private-pensions-study_en.pdf

¹⁷ See http://www.esma.europa.eu/system/files/ipisc_complex_products_-_opinion_20140105.pdf

summary of all the charges, showing their level for each individual year, and the value of the capital accrued after the deduction of all the charges? How to present in a meaningful format estimates on the total charges applied on the PPP during the whole accumulation phase?

3. About taxation applied by authorities: which information on taxation and on potential tax benefits (including the specific advantages and disadvantages for cross border PPP) should be presented, and in which format, when and how often? EIOPA's advice should also consider ways of providing updates to PPP holders on changes in taxation.
4. About risks: how should the investment risk, annuitisation risk and longevity risk be presented to the PPP holder in a meaningful format?
5. How should information (in particular the costs) be presented so that the PPP holder can take informed decisions about its PPP (e.g. early redemption, switch to another PPP with the same or different provider, or change options within its PPP such as a change of the beneficiary, temporary suspension or reduction of the contribution rate)?
6. To what extent should the approach used in MiFID/PRIIPs be applied to pre-contractual information disclosure for PPPs? Regarding the de-cumulation phase: what information should be presented on the alternatives to annuities?
7. To what extent should the approach used in the PBS as laid down in the IORP2 proposal be applied in the accumulation phase of PPPs?
8. In the light of behavioural economics work on the capacity of consumers to digest information, what kind of information and which way of presentation is necessary to make sure that the consumer can take an informed transaction decision?
9. What are the benefits of standardisation of information disclosure? What would be the cost?
10. If these requirements are not already met by PRIIPS, the PBS in IORP2 or the Directive on supplementary pension rights, what other requirements would PPPs need? Are there characteristics of PPPs that require information provision above those contained in existing legislation?
11. Are the requirements in point 1 necessary equally for PPPs offered by "passporting" and for PPPs offered as a 2nd regime? If there are material differences, the advice should explain those differences.
12. What powers do the supervisory authorities need in order to adequately protect the interest of the customer?
13. Other advice, if any.

4. Distribution

Introduction

PPP products can be distributed in various ways. According to EIOPA, this is done predominantly through the intermediary channel. These intermediaries can be financial intermediaries such as banks, or insurance intermediaries such as agents or brokers, but banks can also distribute PPPs that are insurance products. In the EIOPA report, no consensus was reached on which regime should apply to PPPs but at least an alignment between IMD and MiFID was requested.

Distribution rules should have regard to:

- general conduct of business (e.g. remuneration including bonuses, conflicts of interest) and
- the characteristics of the product (e.g. possibility to switch between operators and transfer of capital, and additional obligations on the distribution in the decumulation phase of a PPP for example).

MiFID II regulates the sale of financial instruments and structured deposits laying down operating conditions for investment firms and investor protection provisions. Stronger investor protection is achieved by introducing better organisational requirements, such as client asset protection or product governance, which also strengthen the role of management bodies. MiFID II also provides for strengthened conduct rules such as an extended scope for the appropriateness tests and reinforced information to clients. Independent advice is clearly distinguished from non-independent advice and limitations are imposed on the receipt of commissions (inducements).

For the sale of insurance-based investment products, MiFID II lays down similar requirements by amending the Insurance Mediation Directive. IMD1 regulates the sale (i.e. distribution) of insurance products by insurance intermediaries. IMD 1.5 lays down additional rules for the sale of insurance-based investment products. These are based on the investor protection provisions of MiFID II and lay down rules for the prevention of conflicts of interest, the requirement to act honestly, fairly and professionally in accordance with the best interest of the customer. As these rules are, however, quite limited in IMD 1.5, the current ongoing review of the IMD Directive is addressing the question of ensuring a level playing field between the distribution of insurance products on the one hand and financial instruments and structured deposits on the other.

UCITS “undertakings for the collective investment in transferable securities” are investment funds regulated at European Union level. The UCITS V Directive includes a definition of the tasks and liabilities of all depositaries acting on behalf of a UCITS fund; clear rules on the remuneration of UCITS managers, and a common approach to how core breaches of the UCITS legal framework are sanctioned.

The PRIIPS Regulation lays down the standardised Key information document that must be provided to investors prior to the conclusion of a contract, but does not lay down selling rules.

References

- **International**

- "Point of sale disclosure in the insurance, banking and securities sectors", The Joint Forum, April 2014
- **European**
 - Proposal for a Directive of the European Parliament of the Council on the activities and supervision of institutions for occupational retirement provision (recast) of 27.3.2014, COM(2014) 167 final (**IORP 2**)
 - Regulation on a new Key Information Document for insurance and investment products (**PRIIPS**) (not yet published in the Official Journal)
 - Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC (**MiFID**) and its proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EMIR) on OTC derivatives, central counterparties and trade repositories (MiFIR)
 - Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (**MiFID II**)
 - Proposal for a Directive of the European Parliament and of the Council on Insurance Mediation (COM (2012) 360/2) (**IMD2**)
 - ESMA Opinion on MiFID practices for firms selling complex products, 7/2/2014

Specific advice

The Commission Services would like EIOPA to advise on at least the following topics:

1. As regards conduct of business, EIOPA should consider:
 - The concept of advice (independent or not) in the context of PPPs;
 - The quality of independent advice, taking into account remuneration, inducements; disclosure rules and conflicts of interest in the context of the distribution of PPPs;
 - penalty for early withdrawal in the PPP holder's financial planning and advice provided by the distributor
2. As regards the characteristics of the product, EIOPA should consider:
 - Distribution obligations regarding the sale of DC, DB, or hybrid schemes;
 - The different phases of the life of a PPP product;
 - The additional obligation on the distributor prior to retirement as regards decumulation such as providing advice in relation to alternatives to the purchase of annuities;
 - The distributor's role in providing information about switching options between PPP operators (if any) and transfer of capital (if applicable).
3. Using as a starting point its pension database¹⁸, EIOPA should provide data on the distributors of PPP products (assets at the end of 2013 or latest available, in EUR), such as banks, insurance companies, independent advisors, etc., in the different Member States.

¹⁸ See <https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html>

4. Are the requirements in point 1 necessary equally for PPPs offered by "passporting" and for PPPs offered as a 2nd regime? If there are material differences, the advice should explain those differences.
5. What powers do the supervisory authorities need in order to adequately protect the interest of the customer?
6. Other advice, if any.

5. Product regulation

Introduction

Retirement planning is a difficult issue for most people. At the same time, saving and planning for retirement is one of the most important elements of lifetime financial planning. Given the opacity and importance of PPP's for customers, it is important that these products are designed in a way that is understandable by PPP holders and not detrimental to them. Product regulation, including default products and possible cap for fees, can help protect consumers in this respect. In addition, it can achieve more market transparency and thereby allow a greater choice. This applies equally to pan-European PPP's which could increase choice and offer more competitive prices.

In the context of this CfA, product regulation has two forms: product governance and product standardization. *Product governance* is a mechanism whereby the product producer or provider ensures that proper systems and controls are in place before a product is launched. Typically these requirements cover such areas as product development and testing, proper and appropriate sign off, and periodic review after launch. Product governance can as such serve as an early intervention tool.

The level of *product standardisation* for PPPs can vary and can be measured in terms of price, investment risk, availability and clarity. It is possible to introduce a basic investment product. The introduction of a product following the life-cycling concept offers more flexibility in the investment options over time. In any event a standard product will be widely available, based on transparent pricing, and have a relatively low risk profile. It may meet a demand of consumers for simple products. However, standardisation should not put a break on product innovation in the future.

References

- **International**
 - IOPS working paper no. 5 "Information for Members of DC Pension Plans: Conceptual Framework and International Trends", September 2008
- **European**
 - Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (**MiFID II**) – level 2
 - CEPS-ECMI report "Saving for retirement and investing for growth", September 2013

- ESA's joint subcommittee on Consumer Protection and Financial Innovation “Product Oversight and Governance Principles“, forthcoming
- ESMA Opinion on Structured Retail Products - Good practices for product governance arrangements, 27/3/2014¹⁹
- Study conducted by Oxera for the Financial Services User Group, 2014²⁰
- **National**
 - U.K. Financial Services Authority “Retail Product Development and Governance – Structured Product Review“, March 2012
 - Dutch Autoriteit Financiële Markten “Regelgeving, Wetgeving in de Praktijk, Productontwikkeling“ (<http://www.afm.nl/nl/professionals/regelgeving/thema/productontwikkeling.aspx>)
 - Belgian FSMA “Moratorium on the distribution of particularly complex structured products“, September 2011

Specific advice

The Commission Services would like EIOPA to advise on at least the following topics:

1. What is the optimal framework for product regulation? Should both product governance rules and product standardization be introduced?
2. What rules should thus be in place for *product governance* of PPP's? This could include, but is not limited to, rules regarding:
 - a. product development and testing,
 - b. proper and appropriate sign off, and
 - c. periodic review after launch.
3. Are existing product governance rules applicable to PPP's suitable? In surveying existing and draft rules, EIOPA should also consider the work by ESMA on product governance in level 2 of MiFID II. Can one of the EU-level sectoral acts (or a combination thereof) be used as a starting point to develop proper product governance rules for PPP's? Can we build on best practices from member states?
4. Are differences in rules regarding product governance between Member States and sectors material and a problem?
5. What level of *product standardization* is appropriate for PPP's? What should the features of a standardized PPP be? This as regards: the number of risk investment options, life-styling, default options, target date funds, fee levels, any other.

¹⁹ See http://www.esma.europa.eu/system/files/2014-332_esma_opinion_structured_retail_products_-_good_practices_for_product_governance_arrangements.pdf

²⁰ See http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/papers/oxera-private-pensions-study_en.pdf

6. Should the product as such be standardised or should the product features which are the main competition parameters for the product be excluded from standardisation?
7. Are differences in rules regarding product standardization between Member States and sectors material and a problem?
8. Should a new, standardized EU-wide product be introduced via a 2nd regime? What would be the take-up of this PPP and the effect of its introduction in the market?
9. Should national PPP's be standardized (i.e. through regulation)?
10. What powers do the EU or national authorities need in order to adequately protect the interests of the customer? How should these be allocated?
11. Other advice, if any.

6. Cross-border activity and transfers

Introduction

PPPs should be able to benefit from the Single Market freedoms (services, capital, establishment) and support labour mobility. Developing and selling products to a larger client base can increase efficiency through scale economies, innovation, risk diversification and competition. Indeed, studies suggest that contributions are absorbed by costs for administration, control and advice, accounting, asset management and transaction fees. The potential savings by streamlining costs and fees and spreading them over a larger pool of PPP holders and a typically long accumulation period, could be significant.²¹

Simple cross-border definitions and procedures, including rules on cross-border PPP scheme transfers, would allow financial institutions or other not harmonised distinct entities which manage PPP schemes to manage them from different Member States. Centralising the management of PPP schemes could go hand in hand with cost efficiencies by absorption of costs.

As regards taxation, PPPs involved in cross-border activities within the European Economic Area (EEA) have the right of national treatment in the three stages of a PPP: (i) accumulation (cross-border inpayment of the contributions), (ii) cross-border investment of the capital and (iii) cross-border outpayment of the capital. Cross-border transfers of capital are also covered below.

- **Cross-border inpayment of the contributions**

Contributions paid to a PPP established in another Member State should get national treatment. That means that if contributions to a domestic PPP qualify for tax relief, contributions paid to a similar PPP established in another Member State should also qualify for tax relief.

²¹ See, for instance, DNB (2010), "The impact of scale, complexity, and service quality on the administrative costs of pension funds: A cross-country comparison", DNB Working Paper 258; Lane, Clark and Peacock (2012), "Pension costs survey 2012".

- **Cross-border investment of the capital**

PPPs which are investing their capital in other Member States are granted national treatment in these Member States. That means that if a Member State (de facto²²) exempts investments by local PPPs from taxation, it would also need to exempt investments in its territory made by similar PPPs established in other Member States.

- **Cross-border outpayment of the capital**

The tax regime of outpayments of capital by domestic PPPs should be the same as the tax regime for outpayments by similar PPPs established in other Member States. So, for example, if outpayments of capital by domestic PPPs are taxed, outpayments by similar PPPs established in other Member States should be taxed in the same way.

- **Cross-border transfers of capital from one PPP to another**

If transfers from a domestic PPP to another domestic PPP are possible, EU law requires that cross-border transfers to similar PPPs in other Member States should also be possible. If transfers from a domestic PPP to another domestic PPP are tax free, EU law requires that cross-border transfers to similar PPPs in other Member States should also be tax free.

References

- **European**

- Directive 2009/138/EC (**Solvency 2 Framework Directive**).
- Directive 2003/41/EC (**IORP1 Directive**)
- Proposal for a Directive of the European Parliament of the Council on the activities and supervision of institutions for occupational retirement provision (recast) of 27.3.2014, COM(2014) 167 final (**IORP 2**)
- Communication COM(2001) 214 final (**Pension Taxation Communication**)

Specific Advice

The Commission Services would like EIOPA to advise on at least the following topics:

1. By which financial institutions or other not harmonised entities are PPP schemes managed? What rules are those financial institutions and other not harmonised entities subject to? Do national laws prohibit cross-border management of PPP schemes? What are their reasons and justifications?
2. Are there any obstacles to cross-border investments or investments in foreign currencies? What are their reasons and justifications?

²² The domestic PPP may be nominally subject to tax, but effectively exempt, because its tax base is reduced to (almost) zero. This may be the case for the capital that life insurance companies hold for their clients. In that case the source Member State cannot levy dividend withholding tax on outbound dividends paid to a PPP established in another Member State (Case C-342/10).

3. Are there any obstacles to cross-border transfers of PPP schemes? What are their reasons and justifications?
4. Are there any other obstacles to cross-border provisioning in 1bis pillar and third pillar pension schemes?
5. EIOPA should provide the following data on PPP (assets at the end of 2013 or latest available, in EUR and as a percentage of the total domestic market):
 - a) PPPs offered through the freedom of establishment (making a distinction the type of financial institution, including other not harmonised entities);
 - b) PPPs offered through the freedom to provide services (making a distinction between the type of financial institution, including other not harmonised entities);
 - c) PPPs offered by financial institutions, including other not harmonised entities, that do not benefit from a "passport";
 - d) PPP schemes transferred across Member States.
6. In which of the following instances do Member States not provide national treatment in the tax area (please identify per type of domestic PPP the national legal provisions applied to the domestic situation and the legal provisions applied to the cross-border situation):
 - a) Contributions paid to a similar PPP established in another Member State.
 - b) Investments in their territory by similar PPP's established in other Member States.
 - c) Outpayments of capital by similar PPP's established in other Member States.
 - d) Transfers of capital from domestic PPP's to similar PPP's established in other Member States.

7. Quantitative requirements

Introduction

PPP also include products where the financial service provider underwrites risks, such as longevity risk or investment risk. Not all those PPP's are covered by quantitative rules, and when covered, not all are covered by the same rules (e.g. PPP's offered by insurers are subject to the specific quantitative rules of Solvency 2, while banks are subject to CRR requirements and asset managers are not subject to quantitative rules under the UCITS V framework).

Quantitative requirements refer to capital requirements, technical provisions (for the liabilities of PPP providers) and investment rules (for the assets of the PPP providers). They may be needed for

defined benefit (DB) and hybrid schemes²³, while they are not necessary for defined contribution (DC) schemes which transfer the risk to the beneficiary. Looking at the database surveyed by EIOPA, out of a total of 80 PPP schemes, 6 are pure DB schemes, 31 are hybrid DB/DC schemes (eg DB contribution based, DC with guarantees), and 43 pure DC schemes. The greater share of DC PPPs (as compared to the total PPP market) in the EIOPA database seems confirmed by the industry, and there is a current trend towards DC schemes for new PPP's.

References

- **International**

- OECD Recommendation on the Core Principles of Occupational Pension Regulation, June 2009
- OECD Recommendation on Guidelines on Funding and Benefit Security in Occupational Pension Plans, May 2007
- OECD/ IOPS Good Practices for Pension Funds' Risk Management Systems, 11 January 2011
- OECD Recommendation on Guidelines on Pension Funds Asset Management, January 2006
- OECD/IOPS Good Practices on Pension Funds' Use of Alternative Investments and Derivatives, December 2011

- **European**

- Directive 2009/138/EC (**Solvency 2 Framework Directive**)
- Directive 2003/41/EC (**IORP1 Directive**)
- Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (**Capital Requirement Regulation**).
- EIOPA Report on the IORP Quantitative Impact Study (including the **QIS** technical specifications)

Specific advice

The Commission Services would like EIOPA to advise on at least the following topics:

1. What should be the rules for:
 - a. Technical provisions
 - b. Capital requirements
 - c. Investment rules

²³ Some DC PPPs offer (minimum) guarantees. In some instances, these guarantees are also offered by non-insurance undertakings (but EU-regulated) or by entities that do not fall under any EU-regulation.

2. Are differences in current regulation of quantitative requirements (e.g. for insurers, for banks and for other PPP providers) material? Which main differences are relevant to the area of PPP's?
3. Should quantitative requirements be different if the legislative initiative takes the form of a 2nd regime, and if so which ones?

8. 2nd regime

The Commission Services would like EIOPA to advise on other issues important in light of a 2nd regime²⁴ for PPP's not covered by the previous topics, if any.

²⁴ The 2nd regime is described in the Legal approach, paragraph 11 of the CfA.