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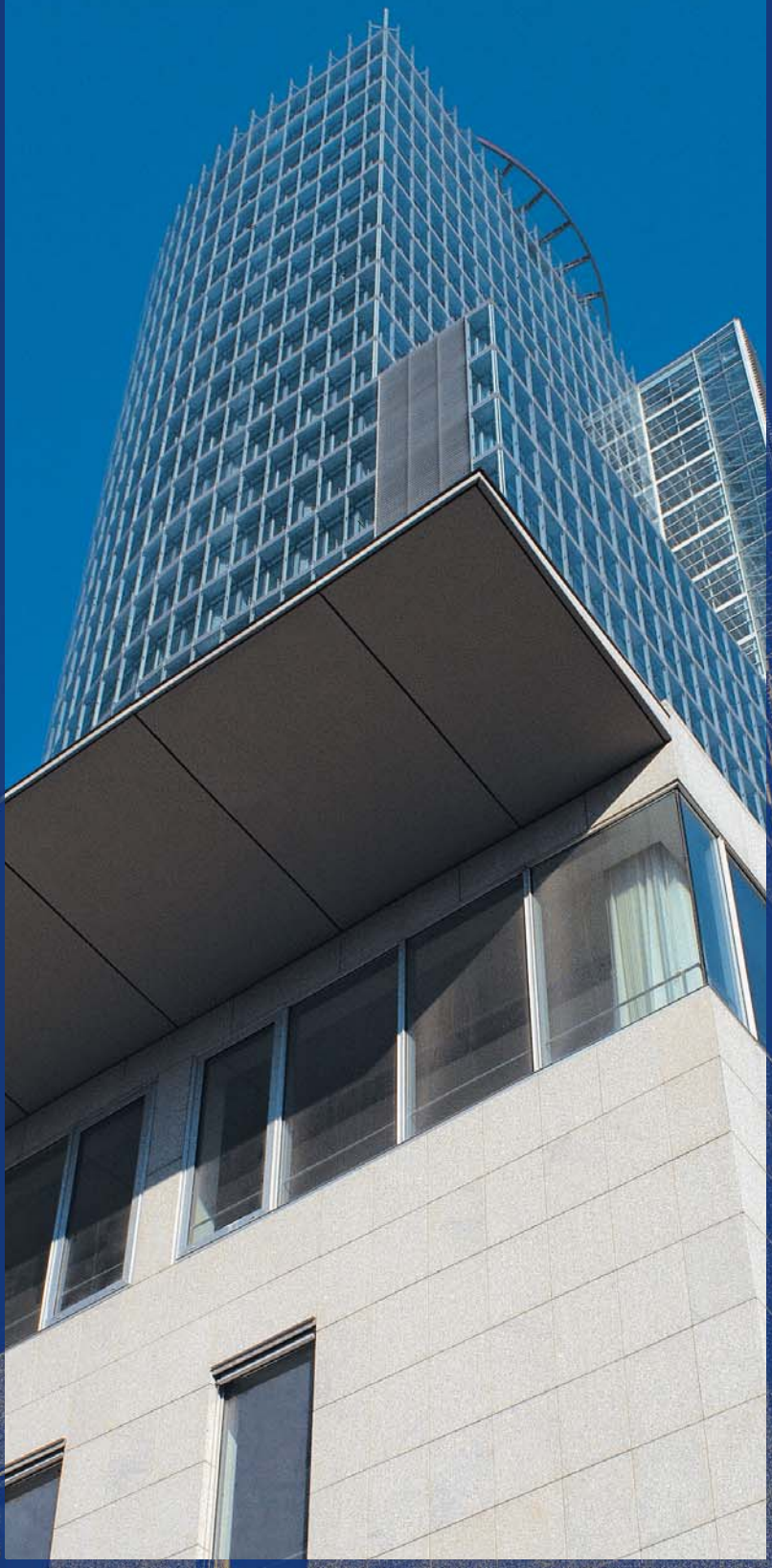

NÁRODNÁ BANKA SLOVENSKA

Konferencia o osobných dôchodkoch v Bratislave

Európsky orgán pre poisťovníctvo a dôchodkové poistenie zamestnancov (EIOPA) a Národná banka Slovenska (NBS) zorganizovali dňa 15. apríla 2014 v Bratislave medzinárodnú konferenciu venovanú vytvoreniu jednotného trhu pre osobné dôchodky v Európskej únii.

Cieľom konferencie bolo diskutovať o zmenách regulácie, ktoré sú potrebné na cezhraničné poskytovanie osobných dôchodkov, so zameraním na väčšiu primeranosť, udržateľnosť a bezpečnosť dôchodkov v Európe. Účastníci sa vyjadrovali k otázkam, ako je zvýšenie efektívnosti informovania majiteľov osobných penzijných plánov, znižovanie nákladov predaja dôchodkových produktov a zvyšovanie ich kvality či aplikovanie poznatkov behaviorálnej ekonómie v procese regulácie. Diskusia zároveň prispela k identifikovaniu spôsobov, ako odstrániť prekážky pri vytváraní jednotného trhu pre osobné dôchodky.

Vladimír Dvořáček, člen Bankovej rady NBS, povedal: „Pre Národnú banku Slovenska je veľmi dôležité pomáhať pri zvyšovaní primeranosti, udržateľnosti a bezpečnosti dôchodkov. Som rád, že prostredníctvom dnešnej konferencie, ako aj účasťou na tvorbe príslušných regulačných opatrení v rámci EIOPA sa naša inštitúcia aktívne podieľa na tejto významnej politickej diskusii."

Gabriel Bernardino, predseda EIOPA, uviedol: „Vytvorenie jednotného trhu pre osobné dôchodky v EÚ môže zohrať významnú úlohu pri vyplnení súčasnej tzv. dôchodkovej medzery, a tým zvýšiť celkovú primeranosť dôchodkov všetkých občanov EÚ. Navyše má potenciál mobilizovať udržateľnejšie dlhodobé investície do hospodárstva EÚ. Som rád, že sa nám podarilo zostaviť pôsobivý zoznam prednášajúcich zo spotrebiteľských a verejných inštitúcií, z oblasti priemyslu aj z akademických kruhov, ktorí sa zapoja do diskusie o tejto problematike. Kolegom z Národnej banky Slovenska som vďačný za ich aktívnu účasť v tejto diskusii, ako aj za možnosť zorganizovať konferenciu tu v Bratislave."

BIATEC
Odborný bankový časopis
Máj 2014

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OBSAH

Vážení čitatelia,
májové číslo časopisu BIATEC je venované konferencii o osobných dôchodkoch s názvom „EIOPA Public Event on Personal Pensions", ktorá sa konala v Bratislave a na jej organizovaní sa spolupodieľali EIOPA a NBS. Keďže rokovanie konferencie prebiehalo v anglickom jazyku, niektoré príspevky sú len v anglickom jazyku. Zhrnutie a základnú informáciu o konferencii prinášame v slovenskom i anglickom jazyku.

EIOPA PUBLIC EVENT ON PERSONAL PENSIONS

STAROBNÉ DÔCHODKY NA SLOVENSKU

Autorom fotografií v tomto čísle je Marek Gavlák.

Budúcnosť osobných dôchodkov v Európe

Dôchodky sú téma, ktorá sa v poslednom čase skloňuje veľmi často. Slovo, ktoré mnohé napovedá. Pre niektorých zaslúžený oddych v starobe, pre iných strach, či budú dobre zabezpečení počas jesene života. Z pohľadu terminológie finančného trhu je to zjednodušene povedané naakumulovanie dostatočných zdrojov počas aktívnej časti života na zabezpečenie počas dôchodkového veku. Predlžujúca sa stredná dĺžka života, znižujúca sa pôrodnosť a z toho vyplývajúce starnutie populácie signalizuje, že na pomyselnom semafore rizík svieti oranžová a téme je potrebné venovať veľkú pozornosť. V tomto kontexte, ako aj v súvislosti s úspešnou konferenciou o osobných dôchodkoch, ktorá sa nedávno konala v Bratislave, je toto číslo časopisu BIATEC venované predovšetkým dôchodkovým témam.

Zabezpečenie v starobe by malo byť aj akýmsi poďakovaním za našu prácu a uznaním za vynaložené úsilie, odvahu, vytrvalosť a talent počas celého aktívneho života. Na to, aby sme dosiahli úroveň starobného zabezpečenia hodnú celoživotného diela, je nevyhnutná reforma neudržateľného Bismarckovho modelu garantovanej výšky dôchodku a definovaných dávok. Treba si uvedomiť, že nastavením udržateľného dôchodkového systému formujeme našu spoločnosť i našu budúcnosť.

Každý by rád dosluhujúci systém uchoval, no zabezpečiť jeho udržateľnosť, primeranú zásluhovosť a vysokú výšku dávok dnes už v klasickom modeli nie je možné. V rámci Európy sa snažíme nájsť riešenie, ktoré by na jednej strane zabezpečilo primerané dôchodky pre dôchodcov a na druhej strane bolo udržateľné z pohľadu verejných financií.

S týmto cieľom a v spolupráci s kolegami z ostatných dvadsiatich siedmich členských štátov sme naše kapacity skoncentrovali práve na túto oblasť. V Bratislave sme organizovali medzinárodnú konferenciu venovanú vytvoreniu jednotného trhu pre osobné dôchodky v Európskej únii. Za jedným stolom sa zišli vrcholní predstavitelia EIOPA – Európskeho orgánu dohľadu pre poisťovníctvo a dôchodkové sporenie, európskych sektorových asociácií finančného trhu, ale aj ich kritikov, zástupcov akademickej obce a organizácií zameraných na ochranu spotrebiteľa.

Podujatie bolo zorganizované v kontexte prác Európskeho orgánu pre poisťovníctvo a dôchodkové poistenie zamestnancov, ktoré sa začali na žiadosť Európskej komisie ako jedna z kľúčových úloh európskych partnerov. Nadviazali na predbežnú správu EIOPA o obozretnej regulácii a opatreniach na ochranu spotrebiteľa potrebných na vytvorenie jednotného trhu pre osobné dôchodky, zverejnenú vo februári 2014.

Cieľom konferencie bolo diskutovať o zmenách regulácie, ktoré sú potrebné na cezhraničné poskytovanie osobných dôchodkov. Účastníci zamerali patričnú pozornosť na väčšiu primeranosť, udržateľnosť a bezpečnosť dôchodkov v Európe. Zároveň sa vyjadrili k problémom, ako je napríklad potreba informovanosti majiteľov osobných dôchodkových produktov, ktoré sú predmetom individuálneho rozhodnutia každého z nás. Naším spoločným úsilím by malo byť aj zvyšovanie povedomia širokej verejnosti. Navyše investície do dôchodkových schém majú potenciál mobilizovať udržateľnejšie dlhodobé investície do hospodárstva Európskej únie.

Vydarené podujatie s množstvom zásadných vyjadrení a s prednesenými konštruktívnymi názormi s následnou vysoko pozitívnou spätnou väzbou je dobrým štartom pre ďalšiu odbornú diskusiu k tejto téme a prínosom k celoeurópskemu riešeniu tejto problematiky.

Vladimír Dvořáček
člen Bankovej rady NBS a výkonný riaditeľ útvaru dohľadu nad finančným trhom

Zhrnutie vystúpení na konferencii o osobných dôchodkoch

Rokovanie medzinárodnej konferencie venovanej vytvoreniu jednotného trhu pre osobné dôchodky v Európskej únii sa uskutočnilo formou odbornej panelovej diskusie zameranej na tri hlavné témy:

- Budúcnosť osobných dôchodkových produktov v Európe
- Zlepšenie ochrany spotrebiteľov v oblasti osobných dôchodkov, kľúčové oblasti pre ďalšiu prácu
- Hlavné témy pre ďalšiu prácu v oblasti osobných dôchodkov na úrovni EÚ: dane, štandardizácia produktov a rozdieľnosti zmluvného práva

V tomto príspevku zhrnieme hlavné myšlienky z vystúpení jednotlivých rečníkov. Podrobnejšie informácie sú v autorských príspevkoch niektorých účastníkov konferencie, ktoré prinášame v anglickom jazyku.

Budúcnosť osobných dôchodkových produktov v Európe

Moderátor: Justin Wray, riaditeľ odboru regulácie, EIOPA

Rečníci: Gabriel Bernardino, predseda EIOPA; Jung Lichtenberger, vedúci skupiny pre dôchodky, GR vnútorný trh a služby, Európska komisia; Matti Leppälä, generálny tajomník, PensionsEurope; Michaela Kollerová, generálna riaditeľka, Insurance Europe; Peter De Proft, generálny riaditeľ, European Fund and Asset Management Association – EFAMA

Prvá panelová diskusia konferencie sa týkala strategickej vízie budúcnosti dôchodkov a osobitne osobných (dobrovoľných) dôchodkových produktov v Európe. Zástupca Európskej komisie Jung Lichtenberger prezentoval plány Komisie v oblasti posilnenia európskeho právneho rámca pre dôchodky. Zatiaľ čo v oblasti zamestnaneckých dôchodkových schém sa už začína diskusia k nedávno zverejnenému návrhu smernice o činnosti inštitúcií zamestnaneckého dôchodkového zabezpečenia IORP II, práca na osobných dôchodkoch je viac „v plienkach" a jej konkrétna podoba bude závisieť od detailného mandátu (*cal for advice*), ktorý Komisia začala pripravovať na základe predbežnej správy od EIOPA. Dá sa očakávať, že mandát bude požadovať analýzu a návrh riešení týchto problémov: identifikácia relevantného trhu pre osobné dôchodkové produkty, úprava správy a riadenia finančných inštitúcií, ktoré tieto produkty poskytujú, zlepšenie informačných povinností vo vzťahu k spotrebiteľom, zavedenie kvantitatívnych požiadaviek na podnikanie pre finančné inštitúcie, ktoré ešte nie sú regulované európskym právom, úprava predaja produktov a ich štandardizácia, ako aj vytvorenie režimu pre cezhraničné podnikanie.

Matte Leppälä, generálny tajomník Pensions Europe, privítal vystúpenie zástupcu Komisie a poukázal na to, že kľúčom k úspechu európskeho právneho rámca pre osobné dôchodky je podpora diverzity zdrojov sporenia na dôchodok a presadzovanie riešení, ktoré sa už ukázali ako úspešné v minulosti v podobných sektoroch. Poznamenal, že zamestnanecké dôchodky (*occupational pensions*) nie sú retailovými produktmi, a preto by nemali byť súčasťou diskusie o osob-

ných dôchodkových produktoch. Osobné dôchodkové produkty môžu byť dôležitým zdrojom príjmu v starobe pre tých, ktorí nemajú žiadne zamestnanecké dôchodky, ako napríklad živnostníci v niektorých krajinách.

Michaela Koellerová, generálna riaditeľka Insurance Europe, tiež zdôraznila dôležitosť diverzifikácie zdrojov príjmov v starobe, najmä pre nasledujúce generácie. Uviedla, že diskusia o osobných dôchodkových produktoch nesmie obchádzať skutočnosť, že ide o špecifické produkty, ktoré nemajú len jednoduchý sporiaci charakter a v porovnaní s ostatnými finančnými produktmi podliehajú rôznym obmedzeniam, prípadne sa na ne vzťahujú niektoré zvýhodnenia (napríklad daňové), pretože slúžia na zabezpečenie na dôchodok. Viac ako 90 % osobných dôchodkov v súčasnosti predávajú poisťovne, na ktoré sa zakrátko začne vzťahovať nová právna úprava Solvency II, obsahujúca prísne kapitálové požiadavky. Preto treba zabezpečiť, aby medzi rôznymi druhmi finančných inštitúcií nedochádzalo k regulatórnej arbitráži.

Peter De Proft, generálny riaditeľ EFAMA, privítal predbežnú správu EIOPA a zdôraznil silnú podporu európskym regulátorom pri vytváraní jednotného trhu pre osobné dôchodkové produkty. EFAMA a jej členovia vidia veľký priestor na vytvorenie alternatívy existujúcim dôchodkovým produktom na národnej úrovni. Dobrovoľný „druhý režim" v podobe štandardizovaného európskeho dôchodkového produktu by mohol hrať dôležitú úlohu pri zabezpečovaní záujmov občanov Európskej únie. Súčasne vyzdvihol význam mandátu pre ďalšiu prácu, ktorý pripravuje Európska komisia. V rámci prípravy na ďalšiu technickejšiu prácu, ktorú bude nevyhnutné vykonať na úrovni EIOPA, EFAMA začína paralelne prehlbovať svoj návrh rámca pre oficiálne certifikované európske dôchodkové produkty.

Účastníci sa v diskusii venovali aj ďalším otázkam, napr. akým spôsobom môžu osobné dôchodkové produkty prispieť k primeranému zabezpečeniu v starobe, ako zvýšiť príležitosti pre podporu dlhodobých investícií a aké sú výhody a nevýhody myšlienky jednotného štandardizovaného európskeho dôchodkového produktu.

Zlepšenie ochrany spotrebiteľov v oblasti osobných dôchodkov, kľúčové oblasti pre ďalšiu prácu

Moderátor: Adrian O'Brien, oddelenie ochrany spotrebiteľa, EIOPA

Rečníci: Júlia Čillíková, riaditeľka odboru regulácie, Národná banka Slovenska; Guillaume Prache, výkonný riaditeľ Better Finance For All; doc. Ján Šebo, Univerzita Mateja Bela; Hannie De Cloe-Vos, Authority for the Financial Markets – AFM; Fod Barnes, starší poradca, Oxford Economic Research Associates Ltd (OXERA)

V druhej panelovej diskusii vystúpili účastníci z rôznych súvisiacich oblastí, ktorí sa sústredili na problémy spotrebiteľov v oblasti osobných dôchodkových produktov.

Riaditeľka odboru regulácie NBS Júlia Čillíková prezentovala skúsenosti Národnej banky Slovenska s celosektorovou reguláciou sprostredkovania finančných produktov. Poznamenala, že regulácia predaja je len jednou časťou väčšej mozaiky ochrany spotrebiteľa, ktorá zahŕňa aj finančné vzdelávanie a informovanie klientov.

Guillame Prache, generálny riaditeľ Better Finance for All, poskytol podrobný prehľad priorít spotrebiteľov a budúcich dôchodcov a vyzdvihol dôležitosť predbežnej správy EIOPA a pripravovaného mandátu Európskej komisie pre ďalšiu prácu v oblasti osobných dôchodkov. Zdôraznil, že význam dobrovoľného sporenia na dôchodok ako alternatívy k povinnému dôchodkovému zabezpečeniu bude rásť z dôvodu zvyšujúcej sa strednej doby dožitia, vysokej miery nezamestnanosti a stavu verejných financií v EÚ. Uviedol 10 opatrení, ktoré navrhla Better Finance for All v záujme vyriešenia niektorých problémov, ktorým čelia dôchodkové systémy v EÚ.

Ján Šebo z Univerzity Mateja Bela zdôraznil nevyhnutnosť jednoduchých a zrozumiteľných dôchodkových produktov. Zástupkyňa holandského orgánu dohľadu v oblasti ochrany finančných spotrebiteľov prezentovala, ako veľmi zaujímavé poznatky z behaviorálnej psychológie a ekonómie môžu pomôcť regulátorom zlepšiť ochranu spotrebiteľa v oblasti osobných dôchodkov.

For Barnes, starší poradca OXERA, sa zameral na dlhodobé investičné produkty, medzi ktoré patria aj osobné dôchodky. Zdôraznil princíp, že sporenie môže byť dlhodobé, len ak produkt umožňuje investovať do dlhodobých investičných nástrojov, aby výsledná suma úspor dovoľovala vyplácať primeraný dôchodok. Z pohľadu ochrany spotrebiteľa je pre regulátorov veľmi ťažké nastaviť pravidlá informovania klientov. Volatilita dlhodobých investícií (najmä akcií) je totiž oveľa vyššia ako pri krátkodobých nástrojoch (napríklad dlhopisoch) a jednotlivci majú tendenciu veľmi citlivo reagovať na aktuálny vývoj na trhu, pričom zabúdajú, že z dlhodobého hľadiska môže byť lokálny výkyv vo výkonnosti korigovaný a v konečnom dôsledku pre veľkosť ich dôchodku sú dlhodobé nástroje lepšie ako krátkodobé. Nesprávne regulatórne zásahy môžu zároveň viesť k tomu, že sa utlmia investície finančných inštitúcií do reálnej ekonomiky.

Hlavné témy pre ďalšiu prácu v oblasti osobných dôchodkov na úrovni EÚ: dane, štandardizácia produktov a rozdielnosti v zmluvnom práve

Moderátor: Peter Pénzeš, Národná banka Slovenska, vedúci pracovnej skupiny EIOPA pre osobné dôchodky
Rečníci: Dirk Staudenmayer, vedúci oddelenie zmluvného práva, GR pre spravodlivosť, Európska komisia; Ambrogio Rinaldi, riaditeľ, Supervisory Commission of Italian Pension Funds COVIP/OECD Working Party on Private Pensions; Hans van Meerten a Pascal Borsjé, Clifford Chance LLP; Gerry Dietvorst, Competence Centre for Pension research, Univerzita v Tilburgu

Vedúci pracovnej skupiny OECD pre súkromné dôchodky a člen pracovnej skupiny EIOPA pre osobné dôchodky Ambrogio Rinaldi predstavil hlavné výzvy a príležitosti pre vytvorenie tzv. druhého režimu pre osobné dôchodky. Správne nastavený druhý režim (štandardizovaný európsky dôchodkový produkt) by mohol zabezpečiť rovnaké podmienky podnikania pre poskytovateľov týchto produktov z rôznych sektorov finančného trhu, posilniť ochranu spotrebiteľa, zvýšiť dostupnosť týchto produktov, prispieť k úsporám z rozsahu, znížiť distribučné náklady a zvýšiť ich cezhraničné poskytovanie. Druhý režim by zároveň mohol slúžiť ako vzor pre reguláciu iných dôchodkových produktov a ich poskytovateľov.

Zástupcovia advokátskej kancelárie Clifford Chance LLP sa podelili so svojimi skúsenosťami pri štruktúrovaní cezhranične podnikajúcich inštitúcií zamestnaneckého dôchodkového sporenia (IORP). Zdôraznili, že na lepšie fungovanie vzájomného uznávania dôchodkových produktov na daňové účely sa ako vhodné javí vytvorenie štandardizovaného európskeho produktu. Jeho právnym základom by spočiatku mohlo byť len tzv. soft law, ako napríklad oznámenie alebo odporúčanie Komisie, keďže takýto nástroj možno prijať pomerne rýchlo a v krátkodobom horizonte by mohol priniesť pozitívny stimul pre európsky dôchodkový trh.

Profesor Gerry Dietvorst z Univerzity v Tilburgu zdôraznil, že nastavenie zdaňovania dôchodkov je kľúčové pre motivovanie ľudí na využívanie dobrovoľných dôchodkových produktov. Priblížil svoju myšlienku naviazať výšku daňovej úľavy nepriamoúmerne na výšku príjmu.

Dirk Staudenmayer z Európske komisie predstavil výsledky pracovnej skupiny odborníkov na európske poistné právo, ktorí vypracovali správu o rozdieloch v poistnom zmluvnom práve členských štátoch EÚ a ich vplyve na cezhraničné poskytovanie týchto produktov. Identifikované rozdiely negatívne ovplyvňujú cezhraničnú ponuku poistných produktov, pretože zvyšujú náklady poisťovní a právnu neistotu inštitúcií a ich klientov. Najdôležitejšie závery správy: (1) V odvetví životného poistenia, povinného zmluvného poistenia a poistenia zodpovednosti za škodu musia poisťovne prispôsobovať zmluvnú dokumentáciu právnemu poriadku každého členského štátu, v ktorom podnikajú. Rozdielnosti existujú vo veľkom množstve oblastí, napríklad aj v informačných povinnostiach vo vzťahu k spotrebiteľom. (2) Rozdielnosti v zmluvnom práve sú menej významné, pokiaľ ide o poisťovanie veľkých rizík a poisťovanie v oblasti dopravy.

Peter Pénzeš a Simona Murariu

Towards a EU single market for personal pensions

*Keynote speech by Gabriel Bernardino**

* *Gabriel Bernardino is Chairman of the European Insurance and Occupational Pensions Authority (EIOPA).*

Pension systems are facing tremendous challenges to deliver on their promises. The longevity growth, the sluggish economic environment, budget deficits and debt burdens, financial instability and low employment are known factors that contribute to this behaviour.

Public pay-as-you-go pension schemes are affected by lower contributions due to higher unemployment and put another source of pressure on public finances. As recognised by the EU Commission in its White Paper: "Reforms of pension systems and retirement practices are essential for improving Europe's growth prospects, and they are urgently required in some countries as part of current actions to restore confidence in government finances".

On the other side, private funded schemes are affected by the depreciation of asset values and by reduced returns which lower the funding ratios in defined benefit schemes and diminish the ultimate value of pensions paid by defined contribution schemes.

These circumstances make it very problematic to any system to deliver adequate, safe and sustainable pensions to EU citizens and increase the difference between what pension provision people need for an adequate standard of living in retirement and the pension amount they can currently expect to receive, usually referred as the "pension gap".

In this context it is widely acknowledged the urgency to put in practice comprehensive strategies and policies to adapt pension systems, recognising that in order to maximise the possibility to deliver adequate, safe and sustainable pensions, there is a role for a combination of public and private regimes.

In order to reinforce the confidence of citizens, the development of private complementary pension savings, be it second pillar occupational pensions or third pillar personal pensions, should be accompanied by appropriate regulation and supervision. This is true for the entire financial sector but pensions are pretty special in my view. Of course other financial products also require individuals to trust their money to a better informed entity. But in few other cases does this relationship last for decades. In few other cases is the product relied upon for something as fundamental as income in old age. The social and political consequences – as well as economic and financial – of this are profound.

The reality is that pensions are still an almost exclusively national activity. On the second pillar,

in spite of the steps taken some years ago with the EU Directive on the Institutions of Occupational Retirement Provision (IORP), there are only 82 cross-border pension funds. In the third pillar, personal pensions, we have a fragmented market with great diversity in the regulatory framework and no EU common approach. The question we should pose to ourselves is if this is an optimal situation? An optimal situation for the European citizen, for the European economy, I would dare to answer no.

I believe pensions, both occupational and personal, can play an important role in a more integrated Europe. The development of a truly internal market for pensions can increase member protection, transparency and be the catalyst for better outcomes for citizens, through economies of scale, and for the EU economy, through more stable long-term funding.

EU citizens are increasingly mobile: 6.6 million EU citizens live and work in a member state other than their own. That is already 3.1% of workers in the EU. A further 1.2 million live in one EU country but work in another. How many of these millions have been able easily to transfer their pension rights? How many of their employers have been able easily to establish a pan-European pension scheme? Of course questions of cross-border pension rights are not the only issue which determines whether someone works in another member state. But they may play an increasing role in whether or not a citizen can stay for the long term in another

member state. And even if it is not the primary consideration in deciding to work abroad, the individual should be able to avail of coherent and continuing pension arrangements while abroad. And those arrangements should be similar to the way that can be achieved by staying at home.

A European approach will help improve protection for members. There are risks to a cross-border approach if member protection is inconsistent between member states. For an individual to trust his or her contributions to a provider based in another member state he or she has to have confidence that there are consistent and high levels of protection, including a high level of transparency and relevance of the information provided.

In this context I welcome the recent IORP II proposal put forward by the EU Commission. It aims to ensure that pension scheme members are properly protected against risks by strengthening the governance and transparency framework of occupational pensions in the EU; further facilitates the cross border activity for IORP's by removing some obstacles to cross border provision of services; and encourages occupational pension funds to invest long-term.

On personal pensions we are just starting. The EU Commission asked EIOPA to provide technical advice on the prudential regulations and consumer protection measures needed to create a single market for personal pensions in the EU. We have started to work on it and received good contributions from a variety of key stakeholders. A key outcome of our consultation is that a single market for personal pensions can be advantageous for consumers, providers, and for the broader EU economy.

EU consumers will have the opportunity to participate in different schemes across the EU according to their preferences and needs, in particular with respect to investment strategies. Transparency and consumer protection may be improved and cost efficiency is expected to be enhanced.

Pension providers will have the opportunity to achieve economies of scale, especially in the case of standardised products, which allow for successful cross-border selling. Overall, the EU economy could benefit from personal pensions becoming a main driver for sustainable long-term investments.

Not surprisingly, our analysis revealed that taxation, social law, as well as difficulties in the area of harmonisation of contract law, appear to be the most significant hurdles to develop a truly single market for personal pensions. In particular these could result in obstacles to economies of scale and the achievement of critical mass.

To deal with these obstacles is an important element of success for this project, but there are many more elements to consider. For example, we need consumer awareness on their projected income after retirement. If we want citizens to have a responsible attitude towards pensions we need to ensure that they have sufficient information about their individual pension situation resulting from the different pension systems in which they are engaged, starting from the first pillar.

We believe a strong case is made for a future EU Directive that would establish a single market for personal pensions inter alia through the alignment across the EU of personal pension holder protection measures, capturing also any personal pension providers that are not currently regulated at EU level.

Regarding the establishment of a second regime for EU personal pensions, further work needs to be done to clearly identify the costs and benefits. If a second regime will be developed, it should focus on defined contribution products with an appropriate level of standardisation. As always there is a trade-off between product standardisation and product innovation. Nevertheless, a higher level of standardisation will help in achieving the required critical mass to decrease costs and facilitate the consolidation of multi-pillar systems in many countries.

Standardisation will also help in delivering simpler products, with transparent fee structures, avoid conflicts of interest in selling practices and provide ultimately "good value for money" for consumers.

Is this an impossible task? I don't think so. EIOPA is fully committed in pursuing this work, but we cannot do it alone; your creative involvement is essential. A public event like this is a landmark for such cooperation. I am glad that today we can bring together consumer representatives, academics, consultants, providers of financial services and products as well as regulators and supervisors, to discuss the way forward.

As Malcolm X put it: "The future belongs to those who prepare for it today". Let's work together for a better future in a stronger European Union.

A single pensions market: six key messages about personal pensions products

*Michaela Koller**

* *Michaela Koller is Director General of Insurance Europe.*

Insurance Europe welcomes the debate on the development of personal pension products, which, ultimately, should ideally lead to encouraging individuals to save more for their retirement.

Key message 1: the insurance sector has a key role in the provision of third pillar pensions.

The insurance sector, with over 90% of market share, is a major provider of third pillar pension products in Europe. This important market share can largely be explained by the fact that insurers offer more than the investment management of the premiums collected. Specifically, with their long-standing actuarial experience, life insurers are well placed to provide protection against the risks that individuals face when planning their retirement, such as:

- longevity risk, by providing annuities
- the risk of premature death, by providing death cover
- inflation risk, by providing index/inflation-linked savings products
- interest rate risk, by providing minimum interest rate guarantees
- health care needs, by providing long-term care products

Insurers are also subject to strict supervision and regulation. The Solvency II regime guarantees a high level of protection to Europe's future retirees.

Key message 2: There is a need for supplementary pension schemes, both occupational and personal, in all member states, as a complement to public pensions.

In many countries, the pension benefits provided by the state are more important than those provided by complementary sources, and this is likely to remain the case in the future. This should, however, not mean that efforts are not to be made to encourage saving through complementary pension products.

Europe's insurance sector upholds that a multi-pillar system is the best way to address the challenges resulting from evolving demographic patterns and the enhanced pressure on national budgets. No system can on its own respond to the differing challenges ahead.

Another advantage of a multi-pillar system is that it makes it possible to distinguish between poverty reduction (typically the objective of the first pillar) and income replacement goals (better achieved through the second and third pillars).

In this respect, personal pensions are especially important for two categories of people:

- For those that the first and second pillar pensions will be insufficient to ensure an adequate income in retirement.
- For those who do not have access to occupational pensions provided by an employer.

Key message 3: The ability of the insurance sector to continue acting as a long-term investor largely depends on the regulatory framework in place.

Due to the long term nature of their business, insurers are Europe's largest institutional investors, with over €8.4trn of assets held by European insurers in 2012. Most of these assets back up long-term life liabilities, including in particular pensions.

Through their pensions business, insurers can play a crucial role in boosting long-term investment, but only if the following two key conditions are met:

- Personal pension products are designed in such a way that citizens have an incentive to take a long-term perspective.
- The regulatory framework in place makes it possible for insurers to take a long-term approach in their investment policy.

It is therefore vital that policymakers seek to encourage policies that stimulate a savings habit for citizens taking a long-term perspective.

Key message 4: any envisaged solution on PPPs should truly be built around pension products and take into account national differences.

Turning to EIOPA's work in the area of personal pension plans (PPPs), it seems important, as a first step, to adequately define what constitutes pension products. For the insurance sector, it should be made clear that pension products have the primary purpose to provide an income in retirement. This means that during the accumulation phase the possibility for early withdrawal of the accumulated capital is generally limited and often sanctioned. Pension products can also include a cover against longevity risk. These features distinguish pension products from investment products.

That being said, many important and specific characteristics of personal pensions differ between member states. These products take into account local taxation, social and labour laws and their aim is to complement national public pensions.

The fact that pension products are generally country specific does not mean that they are not regulated, or that they are not influenced by European rules. Specifically, European laws such as Solvency II and the Insurance Mediation Directive (IMD) have an impact on the regulation of private pension products and complement generally detailed rules in place at national level for such products.

Against this background, it seems important to gather evidence on the potential advantages and disadvantages of this initiative before deciding on a one-size-fits-all approach for personal pensions. Any envisaged proposal should not harm well-functioning markets. Any overlap or duplication with existing legislation should also be avoided.

Key message 5: the creation of a single market for PPPs should not be a cherry picking exercise; the aim should be to foster secure and sustainable pensions.

The insurance sector sees a risk that the development of a single market for PPPs could lead to a situation where different providers, subject to different prudential regimes, would offer similar products. This in turn would lead to a competitive disadvantage for providers with stricter requirements, and could result in some consumers not benefiting from an adequate level of protection.

More specifically, insurance companies which offer a wide variety of PPP types will soon be regulated by the Solvency II Directive. This framework is tailored to the long term nature of pension products and will provide policyholders with adequate safety standards. Such a high level of protection should be guaranteed to all buyers of pension products, even when these products are offered by providers not falling under the scope of Solvency II.

Additionally Insurance Europe would like to stress that a higher standardisation of products, which was suggested as a way to reduce the need for advice by consumers, is not the right way forward. This conclusion is based on experiences at national level which showed that even for standardised products (eg UK (Stakeholder Pensions) and Germany (Riester-Pensions)) there is a need for advice when buying pension products. This stems from the fact that even with standardised pension products, the product outcome will always depend on investor-based factors such as the age of the consumer and time horizon of the product.

Key message 6: Increasing the supply of personal pension products is unlikely to boost demand.

One of EIOPA's objectives is to increase the demand for personal pension products through an increase in the pension products on offer. One of the solutions envisaged is the suggested "second regime". The European insurance sector supports the objective of boosting savings by consumers, but remains sceptical as regards the ability of a "second regime" to overcome the natural tendency of many people to under-save. This is notably so in a market that already offers a wide range of long-term investment options.

One can also question whether consumers have a genuine interest in investing in cross-border pension products. As an example, a Eurobarometer survey from 2012 indicated that only "2% of consumers would potentially buy a life insurance, including pensions in a foreign EU country." Based on this information, the European Commission expert group on contract law concluded that "there therefore seems to be little evidence of actual appetite for cross-border shopping for insurance products by consumers […]".

It is also important to keep in mind that any interest to sell or purchase pension products cross border can currently be facilitated via the passporting of pensions under the Freedom of Services and the Freedom of Establishment principles. Insurance Europe does not share the apparent assumption that there is a large customer base in need of cross-border products, which would require firms to introduce new products. Empirical evidence to support this assumption is at this stage missing.

Finally, referring in particular to the suggested "second regime", it is unclear whether it would be acceptable from a supervisory or political point of view to have two different regimes in parallel (ie the national regime and the "second" regime), one of which would be less strict in certain areas, such as for instance consumer protection.

Conclusion

Insurance Europe welcomes the debate initiated by the Commission and EIOPA on personal pension products, with the ultimate goal of encouraging individuals to invest more in secure personal pension products for their retirement. At this point in time, important questions remain as to how a single market for personal pensions would look like, notably under the envisaged "second regime". Insurance Europe looks forward to continuing the dialogue on these important questions.

Proposals to protect pension savings

*Guillaume Prache**

"Due to the nature of long-term savings and pension plans, particular care is needed to ensure that consumers are being offered products that are really adapted to their needs and marketed appropriately. These are major, once in a lifetime, financial decisions for consumers. Therefore, consumers must be in a position to make their choices in full knowledge of the product, correctly assessing their circumstances and needs."

(European Commission – Green Paper on Retail Financial Services in the Single Market, April 2007)

Seven years have passed since this Green Paper, and pension saving products are however still a gaping hole in EU regulation and supervision of financial products. Even the recently adopted "PRIIPs"[1] Regulation again excludes personal and occupational pensions from the scope of harmonised retail investment product disclosure although pension saving products are the most "packaged" ones, and although – as correctly identified by the Commission seven years ago – they require particular care.

European savers therefore welcome the recently released EIOPA report on personal pensions requested by the Commission, and the upcoming call for advice on the same issue. It is all the more important as pension savings will be more and more needed to supplement mandatory pension schemes which are struggling due to the ever increasing life expectancy, the high level of unemployment and the poor state of public finances in the EU.

At the same time however, pension savings products have been too often delivering poor results and often have not even protected the purchasing power of pensioners' savings. It is therefore nowadays a challenge to advise EU citizens to pour more savings money into these products without thoroughly improving those.

The poor results of "packaged" long term products are evidenced by at least two independent research reports from the OECD[2] and from BETTER FINANCE for All. The Commission acknowledged this key issue in its Staff Working Document (and regrettably not in the Green Paper on the long term financing of the European economy itself) rightly pointing out that one of the reasons why households may not invest long-term is the "*often poor performance of financial intermediaries to deliver reasonable returns, and the costs of intermediation*"[3]. But even the Working Document falls short of analyzing how poor this performance is and why so. Our recently released research[4] does just that: Net real (net of inflation and other costs) returns of pension savings have been on average negative since the beginning of this century, and the main contributing factor – much more than the evolution of capital markets – is the high amount of fees and commissions charged year after year on "packaged" long term and pension products.

Example: Real case of a Belgian occupational pension fund:

Capital markets vs. Belgian Occupational pension funds 13 year performance (2000 to 2012)

Capital markets (benchmark index*) performance	
Nominal performance	+48%
Real performance (before tax)	+11%
Pension Fund performance	
Nominal performance	+10%
Real performance (before tax)	- 25%

** 50 % Equity / 50 % bonds (MSCI World equity index and JPM Euro Bond Index).*

One should not expect – and even more so push – EU citizens to continue and to increase their investments in such long term value destroying products.

Based on these research findings, we recommend the following 10 policy measures to urgently address this dramatic issue:

1. Improve and harmonize disclosures for all long term and retirement savings products:
   - "PRIIPs": the EU proposed Regulation for a Key Information Document (KID) must be

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1 *PRIIPs: Packaged Retail and Insurance-based Investment Products.*

2 *OECD Pensions Outlook 2012, www.oecd.org/daf/fin/private-pensions/50560110.pdf*

3 *Commission Staff Working Document "Long-Term Financing of the European Economy" accompanying the Green Paper on Long Investment, European Commission, 25 March 2013, page 10. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0076:FIN:EN:PDF*

4 *Better Finance research report "Private Pensions: The Real Returns", June 2013. http://www.eurofinuse.org/fileadmin/user_upload/documents/Research_Reports/Pension_Study_EN_website.pdf This first phase research includes three country cases (Denmark, France and Spain). The upcoming (June 2014) second phase includes five more (Belgium, Germany, Italy, Poland, and the UK).*

extended to all retail long term and pension investment products, or, at least a summary pension saving product information document should be required and be as comparable as possible to this KID.
- Disclosure of full costs and commissions, and long term historical returns must be provided:
  - after inflation;
  - after all charges borne directly or indirectly by the investor; and
  - after taxes (as required in the US for investment funds).
- Disclosure of funding status (assets/liabilities coverage).
- Disclosure of transfer/exit possibilities.

2. For EIOPA to comply with ESAs Regulations article 9(1)[5]: to actually report on pension saver trends, including on the actual performance of all pension products: one can manage or supervise only what one can measure. It is indeed quite surprising that the actual net performance of pension saving products is not really known neither by clients nor by supervisors.
3. Design a simple retirement savings vehicle:
   - that protects the long-term purchasing power of savings (could be used as a default option in other pension saving products);
   - readily accessible, without need for advice and its associated commissions;
   - supervised by public bodies.

   A pan-European Personal Pension Plan would be most welcome by EU savers if it matches these requirements and if it is not disadvantaged in terms of taxation.
4. Simplify and standardize the range of product offerings; forbid non UCITs funds ("AIFs"[6]) in all retail packaged long term and pension products (except for qualified investors who can access packaged products with choice of investment units), and find ways to thoroughly streamline the excessive number of UCITs offered in the EU (35,000 versus 9,000 in the US, and for a smaller market).
5. Establish transparent, competitive and easy-to-use (standardised) retail annuities markets throughout the EU, and give more freedom to pension savers to choose between annuities and withdrawals when and after they reach retirement age.
6. For those individually subscribed collective pension products, improve the governance of the collective scheme by having at least half of the scheme's supervisory body directly designated by the pension scheme participants.
7. Ensure the end of biased advice at the point of sale and competent advice on long term investments, including going back to the basics: explain what are the building blocks of long term saving products: equities and bonds.
8. Ensure special treatment by prudential regulation of all pension products (insurance and non-insurance regulated): the long duration of the liabilities allow for higher portfolio allocation to long term investments such as equities.
9. Taxation to incentivize long term retirement savings and investment over consumption and short term savings, or at least not penalise this virtuous behaviour
10. Basic financial mathematics part of school curricula, as this is a crucial tool in selecting suitable investment products for pension savers.

5 "The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by: (a) collecting, analysing and reporting on consumer trends"

6 AIFs stand for Alternative Investment Funds. They are subject to less investor protection rules than UCITs, however AIFs are up to now very widely used by personal pensions providers.

Single market for personal pension products and consumer protection issues*

*Ján Šebo, Tomáš Virdzek and Ľubica Šebová***

* *Discussion paper for the EIOPA conference Bratislava on April 15th 2014. Grant support: This work was supported by the Slovak Research and Development Agency under the contract No. APVV-0465-12.*

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1 *EIOPA. 2014. Towards an EU single market for personal pensions. An EIOPA Preliminary Report to COM. EIOPA-BoS-14/029 (available at: https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/EIOPA-BoS-14-029_Towards_an_EU_single_market_for_Personal_Pensions-_An_EIOPA_Preliminary_Report_to_COM.pdf)*

2 *EIOPA Report on risks related to DC pension plan members, CEIOPS-BOS-11/024 (final), 8 July 2011*

3 *EIOPA „Good practices on information provision for DC schemes – Enabling occupational DC scheme members to plan for retirement". EIOPA-BoS-13/010. 24 January 2013.*

4 *K. J. Arrow, The Limits of Organization, Norton, 1974.*

5 *Kahneman, D., Tversky, A. Prospect Theory: An Analysis of Decision under Risk. Econometrica, 47(2), pp. 263-291, March 1979.*

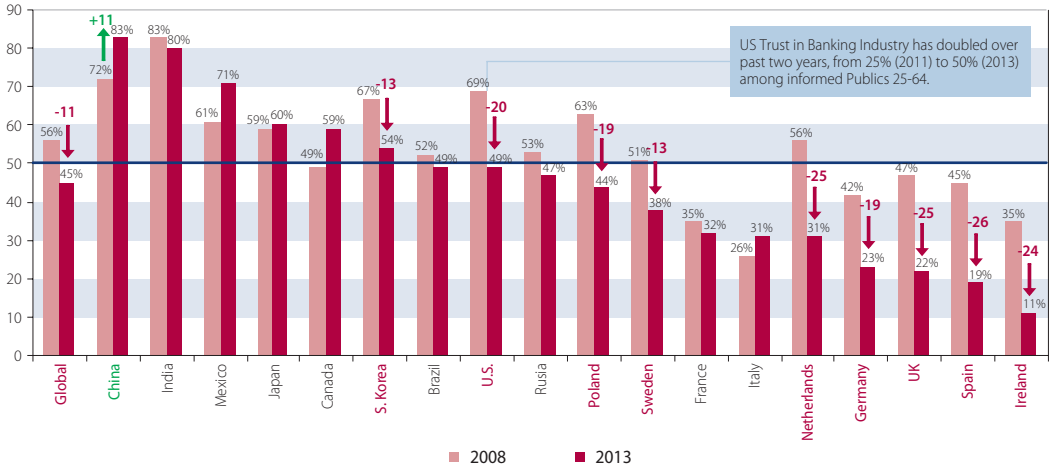
EIOPA[1] (2014) in its Preliminary Report on personal pension products (PPPs) identified that creating a second regime for PPPs could be considered while the baseline should be built on standardized products that allow wide coverage and full comparison. A large majority of stakeholders recommend/argue in favor of EIOPA working principally or indeed only on defined contribution of personal pension products (DC PPPs). Many of them refer to the prolonged trend away from defined benefit (DB) schemes and towards defined contribution (DC) schemes. It shall be argued that DB PPPs would be too complex for a regulation aiming at a single market, in particular with respect to transferability and portability including difficulties with respect to capital requirements. The focus on DC PPPs is therefore viewed as more appropriate if products are intended to be sold cross-border or for self-employed people. However, the point of savers should be taken into account, where the PPPs are not viewed as a DC or DB products, but as a long term contract signed between the saver and a provider, where the product should allow for an adequate income replacement ratio (IRR) when old. Under this contract, the saver carries the most of the risks. PPPs should be therefore recognized on the amount and level or risks shifted from provider onto saver.

If the PPPs is not straightforward for the ultimate aim (adequate IRR) and the risks are shifted onto saver[2], than the PPP as a product should have „no strings attached" and full information disclosure on the risks associated with the PPP should be presented.

Ján Šebo

The ongoing debate on PPPs should take into account the issues associated with behavioral aspects of savers' decision-making and ability to motivate savers to enter into long-term contract with the financial provider[3]. According to many recent as well as seminal studies (i.e. Arrow, 1974[4], Kahnemann and Tversky, 1979[5]), the trust is one of the components consumers buy together with the product. As the trust in financial sector and subsequently in the long-term savings products is generally low, the consum-

Trust in financial sector (in percentages; in percentage points)



Source: Edelman TrustBarometer, 2014.

ers face greater level of uncertainty, which turns into inertia.

According to Edelman TrustBarometer (2014) trust in financial sector in EU is at the lowest level (29 %) among all world regions. The similar results regarding the trust in financial sector and its products can be seen in EC Consumer Market Monitoring Survey[6] where the investment services, private pensions and securities are among services with lowest trust overall. On top of that, consumers also suffer from low level of comparability of products. All these aspects contribute to increased uncertainty and low expectations of consumers in these products.

However, there are misinterpretations of inertia within the financial sector claiming that consumers are conservative investors. Instead of regaining the trust in products financial sector sell to consumers, it is easier to claim the conservative risk-reward profile of consumers. When considering the long-term investment (savings) horizon, risk capacity of consumers has been left behind supported by poorly managed pension funds not able to beat even the simple passive exchange traded funds (ETFs). When talking about the inflation, there are only few long-term savings products on EU market able to beat the inflation index. This has led in creation of complex products,

6 http://ec.europa.eu/consumers/consumer_research/consumer_market_monitoring_survey_en.htm

Table 1 "Objective-information/Risk-protection" scheme for PPPs

Phase	Objective	Information disclosure	Risk	Protection standards
1. Pre-contractual (Joining)	Adequacy Ability to align the product features with obligations and the objective (adequacy)	1. Individual stochastic modeling of the consumer life-cycle under the different PPPs (including all charges during the whole life-cycle)	A. Understanding of the PPPs by consumer B. PPP Suitability risk	Obligation of industry (provider, intermediary) to present individual stochastic based model of adequacy under different PPPs life cycle
			C. Contribution level	Right to change the contribution level
		2. Structure, source and availability of information (What? Where? How to read?)	D. Information availability	Obligation of PPPs provider to disclose information on all phases prior to signing
			E. Investment (savings) strategy	
2. Contractual (Accumulation)	Path-tracking Convergence with the modeled life-cycle path	1. Regular, time specific and retrievable data on respective risks and parameters of particular PPP 2. Forward-looking information disclosure	A. Market risk B. Inflation risk C. Investment strategy D. IRR deviation risk	Right to switch the PPP for another PPP during the accumulation phase (not withdrawal)
		3. Benchmarking	E. Long-term poor performance	
		4. Full disclosure of charges	F. Charges	Aligned fee policy to limit portfolio managers´ conflict of interest
		5. Income replacement ratio modeling (career path vs. performance of savings)	G. Contribution level H. Low or negative added-value	Right to change the contribution level Right to suspend/pause the PPP for a certain period of time (e.g. due to unexpected unemployment) Supervision fines for "poor" added-value (banning the product)
3. Pay-out (Retirement)	Pension needs Ability to align the product features with the adequacy and individual preferences	1. Life tables and actuarial calculations 2. Comparison tools	A. Longevity risk	Supervision of actuarial models and calculations (under existing regulation)
		3. Regular, time and specific data on respective risks of pay-out products	B. Inflation risk C. Market risk D. Interest risk	Right to switch the product

Source: FSUG (2013[12]).

which significantly underperform the market and leave consumers with high charges and risk of missing the ultimate savings objective.

There are several ways how to limit inertia of savers and their willingness to buy long-term savings products. Regaining the trust by offering simple, low cost passively managed funds using the life-cycle savings approach is one of the most important.

Another issue that should be taken into account when discussing on the possible EU-wide PPPs is the ongoing conflict of interest between financial sector owners, portfolio managers and savers. It becomes obvious that portfolio managers serve the financial sector owners and not the clients when designing the PPPs and running the pension funds. Selling the long-term savings products to consumers which underperforms the market benchmarks (OXERA, 2013[7]; EuroFinUse, 2013[8]) and produce short-term revenues and profits for financial providers via charges cannot remain untouched during ongoing debate.

The fee policies should be based on the benchmarking system that recognize whether the portfolio manager underperforms the market benchmark. In the case of underperformance, the management fee should be lowered to the levels that allow covering only part of the fixed costs. To motivate portfolio managers to start performing in favor of savers, success fee should be introduced. The neutrality of fee policy that allows management as well as success fees should be introduced only if the portfolio manager performs better than a market benchmark. In a case where portfolio manager performs on the level of market benchmark, the fee policy should allow only administration fee that covers fixed and variable costs of providers. Fee policy should therefore serve as a tool for aligning the interest of portfolio managers and savers on the first place. Leveling the fee revenues with the product performance could limit the conflict of interest and short-termism where portfolio managers serve the financial institution shareholders with savers left behind.

The last point that should be considered carefully is the task of regulators. Currently, financial sector claims that the whole sector is overregulated or at least there is different level playing field for different providers. However, the introduction of PPPs on an EU level allows consideration of lowering the regulation of providers and shifting the focus on products. Considering the PPPs as a long-term saving product that has three different phases, the regulation of consumer protection should recognize the rights for consumer specifically for each phase.

The rationale for product regulation imposes the need to recognize the objective of the product and information disclosure that is forward-looking toward this objective (see Dowd and Blake, 2013[9]). Retrospective information has no real value for consumers and only distracts their willingness to contribute to the product in the future[10]. Enforcement of forward-looking information disclosure while accepting the behavioral aspects of savers´ responses to the information (EIOPA, 2013[11]) is a challenging task for regulators.

Combining the objectives with risks and information disclosures could lead to the creation of savers´ rights in the long-term savings products recognized for PPPs. However, it should be noted that information disclosure to savers is still not recognized as one of the prudent principles.

Regulation of the product should be a key task of any regulation. Most of the regulatory attention should therefore be paid to the design, back-testing, forward-testing, projections, distribution, switching, termination and transparency of particular products as they are directly sold to consumers. Simultaneously with the main product oriented regulation, the regulation of providers derived from the product regulation (rules) should be applied. This combined approach with a clear focus on the product regulation should ensure that poor value products are not engineered and distributed on the single market.

There are some good examples and practices that can be used as inspiration for creating a second regime for PPPs with product oriented regulation. We refer to the paper of Kevin Dowd and David Blake[13] (2013), Blake, Cairns and Dowd[14] (2009) and OECD[15] Roadmap for the Good Design of Defined Contribution Pension Plans which was published in June 2012. Some good examples can be taken from the national schemes implemented in Sweden, Estonia, Slovakia or Romania. Additional good example is a 401(k) scheme applied in USA. Some interesting findings on a good design and operation of PPPs can be found in the OXERA[16] Study on Position of Savers in Private Pension Products (2013).

7 *Oxera study „Position of Savers in Private Pension Products". Research study prepared for behalf of FSUG and EC. 2013.*
8 *EuroFinuse. 2013. The Real Return of Private Pensions (available at: http://www.eurofinuse.org/fileadmin/user_upload/documents/Research_Reports/Pension_Study_EN_website.pdf)*
9 *Dowd, K., Blake, D. 2013. Good Practice Principles in Modelling Defined Contribution Pension Plans. Discussion Paper 1302. The Pension Institute. [online] http://pensions-institute.org/workingpapers/wp1302.pdf*
10 *Harrison, D. 2012. Treating DC scheme members fairly in retirement? NAPF and Pensions Institute Research Report, February 2012.*
11 *EIOPA „Good practices on information provision for DC schemes – Enabling occupational DC scheme members to plan for retirement". EIOPA-BoS-13/010. 24 January 2013.*
12 *Financial Services User Group's (FSUG) Response to EIOPA Discussion Paper on a possible EU-single market for personal pension products.*
13 *Dowd, K., Blake, D. 2013. Good Practice Principles in Modelling Defined Contribution Pension Plans. Discussion Paper 1302. The Pension Institute. (available at: http://pensions-institute.org/workingpapers/wp1302.pdf)*
14 *Blake, D., Cairns, A., and Dowd, K. (2009) Designing a Defined--Contribution Plan: What to Learn from Aircraft Designers, Financial Analysts Journal 65 (1), 37-42.*
15 *OECD Roadmap for the Good Design of Defined Contribution Pension Plans. (available at: www.oecd.org/finance/private-pensions/50582753.pdf)*
16 *Oxera study „Position of Savers in Private Pension Products". Research study prepared for behalf of FSUG and EC. 2013.*

A European Pensions Union

*Pascal Borsjé and Hans van Meerten**

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1. Introduction

In recent years, tempestuous developments in the financial sector have led to more extensive European cooperation, with the strengthening of European financial supervision within the European Union and now, in the euro zone, initial steps towards developing a banking union and the introduction of a separate Treaty on Stability, Coordination and Governance in the EMU (the Fiscal Compact) which sets out rules for national budgets of the signatory EU Member States. Legislation on for example European insurance funds (the Solvency II Directive[1]) and investment funds (the amendments to the UCITS Directive[2]) have seen further harmonisation at European level.

For some considerable time, the increasing ageing of European populations has obviously been a concern of national governments in relation to pensions. At European level, too, this concern about, on the one hand, the future affordability of the pension system and, on the other hand, the flexibility of the labour market (with pensions being part of the employment terms) has drawn a great deal of attention.[3] In this regard the sustainability of the pension systems cannot be viewed separately from the stability of the European financial system given, for example, the implications for the European economy as a whole as a result of possible social unrest due to uncertainty about pension provisions combined with the increasing ageing of European Member State populations.[4]

In addition, in the European labour market, pension schemes in cross-border situations are often beset with practical problems regarding the relationship between various tax and social laws and regulations.

Despite the explicit European dimension of the pension issue and attempts of the European Commission to, on the one hand, encourage the Member States to future-proof their retirement provisions and, on the other hand, to increase coordination between the national pension systems, in practical terms the European pension sector is still organised mainly along national lines.

The pension institutions in various Member States are, for instance, still principally active within their own national borders. The forms of retirement provisions also vary from one Member State to the next, with some countries, such as the Netherlands and the United Kingdom, which have large well-funded systems for occupational pension schemes, doing relatively well. The lack of a more 'mature' European pension standard is regrettable because an occupational pension scheme, for example, is not available to a considerable number of European employees.

It is therefore not surprising that the European Commission ("EC") keeps trying to take further measures to strengthen the European pension system. At the beginning of this year, for instance, the EC announced that, in relation to labour mobility within the European Union, it would scrutinise the tax obstacles to (among other things) pensions accrued for cross-border activities of individuals, and remind the EU Member States of their obligations under European law.[5]

In the meantime, the EC is also working on revising the current so-called IORP Directive,[6] and, at the request of the EC, the EIOPA[7] has prepared a report on the development of a common European "Personal Pension Plan"[8]. As far as is clear at this point, these proposals seem to strive for further harmonisation of the internal market for pension services within the EU. It is debatable to what extent these proposals will also have consequences, either directly or indirectly, on those areas which, in principle on the basis of the current status of EU law, are delegated to national policymakers of the Member States, i.e. especially (aspects of) social and tax legislation of the Member States.

This harmonisation ultimately serves to protect members of pension schemes and, for example, to prevent pension funds from allowing a lack of clarity to exist about their ability to meet their obligations to their members. Members of pension

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1 *Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ EU 2009, L 335/1.*

2 *Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 375, 1985, 3–18.*

3 *See for example European Commission, Green Paper of 7 July 2010, "Towards adequate, sustainable and safe European pension systems", COM 2010, 365 final.*

4 *See also: European Commission Communication on ageing of 29 April 2009, "Dealing with the impact of an ageing population in the EU (2009 Ageing Report)" and the Commission Staff Working document Demography Report 2008: Meeting Social Needs in an Ageing Society (SEC(2008)2911).*

5 *"Free movement of people: Commission to tackle tax discrimination against mobile EU citizens", press release from the European Commission – IP/14/31, 20 January 2014.*

6 *Directive No. 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision ("IORPs") (OJ EC L 235, 23 September 2003, pp. 10–21).*

7 *European Insurance and Occupational Pensions Authority, ("EIOPA").*

8 *"Towards an EU single market for personal pensions. An EIOPA Preliminary Report to COM", EIOPABoS14/029.*

schemes would obviously, therefore, benefit from clarity about existing pension entitlements. This also presents opportunities for Member States such as the Netherlands, the United Kingdom and Denmark. For example, major Dutch asset management organisations and pension providers as well as insurance companies could very well offer their services and know-how abroad. With greater efficiency and economies of scale, the strengthening and further development of fund entities and the provision of pension services could also benefit the national pension market and those participating in it. Furthermore, an increasing number of European employees work in cross-border situations and certainly stand to gain from a better integration of pension accrual in the European labour market. These include not only employees of internationally operating companies but also, for example, inhabitants of cross-border regions who work and live in different EU Member States. A lack of European integration is keeping the markets closed off and, as a result, opportunities for growth and improvement in the European pension and labour markets are not being sufficiently harnessed.

We see developments that are laying the foundations for what we would like to call a European Pensions Union. We will discuss these foundations in this contribution.

2. The IORP Directive

2. 1 General

The IORP Directive, which has been in force since 2003, regulates funded pension institutions that provide employment related pension schemes. It provides 'minimum' harmonisation of pension entities, i.e. only general rules that allow the Member States a considerable degree of freedom to set further rules at national level. The underlying notion of the IORP Directive was, among other things, to provide a further stimulus – in the future, because of ageing – for the transition from pay-as-you-go systems – which are barely sustainable – to funded retirement provisions.[9]

When developing the proposals for the IORP Directive, the EC noted that IORPs were already playing an important role in the pension and social security systems of a number of Member States. About 125,000 IORPs operate in the EU. The assets managed by them are estimated at around EUR 2.5 billion, whilst they only represent 75 million Europeans, which is about 20% of the EU employee population.[10]

The number of IORPs and the assets managed by them are shown in Table 1.

In addition to the other financial institutions, such as banks and insurers, IORPs play a highly important role in the funding of the European economy and the functioning of the capital markets in the European Union.

2.2. Revision of IORP I

The IORP Directive did not produce the anticipated results. The number of cross-border IORPs remained modest and the envisaged operation of market forces between European IORPs within a European pension market did not materialise. To strengthen the pension system within the EU and promote a common pension market, the EC is working on a revision of the IORP II Directive (the "IORP II Proposal").[12]

In what follows we will examine a number of aspects of the IORP II Proposal and, in connection with this, discuss a number of specific factors which are generally seen as obstacles to establishing a common pension market. We will in any case look at the following points:

(i) the lack of clarity about the term cross-border when applying the (current) IORP Directive;
(ii) social and labour law and prudential supervision;
(iii) investment rules.

2.2.1 General aspects

We begin however with some general issues. There are a number of general aspects of the draft IORP II Directive presented by the EC that stand out.

Firstly, its legal basis is still primarily the provisions on the freedom of movement of persons and services and the *ordinary legislative procedure* for establishing a common internal market: in principle, if there is a qualified majority, the Member States are to adopt the measures concerned within the EU.[13] Thus, the Directive is and

Table 1 Total number of IORPs and assets managed, end-2011[11]

	Number	Assets (€ millions)		Number	Assets (€ millions)		Number	Assets (€ millions)
BE	226	15,910	IT	352	69,050	PT	197	12,650
BG	1	na	CY	1.651	na	RO	11	110
DK	26	7,060	LV	7	170	SI	9	1,835
DE	181	138,570	LU	19	970	SK	5	1,180
IE	68.500	70,000	HU	1	na	FI	56	4,120
EL	9	60	NL	514	774,060	SE	86	30,900
ES	363	31,690	AT	17	14,760	UK	50.880	1,319,930
FR	1	na	PL	5	360	Total	125,129	2,492,485

9 *For further background to the IORP Directive see, for example, H. van Meerten, B. Starink, 'Cross-border problems and solutions for IORPs, EC Tax Review, 2011,1; H. van Meerten, S. de Vries, 'Regulating pensions; Why the EU matters', Netspar, 2011and H. van Meerten, 'The scope of the IORP Directive', in: U. Neergaard, E. Szyszczak, J. W.van de Gronden, M. Krajewski, Social Services of General Interest in the EU. The Hague: T. M. C. Asser Press, 2013.*

10 *European Commission, Impact assessment on Proposal for a Directive amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Brussels, 27.3.2014, SWD(2014) 103 final.*

11 *Idem.*

12 *European Commission, 'Proposal for a Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision', Brussels, 27 March 2014 COM(2014) 167 final, 2014/0091 (COD).*

13 *In this regard the proposal refers to Articles 53, 62 and 114 TFEU.*

remains[14] an internal market for services directive, and the competence will not be shifted to, for example, Article 153 TFEU on social protection (*inter alia* with regard to employment terms), which article could, in connection with the establishment of pension rights, possibly be considered as well. The fact that the draft IORP II Directive will not enter into force on the basis of Article 153 TFEU is of importance to the European legislative procedure as, under Article 153 TFEU, any measures must be adopted *unanimously* by the Member States, with each individual Member State in principle being able to block the entry into force of this directive.[15]

It therefore makes quite a difference to the competence of the institutions whether Article 114 TFEU in combination with *inter alia* Article 53 TFEU or Article 153 TFEU is chosen. Article 153 TFEU primarily sets out an additional competence of the EU, whilst Article 114 TFEU confers full legislative authority on the basis of a qualified majority.

The European Court of Justice (ECJ) upholds that it follows from the Directive's Recitals 1, 6 and 8 that the Directive seeks to introduce an internal market for IORPs in which IORPs must have freedom to provide services and freedom of investment.[16]

The chosen legal basis can also be viewed as an important political signal: regulation of occupational retirement provisions is to remain primarily a matter for the internal market.

The second striking, but more general, point is that the proposal for the IORP II Directive does not regulate any *new* funding requirements for IORPs. This was the express wish of, among other countries, the Netherlands and the United Kingdom, given their highly developed systems with funded entities and the possible considerable added costs that additional funding requirements would entail. Although the IORP II Proposal does still contain funding requirements (which are practically the same as those of IORP I), these relate to the pension schemes that had already taken effect. In practice, it is precisely the differences in the local funding requirements that are a factor in making it difficult for an IORP to offer cross-border DB schemes, and the IORP Directive currently seems, in practical terms, to stimulate cross-border DC schemes in particular.

Regarding the implementation process of the IORP II Proposal, it should also be noted that it seems that the character of this draft Directive is what, until recently, was termed a 'Lamfalussy directive', in which the harmonised legislation was enacted at four levels.[17]

At level 1, the Council of Ministers (comprising the national ministers) formulate the principles or frameworks and usually adopt them in a directive (which also applies to the current IORP II Proposal). At level 2, with the assistance of the second level committees (made up of representatives of the Member States' sector-specific ministries, also referred to as 'comitology'), the Commission further elaborates these principles (technically) in directives or regulations. At level 3, the national supervisory authorities collaborate in advising on the regulation and implementing the supervision. These third level committees are made up of representatives of the supervisory authorities of all 28 EU Member States, which in this case form part of the EIOPA. At level 4, the European legislation is implemented by the Member States and the European Commission ensures that this is done correctly, if necessary by commencing an infringement procedure pursuant to Article 258 TFEU.

In a certain sense, the 'Lamfalussy' structure has been codified by the establishment of the three supervisory agencies[18], the European Supervisory Authorities (European Banking Authority, European Securities and Markets Authority, and EIOPA), in combination with the Treaty of Lisbon. This Treaty distinguishes between legislative acts and non-legislative acts.[19] Among other things, the introduction of Article 290 TFEU is relevant in this regard because the power to adopt non-legislative acts of general purport, to supplement or amend certain non-essential elements of the legislative act, may be delegated to the European Commission.[20]

In many cases this means that that EIOPA writes the draft versions (of the delegated acts and acts of implementation on the basis of Articles 290 and 291 TFEU[21]) and the European Commission will subsequently (formally) adopt these acts (also referred to as "level 2.5"). Under the measures of the European Commission and EIOPA, it seems that the current draft of the IORP II Directive does not provide any new funding requirements, but for the present it should not be ruled out that developments may yet occur on this point. In this regard it can, for example, be noted that the text of Article 30 of the draft IORP II Directive empowers the European Commission to adopt acts of implementation in instances "beyond those foreseen in this Directive".

"Beyond those foreseen", could mean that the EC could enact further prudential requirements.[22] This is again confirmed by maintaining in IORP II the former recital from the current IORP (I) Directive. This reads:

"In many cases, it could be the sponsoring undertaking and not the institution itself that either covers any biometric risk or guarantees certain benefits or investment performance. However, in some cases, it is the institution itself which provides such cover or guarantees and the sponsor's obligations are generally exhausted by paying the necessary contributions. In these circumstances, the products offered are similar to those of life-assurance companies and the institutions concerned should hold at least the same additional own funds as life-assurance companies."[23]

We note that recent European case law has shown that the solvency of pension funds could also have consequences for the position and liability of the Member States (or their government bodies (or the supervisory authorities)), with the possible attendant financial consequences.[24] In

14 *These were also the legal bases of the IORP Directive in 2003.*
15 *See Article 153(2) TFEU.*
16 *ECJ, 14 January 2010, Case C-343/08, Commission v Czech Republic.*
17 *Cf. H. van Meerten, J. van Haersolte, 'Zelfrijzend Europees bakmeel: de voorstellen voor een nieuw financieel toezicht', Nederlands Tijdschrift voor Europees Recht, 2, 2010 (in Dutch).*
18 *M. Rötting, C. Lang, 'Das Lamfalussy-Verfahren im Umfeld der Neuordnung der europäischen Finanzaufsichtsstrukturen', Europäische Zeitschrift für Wirtschaftsrecht (23) 2012-1, p. 8-14 (in German).*
19 *A concise account of how this relates to the Lamfalussy -structure is given by: H. van Meerten and A. Ottow, 'The proposals for the European Supervisory Authorities: the right (legal) way forward?', Tijdschrift voor Financieel Recht, January 2010.*
20 *M. Charmon, 'Comitologie onder het Verdrag van Lissabon', Tijdschrift voor Europees en Economisch Recht, 2013, 2 (in Dutch).*
21 *This authority is usually stated in the directive itself.*
22 *The relevant provision of Article 30 of the draft IORP II Directive reads: "The delegated act shall not impose additional funding requirements beyond those foreseen in this Directive" –this to our view could imply that other requirements (other than funding requirements as such) could be introduced by the European Commission, for example requirements as to the calculation methods or composition of the relevant funding of an IORP.*
23 *Recital 29 of the IORP II Proposal, copying recital 30 of the current IORP Directive.*
24 *ECJ, 25 April 2013, Case C-398/11, Hogan. In essence, in its decision in the Hogan case the European Court of Justice in Luxembourg ruled that, if an employer is insolvent, there must be a minimum guarantee for the members of the occupational pension schemes. If the value of retirement benefits falls to less than 49% of the benefits originally promised, the Member State can, (partly) on the basis of the Insolvency Directive (2008/94/EC), be liable for the shortfall.*

our view, this could also be a reason to further develop the role of the European Commission and EIOPA in this context.

The third and last general point of note concerns the observations on subsidiarity. The European Commission is of the opinion that "Member States […] *will* not: (i) remove obstacles to cross-border activities of IORPs (ii) ensure a higher EU-wide minimum level of consumer protection; (iii) take into account positive externalities from scale economies, risk diversification and innovation inherent to cross-border activity; (iv) avoid regulatory arbitrage between financial services sectors; (v) avoid regulatory arbitrage between Member States; and (vi) take into account the interest of cross-border workers."[25]

Regarding these points, according to the European Commission the removal of obstacles to *cross-border activities* cannot be left to the Member States, and implementation of the IORP II Directive is therefore necessary.

2.2.2 Specific aspects

In what follows we examine a number of specific aspects of the IORP II Proposal.

(i) Cross-border activity

Article 16(3) of the current IORP (I) Directive provides the following:

"In the event of cross-border activity […], the technical provisions shall at all times be fully funded in respect of the total range of pension schemes operated. If these conditions are not met, the competent authorities of the home Member State shall intervene […]."

Many in the European pension market consider this "fully funded" requirement as one of the greatest obstacles facing IORPs in developing *cross-border activities* between Member States. The fact is that, if a pension scheme is not fully funded, contributing companies simply cannot transfer it to an implementing institution in other Member States. Given the problematic state of, for example, many Dutch and English pension funds, this requirement would at least constitute a potential obstruction. Although the "fully funded" requirement had been removed from a previously leaked draft of the IORP II Proposal, it nevertheless appears to have been retained in the recent proposal of the European Commission.

It is still unclear what "in respect of the total range of pension schemes operated" means. It could mean that that host schemes can be underfunded and home schemes cannot (as long as the total range is fully funded) and vice versa. It is also unclear whether "fully funded" means the *moment* of transfer of the scheme, or does it also apply when the scheme has already been transferred? Once it has been transferred, Member States might allow an institution, for a limited period of time, to have insufficient assets to cover the technical provisions.[26]

Unfortunately, the explanatory memoranda attached to the original proposal for the IORP Directive of 2003 and (also) to the current IORP II Proposal do not shed light on this.[27]

On the other hand, the definition of "cross-border" has been clarified in the IORP II Proposal in the sense that, in classifying an activity as a cross-border activity, it seems that the basic premise whereby the applicable social and labour law of a pension scheme differs from the jurisdiction in which the IORP is established, has been adhered to; this means, for example, that under the text of the IORP II Proposal, the situation in which a contributing company and the IORP are in the same Member State qualifies as a "cross-border activity" specifically when the members of the pension plan in question are in a different Member State.[28] A striking aspect of this is that, in principle, the host country (i.e. the jurisdiction in which the IORP is established) plays a leading role, whereby intensive information-exchange and approval procedures between the home and host countries should be avoided.[29]

In addition, a provision has been added to Article 13 regulating the transfer of pension schemes from one IORP to another IORP.[30] The aforementioned new articles of the draft IORP II Directive thus contain improved provisions on how a cross-border activity should be established.

(ii) Social and labour law and prudential supervision

It may be concluded from the current IORP Directive that the realisation of "social and labour law" is virtually an exclusive authority of the Member States.[31] This is, in principle, in line with the aforementioned basis of the IORP Directive under the TFEU, which, after all, aims to elaborate relevant provisions on free movement in establishing an internal market – and which do not, therefore, (primarily) concern the development of social protection or measures relating to employment terms. The system of the directive is also, therefore, that the pension scheme is regulated by the social and labour law of the country in which the member of the pension scheme maintains an employment relationship. In addition, under the current IORP Directive the institutions (the IORPs) are regulated by the prudential law of the country in which the IORP is established, with the Member State in question having to comply with certain basic norms set out in the IORP Directive. The IORP Directive contained little or nothing regulating social and labour law.

A striking innovation in the IORP II Directive is, therefore, the list of prudential requirements in Article 60 of the draft:

"Member States shall ensure that institutions for occupational retirement provision are subject to prudential supervision including the supervision of the following:

a) conditions of operation
b) technical provisions
c) funding of technical provisions
d) regulatory own funds
e) available solvency margin

25 *See paragraph 3.2 of the "Explanatory Memorandum" (page 6) of the European Commission to the IORP II Proposal.*
26 *Article 16 of the current IORP (I) Directive and (also sustained in) Article 15 of the draft IORP II Directive.*
27 *For IORP I see, COM (2000) 507, final, Brussels, 11.10.2000, 2000/0260 (COD) and for IORP II, op. cit.*
28 *See commentary to Article 12, in paragraph 3.4 of the "Explanatory Memorandum" (page 7) of the European Commission to the IORP II Proposal.*
29 *Under the current applicable regime in respect of the IORP (I) Directive, this cooperation is further elaborated in the so-called "Budapest-protocol": Protocol Relating to the Collaboration of the Relevant Competent Authorities of the Member States of the European Union in particular in the Application of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs) Operating Cross-Border Activity, CEIOPS-DOC-08-06 Rev1, 30 October 2009.*
30 *See Article 13 of the draft IORP II Directive.*
31 *See inter alia Recital 37 of the directive. The extent to which this can genuinely be seen as an "exclusive" authority is doubtful. In this area, for example, only the European anti-discrimination prohibition of Article 12 TFEU is itself applicable to the national legal order.*

f) required solvency margin
g) investment rules
h) investment management
i) conditions governing activities; and
j) information to be provided to competent authorities"

By formulating the required (basic) framework for prudential supervision, it can be said that legal uncertainty is avoided in this area, because it means that Member States will no longer be able to create *de facto* national obstacles (or will less easily be able to do so than under the text of the current IORP Directive) by imposing (obvious) prudential requirements on the basis of (local) social and labour law, thus frustrating the objective of the IORP Directive in this regard. That is a step in the right direction. In the Netherlands, for instance, there was for some time the possibility of applying social and labour law to the relevant Dutch prudential rules, i.e. the Financial Assessment Framework (*Financieel Toetsingskader*).[32] That seems now to have been made impossible.

(iii) Investment rules

As explained in section (i) above, it will be made easier to place pension schemes abroad. Recital 24 states that everyone should be able transfer pension schemes across borders, subject only to authorisation from the competent authority in the receiving Member State. If, therefore, a Dutch scheme is transferred to a Belgian IORP, the Belgian supervisory authority may prevent that happening whilst the Dutch supervisory authority may not. The authorisation of the fund's interested parties is, however, required, insofar as this is required by Dutch law; withdrawal from an obligatory sectoral fund is still not allowed.[33]

In this example, the Netherlands may not, in addition, impose any extra information requirements, any extra restrictions on investment policy, or any prudential requirements on the Belgian IORP; that supervision is in the hands of the Belgian authorities. According to Article 20, the host Member State may not impose any additional investment rules on the home Member State.

In this example, the Belgian IORP must, in the Netherlands, comply with the Dutch social and labour laws, but these may not include any extra prudential rules. If social legislation is infringed, then the Dutch Central Bank (*De Nederlandsche Bank* ("DNB")) must inform the Belgian authorities, which must enforce this legislation. Only then may DNB intervene.[34]

3. Tax aspects

In general, the different tax treatment of pension schemes in the Member States concerned is also seen as a considerable obstacle to establishing a common pension market in the EU. In practice it can, for example, be difficult for a pension scheme, designed according to the law of one Member State, to comply with the requirements for applying a tax facility in another Member State. And in some cases the operation of various tax regimes of various Member States can, for example, result in double taxation because both the country where the member of the pension scheme (formerly) worked and the country where that recipient of retirement benefits (currently) lives, taxes the income (as the pension is accrued in a different Member State from the one in which (following emigration) retirement benefits are received). In practice, double taxation in such cases can only be prevented (or mitigated) if the Member States in question have concluded a treaty to prevent double taxation. Apart from the treatment of pension schemes, the tax treatment of the pension entities themselves (which may qualify as IORPs) also plays a role. Pension entities are often accorded tax-favourable treatment, for instance an exemption from income and capital gains taxation. Facilities that can limit taxation are also often applicable to the entities in which the pension institutions invest (e.g. investment funds). Given the fact that investments are often made across borders and investment structures are thus subject to various tax regimes, international investment structures in particular (also within the EU) are far from always being entirely tax-neutral.[35]

The tax aspects are left intact under both the current IORP Directive and the IORP II Proposal. The fact is that under the TFEU taxation is, in principle, the exclusive domain of the Member States, with harmonising measures only being permissible if they are adopted unanimously.[36] On the other hand, under the TFEU the national tax policy and legislation of the Member States must be in accordance with the provisions on free movement, thus safeguarding the basic premise that cross-border activities and purely national activities be accorded equal treatment (including equal tax treatment). This means, for example, that the payment of pension contributions to an IORP established in another Member State must come under the same tax facility as the payment of pension contributions to a local IORP. On the other hand, double taxation (of, for example, retirement benefits received) cannot therefore, in principle, be avoided in all cases.[37] In the past, the EC has taken initiatives to achieve further harmonisation on the taxing of pensions, but it has not yet adopted any more far-reaching measures.[38]

4. Personal Pension Plan and possible roadmap for a solution

At the beginning of 2014, the EIOPA issued a voluminous and impressive report (referred to above) entitled the "Personal Pension Plan (PPP)".

It seemed that the reporters had had some difficulties in establishing a good legal definition of a PPP.

The OECD's definition of a "private pension plan"[39] and EIOPA's initial definition of a PPP[40] differed considerably. The perspectives of the various stakeholders also differed widely. The difficulty of defining a PPP is also reflected in the wide-ranging legal/regulatory design and tax requirements of PPPs in various jurisdictions.

32 *See, for example, the plans of the Dutch policymakers regarding the developments of a new pension vehicle (the General Pension Institution) (Algemene Pensioeninstelling), www.internetconsultatie.nl.*
33 *M. van Wijk, in collaboration with H. van Meerten in an analysis in het Financiële Dagblad, 10 April 2014 (in Dutch).*
34 *See Articles 12 and 13 of the draft IORP II Directive.*
35 *Cf. the observations regarding the UCITS in the EIOPA PPP report, pp. 34-35. In this regard see also, for example, P. Borsjé, W. Specken, 'Taxation and Cross-Border Pooling in the EU Pension Sector: From UCITS to IORP', Derivatives & Financial Instruments 15 – 2013, pp. 27-34.*
36 *See, for example, Article 114 paragraph 2 TFEU.*
37 *(Additional) taxation that is imposed when the value of pension entitlements is, upon emigration, transferred to another Member State can also pose an obstruction to worker mobility within the internal market. Nor does the current proposal for the Portability Directive (Amended proposal for a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights, COM/2007/0603 final – COD 2005/0214), provide (full) protection.*
38 *See, for example, the communication from the European Commission entitled "The elimination of tax obstacles to the cross-border provision of occupational pensions", COM (2001) 214, 19 April 2001.*
39 *http://www.oecd.org/finance/private%19pensions/38356329.pdf*
40 *"PPP _ a pension plan that hosts members only on an individual basis.", see paragraph 37, p. 11 EIOPA PPP report.*

In EIOPA's PPP report it has now been decided to examine the following definition and to refine it to a greater degree:

"Products which under national law are recognised as having the primary purpose of providing the investor an income in retirement and which entitles the member to certain benefits."[41]

In this regard, EIOPA notes that the term "investor" must be replaced by a "more suitable term" and that a PPP is always understood to be a "funded product" and that, in principle, a PPP is established on the basis of an agreement between a "provider" and an "individual".[42]

More specifically, a Member State's recognition of a pension plan which has been established under the regime of another Member State can present problems in practice.[43] In principle, this could be resolved if, when designing a pension plan, the (common) legal and tax requirements of the different Member States are adhered to as far as possible. In the literature, it has been pointed out in the past that there certainly are practical possibilities in this regard, including, for example, a flexible DC-plan.[44] The EIOPA PPP report also refers to this.[45] To promote mutual recognition and equal legal and (facilitated) tax treatment of plans originally established under the laws of another Member State, it might be an idea to develop a kind of 'standard' EU pension plan in which, in our view, it makes no difference at all whether the plan in question qualifies as "occupational" in the Second Pillar or "personal" in the Third Pillar.[46] A PPP could thereby qualify as a "29th" or "second" regime; a completely optional regime, in additional to the existing legal systems of the Member States.[47]

We would also like to put the case for initiating such a second regime, initially on the basis of a "communication" or a "recommendation" (i.e. "soft law"); since, in principle, a measure of this sort can be adopted more quickly by the EC (in collaboration with EIOPA), it could provide a further stimulus for the European pension market in the short term. We would like to remind that there are many examples of soft law sorting legal effect. In general, recommendations are in principle deprived of legally binding force (as reflected in Article 288 TFEU), but the ECJ considered that this did not mean that they were deprived of legal effects as well:

"However, national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular where they are capable of casting light on the interpretation of other provisions of national or Community law."[48]

The EU Courts note that soft law instruments lay down rules of conduct that are binding on the institutions and Member States because they create legitimate expectations, enhance legal certainty, equality, ensure the respect of human rights and non-retroactivity of laws.[49] Furthermore, in the field of competition law, there are many examples of soft law sorting legal effect. [50]

Along with this a (parallel) procedure could eventually be developed to incorporate elements of such a second regime into a directive or regulation, thereby expediting the requisite further cooperation and coordination between the Member States. Insofar as the second regime can be termed a flexible financial product, the Member States would have to be able to facilitate the applicability of the second regime to their own social and labour law. Here, too, formulating a second regime with the information and transparency requirements envisaged in the draft IORP II Proposal could also be brought into line with this.

The flexibility of the second regime plan in question should then make it possible for the ultimate *status* of a particular (pension) implementing body not to have to be decisive in this regard (if sufficient safeguards are provided). We believe that, for example, a flexible DC plan can, in accordance with the legal character of the local pension system of the Member State in question, be transferred to a (more traditional) pension fund or insurer, but also, for example, to an investment fund (or similar) entity with an asset manager and separate custodian, whereby the framework of the IORP Directive, the Solvency Directive or perhaps even the UCITS Directive (or in combination with this directive) can provide the specific regulatory framework for the entity in question. In this regard it should be noted that it was precisely in relation to the application of the *VAT exemption on management services rendered to special investment funds*, that the European Court of Justice recently ruled that the character of a DC pension entity can be so similar to a UCITS that a DC pension entity can also be entitled to this VAT exemption.[51] It should be borne in mind here that this exemption under the VAT Directive in fact served to limit the VAT burden on the manager for the collective asset management for entities qualifying as a UCITS, or entities that are *sufficiently similar* to the characteristics and activities of a UCITS.[52]

Regarding the flexibility outlined above, a distinction will in certain cases have to be made between the accrual phase of the plan and the benefits phase whereby, if the pension has, for example, been accrued via a UCITS, the benefits phase can be administered by a suitably equipped party (e.g. an insurer or perhaps a relevant IORP).[53]

5. The Charter

Since 1 December 2009, the Charter of Fundamental Rights of the European Union (hereinafter: the Charter) has legally binding force and, as discussed in the literature, can have direct legal effect in national disputes between individuals in proceedings before the courts of the EU, provided the dispute falls within the scope of Article 51 of the Charter.[54]

It can be inferred from a number of judgments[55] that the conditions of Article 51 paragraph 1 Charter are fulfilled when a national regulation (1)

41 *See paragraph 54, p. 14 of the EIOPA PPP report. This definition was taken from the European Council as used in "Proposal for a Regulation on key information documents for packaged retail investment" Document 11430/13, 24 June 2013, http://register.consilium.europa.eu/pdf/en/13/st11/st11430.en13.pdf.*

42 *Here EIOPA also inserts the comment: "This does not necessarily exclude products where an employer also makes contributions into the product".*

43 *In our view, the recognition of pension plans of (temporarily) transferred workers follows from the operation of the so-called "Safeguarding Directive" (Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community).*

44 *H. van Meerten, B. Starink, 'Cross-Border Obstacles and Solutions for Pan-European Pensions', EC Tax review, 2011-1.*

45 *See paragraph 613, EIOPA PPP report.*

46 *We note that for example in respect of the UCITS entities, recent EU Court rulings may give room for the development of the mutual recognition and (a consequently) equal tax treatment of UCITS on the basis of its common EU regulatory framework with reference to the free movement provisions under the TFEU, as argued in P. Borsjé, W. Specken, op. cit.; see in this respect ECJ in Santander, 10 May 2012, joined Cases C-338/11 to C-347/11; cf. also EMS of DFA Investment Trust Company-case, 10 April 2014, Case C-190/12. A similar development might be anticipated as to the equal tax treatment of a PPP on the basis of a common EU regulatory framework, i.e. such as a contemplated under a "29th" or "second" regime.*

47 *Cf. furthermore also G. Dietvorst's proposal: 'Proposal for a pension model with a compensating layer', EC Tax review, 2007-3.*

48 *See ECJ, 13 December 1989, Case C-322/88, Grimaldi, paragraph 18.*

49 *O. Stefan, Soft Law in Court Competition Law, State Aid and the Court of Justice of the European Union. Deventer: Kluwer, 2013.*

50 *An interesting overview is written by AG Kokott in her opinion of 6 September 2012 to ECJ, Case C-226/11, Expedia.*

51 *ECJ, 13 March 2014, Case C-464/12, ATP Pension Service A/S v. Skatteministeriet.*

52 *See Article 135(10)(g) of Directive 2006/112/EC.*

53 *Preferably, in our view, the alternative of continuing investment activities in the benefits phase, too, could be opted for.*

54 *M. A. Fierstra, 'Åkerberg Fransson: ruim toepassingsgebied van Handvest op handelingen van lidstaten', NTER, 6, 2013 (in Dutch).*

55 *Inter alia ECJ, 13 July 1989, Case C-5/88, Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft and 26 February 2013, Case C-617/10, Åklagaren vs Hans Åkerberg Fransson.*

transposes EU law or (2) "otherwise" makes reference to EU law. The Charter applies primarily to the institutions and bodies of the Union, but also to Member States when they act in the context of Community law.

The scope of the Charter is rather broad.[56] Next to the European Convention of Human Rights (ECRM), under the competence of the European Court for Human Rights at Strasbourg, pension beneficiaries across the EU can directly invoke the Charter, with the ECJ in Luxembourg, when their fundamental rights would be violated. This route is not so much highlighted yet.

An interesting Article to mention here is Article 17 Charter:

"Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest".

For example, pension beneficiares whose rights have somehow been cut, could invoke this article. The explanatory memorandum of the Charter states that the meaning and scope of the right are "the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there."[57] It might be worthwhile to investigate whether this is actually the case. There are many cases known where the ECJ offers different – and potentially more far reaching – protection than the Court of the ECHR in Strasbourg.[58]

In connection with the above it should also be considered that Article 25 of the Charter contains a specific provision to protect the rights of the elderly:

"The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life."

To ensure such "dignity" and "independence" of the elderly, and their ability "to participate in social and cultural life", Article 25 of the Charter can be understood to include the relevant arrangements facilitating certain basic pension provisions.[59]

The Charter therefore to our view holds the general (social) framework and commitment of the European Union and its Member States to establish at least a basic and in any case sustainable pension provision for the elderly within the EU.

6. European Pensions Union

The development of a European second regime for a PPP can, in combination with the revision of the current IORP Directive and the general (social) framework of the the Charter, form the basis for a *European Pensions Union*. We have already discussed above the fact that, for the present, the revision of the IORP II Directive is not focused on elaborating further solvency requirements for IORPs. That also seems to be of lesser relevance in the promotion of a cross-border DC plan. If the IORP II continues in the current direction, with additional requirements apparently only being established with regard to the manner in which the plan is to be implemented, additional requirements as to the solvency or legal design of the IORP vehicle that implements the plan could be of lesser importance. It could be sufficient for the institution itself to elaborate and adopt the relevant information and governance requirements under the IORP II Directive, with consideration also having to be given to the role that could be played by insurers and investment entities – and any other possible (financial) service providers, such as banks – in accordance with the obligations that these parties have under the relevant European regulations and directives. This, in our view, would enable the outline of a future European Pensions Union to slowly, but effectively, be drawn up.

Consistent with the structure of a European Union, a European second regime pension plan would actually provide protection to members of European pension schemes in accruing pensions and enjoying retirement benefits. It would also provide support to the pension sector and internationally operating companies with regard to cross-border activities. More generally, this would also benefit Europe's economic stability and social objectives.

7. Conclusion

Establishing (gradually, in our view) a European Pensions Union in which the pension law of the Member States would be provided with a stronger European framework and a clearer (basic) norm, introduced through a second regime for a PPP, in combination with a revised IORP Directive, would be a welcome development.

This could, for example, preclude the situation in which retirement provisions are insufficiently facilitated or even negligently managed in a European Member State (other than the one in which pensions were accrued) with the attendant adverse socio-political consequences in the Member State concerned. Potential economic (and social) problems of this sort would also entail risks for the state budget in question, which in turn could have consequences on the European financial system as a whole.

The pension matters therefore call for a European approach, and the first steps have been undertaken to laying the foundations of a European Pensions Union.

56 *Fierstra, op. cit.*
57 *CHARTE 4473/00.*
58 *For an analysis of the Charter, see: D. Sarmiento, 'Who's afraid of the Charter? The Court of Justice, national courts and the new framework of fundamental rights protection in Europe', Common Market Law Review, 5, 2013, pp. 1267–1304.*
59 *It might for example also be further investigated whether the Charter provisions could mitigate the double taxation issues that might arise for pensioners in cross-border situations as set out above; we do not rule out that the Charter can be successfully invoked by a pensioner, and could at least mitigate the effects of double taxation, preventing the (complete) erosion of a basic pension benefit.*

Personal pensions in the EU: the case for establishing a second regime

*Ambrogio Rinaldi**

1. Introduction and general background

Pension policies and reforms have a number of overarching objectives (adequacy, financial sustainability, coverage, fairness…)[1] and have to manage trade-offs between these objectives. Multi-pillar pension systems, with a funded component that is put beside the unfunded, PAYG public component, are considered to be sounder and more resilient to shocks of different nature than single-pillar, PAYG only, pension systems.

In particular, in the context of ageing populations multi-pillar systems are better suited to achieve the objective of financial sustainability, as the funded component helps financing retirement benefits for larger cohorts of retirees, against a labour force that is not increasing at the same pace (or is even shrinking). Funded schemes improve adequacy as well, integrating retirement income from PAYG schemes through additional resources and/or through returns that are usually largely uncorrelated with the indexation mechanisms set for unfunded schemes[2].

It is worth noting that, for the purposes stated above, a diversification that occurs in the dimension "unfunded/funded" is more important than one in the dimension "public/occupational/personal". Indeed, the latter dimension has mainly to do with the allocation of responsibilities and risks among the different actors; the unfunded/funded dimension, more basically, has to do with the (public and private) inter-temporal budgeting and financing of retirement needs and their interaction with the dynamics of the population and the workforce.

Across the EU, the role played by funded pension schemes is diverse. Only few countries have well developed, funded occupational pensions, sometimes with relatively small PAYG arrangements, providing for only basic retirement benefits. A group of Central and Eastern European (CEE) countries introduced the so-called first pillar-bis schemes: funded schemes based on individual accounts typically financed by contributions diverted from PAYG schemes. The diffusion of voluntary, personal pension schemes is scattered across the EU and anyway their importance is quite limited in term of assets and members.

Recent developments in the EU countries regarding funded schemes are also mixed and often not positive. The introduction of auto-enrolment in work-based pension schemes has so far worked well in the UK, but not as well in Italy. In some CEE countries, the reforms that introduced first pillar-bis schemes have been reversed, and contribution flows as well as accumulated assets have been diverted to public PAYG schemes[3]. Some public reserve funds created in the social security context in order to finance pensions to be paid in the future decades were used for other purposes in the context of the great financial crisis of 2008-11.

2. Looking for a more effective role of the EU for the development of funded pension schemes

Although the design of national pension systems is left to the responsibility of individual countries, pension policies are increasingly gaining relevance at EU level. National pension strategies and reforms are periodically assessed through the so-called Open Method of Coordination. In addition, the implications of national pension policies and reforms for the public budgets are considered in the framework of the Stability and Growth Pact (SGP).

In principle, the EU institutions do favour the establishment of multi-pillar systems and funded pension schemes (for instance, see the European Commission White Paper on Pensions published in February 2012). Unfortunately, in the context of the calculation of the public budget deficit that is relevant for the SGP, the treatment of contributions paid to funded pension schemes is very unfavourable in comparison to contributions paid to unfunded, public PAYG schemes. If the EU truly wants to favour the development of

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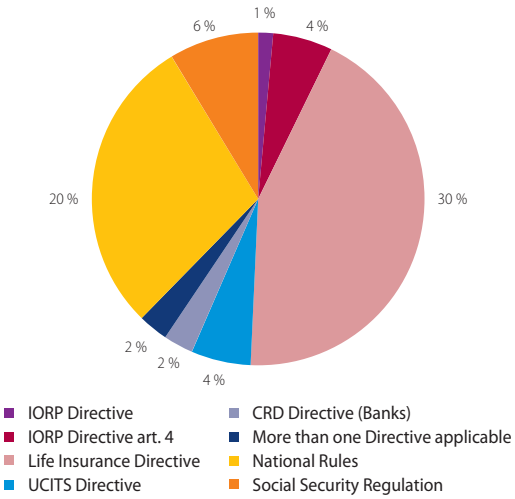
1 *See OECD, Pensions at a glance 2013, chapter 1 . See also Rinaldi A., Major Trends in Pension Reforms, presentation made at the 6th World Bank Conference on Savings and Pensions, April 2014, Washington DC, available on the World Bank website.*

2 *The famous World Bank book Averting the old-age crisis, published in 1994, holds the prime for arguing in favour of multi-pillar systems. See also European Commission (2012), White Paper: an Agenda for Adequate, Safe and Sustainable Pensions.*

3 *See World Bank (2013), Reversals and Reduction, Resolution and Reform. Lessons from the Financial Crisis in Europe and Central Asia to Improve Outcomes from Mandatory Private Pensions.*

Personal Pensions in place in the EU countries classified according to the applicable EU or National Rules



Source: EIOPA Pensions Database.

multi-pillar systems, such arrangements should be reviewed[4].

In the field of occupational pensions, the EU did set a harmonized framework already in 2003, with the IORP Directive. However, the effect of the Directive in terms of favouring the development of occupational schemes has been dubious. One may argue that any growth of occupational pensions that took place in the EU after 2003 was independent of the IORP Directive and would have occurred anyway. In particular, the Directive hardly had any effect in terms of the development of cross-border activity[5].

In March 2014 the European Commission finally published its proposal of revision of the IORP Directive. For the time being, the Commission has put aside its original intention to propose the introduction for occupational pensions of harmonized solvency requirements inspired to the "Solvency II" rules applicable to insurance undertakings. However, in terms of the future development of occupational pensions and in particular of their cross-border activity, this choice is not likely to have any significant effect. Indeed, there is very little appetite for any pan-European development of defined benefit (DB) pension funds. Indeed, one may argue that the harmonization of solvency rules is not worth the effort: it may be just too complex to try to take into account appropriately all the different security mechanisms that are in place across the EU countries.

The proposal of revision of the IORP Directive focuses on the strengthening of governance rules and on the harmonization of requirements for the information to be given to members. For the time being, the impact of a revised IORP directive on the potential for future growth of funded, occupational, pension schemes is difficult to assess. Anyway, not in all EU countries occupational pensions are the most promising vehicle for the diffusion of funded pension schemes supplementing the PAYG pension pillar.

Indeed, there are differences in the labour market structure of EU countries that have an obvious impact of the relative potential for growth of occupational vs personal pensions. These differences include the role of trade unions, the stability of employment, the diffusion of self-employment. In some EU countries, personal pensions could actually have a stronger potential for growth. For instance, this is probably the case of the CEE countries, where first pillar-bis schemes were introduced, indeed based on individual accounts and with no linkage to an employment relationship.

3. Overview of personal pensions in the EU

Therefore, personal pensions indeed represent a crucial element for the development of funded pension schemes in a number of EU countries. In this field, it should be recognized that a comprehensive EU-wide regulation is already in place for several types of personal pension schemes. According to the EIOPA Pensions Database, in the European countries 60 different "kinds" of personal pension schemes can be counted, half of which fall under the scope of insurance directives. Among the 20 types of schemes that are established on the basis of national rules, many are anyway inspired by EU legislation.

Despite the EU framework already in place, the diffusion of personal pensions is limited in most European countries[6]. This is due to a number of factors, including the limited need for personal pensions in countries where PAYG schemes are relatively generous or occupational pensions are well developed. Nevertheless, there are indeed countries where important portions of the workforce are in a clear need to supplement the retirement income expected from PAYG schemes. Countries that introduced first pillar-bis schemes aimed exactly at fulfilling that need, though with mixed results – especially in their ability to keep costs low (a fundamental precondition to ensure satisfactory net returns).

Indeed, in the personal pensions field a sort of collective, EU-wide regulatory failure seems to occur. On the one hand, the EU legislation in place has not been able to favour the development of an ample single market, economies of scale, critical mass and competition. On the other hand, national legislations, especially those introducing pension reforms based on first pillar bis schemes, have segmented national markets making economies of scale impossible to achieve. In addition, in most cases they have not satisfactorily addressed the issue of designing in a cost-effective way the distribution of personal pensions and the collection of contributions – thus exposing the reforms to serious criticism and, finally, in some cases, to their reversal.

4 See again World Bank (2013), that explicitly mentions the rules of the SGP as factor contributing to the reversals of reforms in Eastern Europe.

5 Currently, only about 80 IORPs have notified the intention to carry some cross-border activity. The quantitative relevance in terms of assets/members of this cross-border activity is very limited.

6 Unfortunately, comprehensive EU statistics on the diffusion and volumes of personal pensions are not available.

4. Another Directive, or a "second regime" for personal pensions in the EU?

What could the EU do to favour the diffusion of personal pensions and by this way the strengthening of the funded component of pension systems? In principle, there are two instruments available[7]:

a) a EU directive, applicable to the personal pension schemes that currently not fall in the scope of any EU legislation;
b) a so-called "second regime": an EU regulation defining a set of standards that a product has to comply with in order to qualify as an "EU personal pension plan". This second regime would be put in place in parallel with the existing regulations, both at the EU and national levels. Pension plans compliant with the second regime could be set up by a number of different institutions (such as insurance undertakings, asset management companies, banks, IORPs), provided that they are subject to prudential regulation at EU level.

A new EU Directive, targeted to regulating the personal pension plans that currently do not fall in the scope of any EU regulation, could aim at levelling the playing field for all kinds of personal pensions; in particular, it would create the preconditions for cross-border activity also for the schemes currently regulated only at national level. However, as it should include in its scope of application a wide range of personal pension schemes, such a Directive would necessarily adopt a wide definition of personal pensions, and therefore would not be able to address appropriately the issue of creating economies of scale and critical mass.

A second regime would indeed be more promising for achieving economies of scale and critical mass. However, in order to do so, it should require an appropriately high level of standardization. Such a second regime would indeed favour comparison and cost competition. In addition, it could have an important impact of the organization of distribution, making cost-effective "non-personalized" channels practicable (workplace, internet, auction systems, etc.) – and could indeed facilitate the definition and introduction of suitable defaults, first of all for the choice of the investment option.

This second regime, even if highly standardized, would not in itself limit product innovation, as it is designed to co-exist in parallel with the personal pension schemes that are regulated under other EU or national rules – both the current and the future (possibly innovative) ones.

The standards set for a second regime in the field of personal pensions could play the role of a benchmark also for other kinds of schemes. With no prejudice for the subsidiarity principle, interested countries could decide to design first pillar-bis schemes in compliance with the standards of the European second regime – thus taking advantage of economies of scale and lower costs. A similar process of voluntary adoption of the standards of a second regime set for personal pensions could occur also for occupational pensions – indeed, occupational pension schemes based on defined contributions often are already organized on the basis of individual accounts, similarly to personal pensions.

Besides all that, it is worth noting that the introduction of a second regime is not incompatible with the introduction of a Directive applicable to all personal pension schemes currently not covered by any EU legislation. In other words, the two regulatory instruments are not mutually exclusive. However, they should be seen as aiming at different purposes. A Directive would be more useful in order to level the playing field and harmonize consumer protection; a second regime would be more useful in order to develop low-cost products, economies of scale and a wider diffusion of funded pensions.

5. Elements of a second regime

In this short note, it is not possible to discuss in detail the contents of a possible second regime for personal pensions. Anyway, it is useful to propose some basic, overarching principles that could offer guidance for the good design of a second regime[8]:

a) provide an appropriately high level of standardization;
b) make things simple for members;
c) put emphasis on the length of the time horizon available for investments;
d) keep costs low;
e) do not discriminate across suitable pension providers.

Taking stock of these principles, specific standards should be defined first of all in the areas of investment choice and communication to members. In particular, a well-designed default option should be set. Good candidates for it are life-cycle investment options that modify the asset allocation as a function of the age of the member or the time left before retirement. For those who do not see the default option as suitable to them, the possibility to opt-out should be ensured, and a limited range of investment options should be offered.

A crucial point is how to define a standard for communicating to members the risk-reward profile of these different investment options. Labelling investment options in terms of their risk-return profile is tricky for pension plans. Indeed, the relative ranking may vary as a function of the length of the investment horizon of the holder and may not be an objective characteristic of the option itself. It would therefore be useful that communication standards on this aspect make appropriate reference to different holding horizons[9].

Governance and administration is a third area that may deserve the definition of standards for the second regime. However, it is unclear whether the standards set up in general for the admissible

7 *A more detailed discussion of the two options is contained in the EIOPA Report Towards an EU-single market for personal pensions, published in February 2014.*
8 *Inspiration is taken from OECD (2012), The OECD Roadmap for the good design of defined contribution pension plans. A useful contribution is also offered by EFAMA (2013): The OCERP: a Proposal for e European Personal Pension Product.*
9 *Similar reasoning have been included in the EIOPA advice to the European Commission for the revision of the IORP Directive, issued in February 2012.*

providers (as mentioned above, already subject to their specific prudential rules) have to be integrated in the case they offer pension plans that are second regime compliant.

Distribution is a fourth, very important area of attention. However, taking in mind the overarching objective of keeping costs low, standards for a second regime should avoid requiring in all cases costly personalized advice and/or assessments of suitability. Indeed, a level of standardization appropriately high and well-designed defaults could indeed ensure a sufficient level of protection already at the level of the design of the products. Indeed, for second regime personal pension plans, non-personalized distribution channels could be appropriate (e.g. internet). Even centralized automated auction systems, that select plans based on their costs and enrol individuals accordingly (with an option to opt-out), could be considered. Besides, second regime personal pension plans could be distributed on the workplace, possibly with some involvement of the employer and/or trade union representatives.

6. Conclusion

Although the design of national pension systems is left to the responsibility of individual countries, pension policies are increasingly gaining relevance at EU level. The development of multi-pillar pension systems, including a significant funded component, is encouraged by international institutions. While in many countries occupational pension schemes are best placed to fulfil this objective, in other cases personal pensions have a significant role to play. However, in order to make the diffusion of personal pensions in the population at large both desirable and feasible, low costs and economies of scale are essential. The introduction of a well-designed second regime would be a promising initiative for the future development of pension systems across many European countries.

Ochrana spotrebiteľa v oblasti osobných dôchodkov

*Júlia Čillíková**

Téma ochrany spotrebiteľa rezonuje v celej spoločnosti a v oblasti finančného trhu možno ešte intenzívnejšie. Jedným z dôvodov je existencia asymetrie medzi informáciami a znalosťami o poskytovanej finančnej službe na strane jej poskytovateľa, napríklad banky, poisťovne či správcovskej spoločnosti, a príjemcu – spotrebiteľa, čím vzniká riziko nesprávneho výberu, t. j. výberu, ktorý nie je ideálny vzhľadom na potreby klienta a cenu služby. Spotrebiteľovi tiež mnohokrát chýbajú informácie o ponuke konkurencie. Ďalším dôvodom dôležitosti ochrany spotrebiteľa na finančnom trhu je, že z väčšiny rozhodnutí spotrebiteľa v oblasti poskytovania finančných služieb vyplývajú dlhodobé záväzky alebo očakávania. Preto považujeme primeranú ochranu spotrebiteľa finančných služieb za oprávnenú. Európska legislatíva sa už v minulosti snažila čiastkovo regulovať a harmonizovať niektoré oblasti, ako napríklad platobné služby,[1] sprostredkovanie v poisťovníctve,[2] poskytovanie finančných služieb na diaľku,[3] spotrebiteľské úvery,[4] UCITS,[5] MIFID[6] a podobne, ale vzhľadom na rozsiahlosť a rôznorodosť finančných trhov, lokálnej regulácie v tejto oblasti a rôznej finančnej gramotnosti v jednotlivých krajinách išlo o postupný proces. Slovenská republika začala systémovo riešiť koncept ochrany spotrebiteľa na finančnom trhu už v roku 2008.

Už v tom čase sa diskutovalo o rozsahu regulácie v niekoľkých rovinách. Prvou je rozsah ochrany spotrebiteľa z pohľadu subjektov poskytujúcich finančnú službu, prípadne z pohľadu produktov. Druhou rovinou bol rozsah povinností subjektov poskytujúcich službu, ako napríklad poskytnutie odbornej starostlivosti pri poskytovaní služby, dodržiavanie dobrých mravov, posúdenie vhodnosti finančnej služby, propagácia, neetické konanie, klamanie spotrebiteľa, agresívne praktiky, informačné povinnosti a podobne. V tejto súvislosti je nutné dôsledne v legislatíve zadefinovať obsah jednotlivých povinností, aby sa zabezpečila ich vymáhateľnosť. Treťou rovinou je finančné vzdelávanie, pretože bez pochopenia finančných služieb môžu spotrebitelia nesprávne vyhodnotiť svoje možnosti, ako i ponuku finančných inštitúcií. Na základe diskusií od roku 2008, ale aj skúseností z ostatných krajín možno konštatovať, že akokoľvek kvalitná regulácia vyššie uvedených okruhov sama osebe, bez ďalších súčastí, nezabezpečí primeranú ochranu spotrebiteľa.

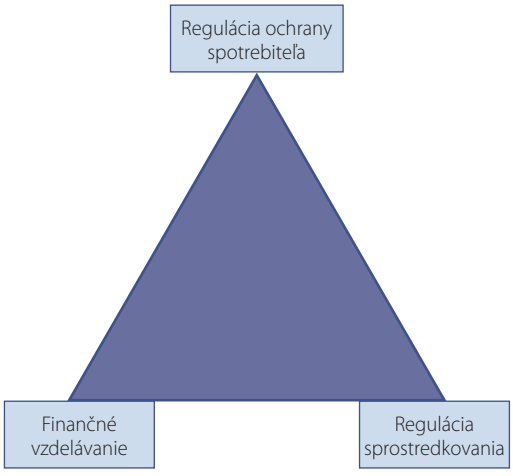
Ochranu spotrebiteľa by mal tvoriť súbor opatrení, ktoré potom ako jeden celok majú veľkú pravdepodobnosť významne zvýšiť ochranu spotrebiteľa na finančnom trhu. Tento koncept je možné vyjadriť trojuholníkom (obr. 1), v ktorom vrcholy tvoria už spomínaná regulácia finančného trhu, regulácia distribúcie produktov a primerané koncepčné finančné vzdelávanie.

Tieto segmenty majú rovnakú a nezastupiteľnú váhu a systémovo sa dopĺňajú. Takto zvolený koncept by mohol zabezpečiť na jednej strane kvalitných a zdravých poskytovateľov služieb a zároveň pre klienta garantovanie jasných a dostatočných informácií o produkte doplnené jeho primeranou schopnosťou takéto informácie pochopiť (percepčná schopnosť).

Od roku 2008 Slovensko prijalo množstvo opatrení s cieľom zvýšiť ochranu spotrebiteľa. Niektoré sú implementáciou európskej legislatívy, avšak sú oblasti, kde sme išli ďalej.

V pomyselnom trojuholníku sme najviac pokročili v regulácii sprostredkovania. Zákon č. 186/2009 Z. z. o finančnom sprostredkovaní a finančnom

Obr. 1 Koncept ochrany spotrebiteľa



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1 *Smernica Európskeho parlamentu a Rady 2007/64/ES z 13. novembra 2007 o platobných službách na vnútornom trhu, ktorou sa menia a dopĺňajú smernice 97/7/ES, 2002/65/ES, 2005/60/ES a 2006/48/ES a ktorou sa zrušuje smernica 97/5/ES (Text s významom pre EHP) (Ú. v. ES L 319, 5. 12. 2007, s. 1).*

2 *Smernica 2002/92/ES Európskeho parlamentu a Rady z 9. decembra 2002 o sprostredkovaní poistenia Ú. v. ES L 9, 15/01/2003, s. 3 – 10.*

3 *Smernica Európskeho parlamentu a Rady 2002/65/ES z 23. septembra 2002 o poskytovaní finančných služieb spotrebiteľom na diaľku a o zmene a doplnení smernice Rady 90/619/EHS a smerníc 97/7/ES a 98/27/ES (Ú. v. ES L 271, 9. 10. 2002, s. 16).*

4 *Smernica Európskeho parlamentu a Rady 2008/48/ES z 23. apríla 2008 o zmluvách o spotrebiteľskom úvere a o zrušení smernice Rady 87/102/EHS (Ú. v. ES L 133, 22. 5. 2008, s. 66).*

5 *Smernica Európskeho parlamentu a Rady 2009/65/ES 13. júla 2009 o koordinácii zákonov, iných právnych predpisov a správnych opatrení týkajúcich sa podnikov kolektívneho investovania do prevoditeľných cenných papierov (PKIPCP) (prepracované znenie) (Text s významom pre EHP)(Ú. v. ES L 302, 17. 11. 2009, s. 32).*

6 *Smernica Európskeho parlamentu a rady 2004/39/ES z 21. apríla 2004 o trhoch s finančnými nástrojmi, o zmene a doplnení smerníc Rady 85/611/EHS a 93/6/EHS a smernice Európskeho parlamentu a Rady 2000/12/ES a o zrušení smernice Rady 93/22/EHS (Ú. v. ES L 145, 30. 4. 2004, s. 1).*

poradenstve pokrývajúci všetky sektory finančného trhu zaviedol jednoznačné požiadavky na osoby ktoré môžu ponúkať finančné služby. Zaviedol minimálne požiadavky na osoby vykonávajúce sprostredkovanie a podmienky na sprostredkovanie finančnej služby, a zároveň definoval dohľad nad dodržiavaním týchto povinností. Medzi najdôležitejšie nástroje patrí požiadavka na bezúhonnosť a odbornosť (*fit and proper*) sprostredkovateľa finančných služieb, a to vymedzením minimálneho vzdelania, overením odbornosti (vykonaním skúšky) a následným udržiavaním odbornosti. Zároveň bol zavedený centrálny register sprostredkovateľov (register finančných agentov, finančných poradcov, finančných sprostredkovateľov z iného členského štátu v sektore poistenia alebo zaistenia a viazaných investičných agentov),[7] ktorý je verejne prístupný a tým sú dostupné údaje o osobách, ktoré sú oprávnené sprostredkovávať finančné produkty v jednotlivých sektoroch finančného trhu. Pre spotrebiteľa je následne veľmi jednoduché skontrolovať, či osoba, ktorá ho osloví vo veci sprostredkovania finančnej služby, je alebo nie je na to oprávnená. Ďalšou dôležitou časťou je zadefinovanie predzmluvných informácií a povinnosť takéto informácie uchovávať. Týmto nástrojom sa výrazne zjednodušilo preukazovanie kvality a vhodnosti poskytnutej služby a eliminoval sa počet problémov a nejasností pri prípadných neskorších sťažnostiach. Zadefinovanie predzmluvných informácií zatiaľ nie je definitívne a bude potrebné nájsť rovnováhu medzi poskytnutím všetkých dôležitých informácií a rozsahom týchto informácií. Ďalej bola zavedená dvojstupňová kategorizácia sprostredkovateľov vzhľadom na obrovské množstvo osôb poskytujúcich sprostredkovanie finančných služieb a časť zodpovednosti za dohľad nad plnením zákonných požiadaviek bola prenesená na trh ako taký. Tento krok pomohol k výraznému sfunkčneniu a zvýšeniu efektívnosti vymáhania zákonných povinností, pretože sa zúžil počet osôb, voči ktorým dohľad koná. Zároveň aj posilnil zodpovednosť trhu, lebo následkom preukázaného porušovania zákona je strata dôveryhodnosti a tým aj znemožnenie ďalej vykonávať sprostredkovateľskú činnosť. Ukázalo sa, že základné informácie pre klienta by sa nemali líšiť v závislosti od typu distribúcie, pretože z pohľadu klienta je dôležité, aby dostal korektné informácie, na základe ktorých sa môže rozhodnúť a následne uzavrieť zmluvu.

Skúsenosti Slovenska počas piatich rokov ukazujú, že takáto regulácia bola krokom správnym smerom a veľmi podobné diskusie teraz prebiehajú v rámci Európy, so zámerom zharmonizovať princípy poskytovania sprostredkovania finančných služieb. Aj keď na začiatku bolo zjednotenie regulácie sprostredkovania vo všetkých sektoroch považované za veľmi revolučnú myšlienku, teraz sa môžeme podeliť o naše skúsenosti v existujúcej diskusii.

Ochrana spotrebiteľa na finančnom trhu je na Slovensku opätovne predmetom diskusií a prebieha príprava komplexnej regulácie vrátane vymedzenia subjektov, ktoré budú podliehať inšpekcii, a vymedzenia rozsahu nástrojov inšpekčnej činnosti. Táto príprava sa začala v januári tohto roka, keď vláda schválila koncepciu ochrany spotrebiteľa na finančnom trhu.[8] Cieľom schválenej koncepcie je vytvoriť systém nástrojov a opatrení, ktoré povedú k vyššej ochrane spotrebiteľov na finančnom trhu. Kľúčové bude rozšírenie právomoci NBS v oblasti dohľadu nad poskytovateľmi spotrebiteľských úverov, nad ktorými v súčasnosti dohľad nevykonáva. Zároveň dôjde k zabezpečeniu výkonu inšpekčnej činnosti na finančnom trhu.

Nebankové subjekty budú po novom licencované a dohliadané Národnou bankou Slovenska. Z koncepcie teda vyplýva, že každý dohliadaný subjekt bude zároveň podliehať aj inšpekcii Národnej banky Slovenska, ktorá bude môcť preskúmať postupy danej spoločnosti voči klientovi. Vzájomným pôsobením týchto opatrení by sa malo podariť dosiahnuť lepšie podmienky a lepšie postavenie spotrebiteľov na finančnom trhu.

Súčasťou koncepcie je zriadenie tzv. jednotného kontaktného miesta, ktoré by malo zastrešovať všetky podnety klientov voči poskytovateľom finančných služieb pre celý finančný trh vrátane lízingových a nebankových spoločností. Je však potrebné uviesť, že túto úlohu Národná banka Slovenka čiastočne získala už novelou zákona o dohľade.

Koncepcia navrhuje aj zlepšenie mimosúdneho riešenia sporov medzi finančnými inštitúciami a ich klientmi so zámerom zefektívniť fungovanie systému nezávislých a nestranných rozhodcovských súdov. V oblasti finančného vzdelávania zakotvuje zámer viac spolupracovať so spotrebiteľskými združeniami, dôchodcovskými organizáciami a školami, ako aj vytvoriť funkčný a účinný systém združení na ochranu spotrebiteľa. Je však pravdou, že práve finančné vzdelávanie je v súčasnosti najslabším článkom nášho trojuholníka a bez schopnosti klienta pochopiť a vyhodnotiť informáciu je riziko zlého rozhodnutia veľmi vysoké. Finančná gramotnosť obyvateľstva je veľmi senzitívnou oblasťou a nie vždy existuje priama úmernosť medzi prostriedkami vynaloženými na finančné vzdelávanie a vedomosťami obyvateľstva.

O to väčší dôraz je potrebné klásť na ochranu spotrebiteľa v oblasti osobných dôchodkov, keďže ide nielen o dlhodobý charakter týchto produktov, ale aj o jeden zo zdrojov financovania nákladov v poproduktívnom čase jednotlivca. Novým prvkom ochrany spotrebiteľa v tejto oblasti by mohol byť štandardizovaný produkt ponúkaný klientovi pre jeho jednoduchšie rozhodovanie vzhľadom na obmedzenú finančnú gramotnosť verejnosti.

Téma osobných dôchodkov sa v poslednom období v Európe dostáva do popredia, keďže predlžujúca sa stredná dĺžka života, nižšia pôrodnosť a tým spôsobené starnutie populácie je skutočnosť, s ktorou sa jednotlivé krajiny musia postupne vysporiadať. O neudržateľnosti Bismarckovho

7 http://www.nbs.sk/sk/dohlad-nad-financnym-trhom/dohlad-nad-financnym-sprostredkovanim-a-financnym-poradenstvom/register-fa-fp

8 Koncepcia ochrany spotrebiteľov na finančnom trhu, dostupná na http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=23164

modelu sa dnes už nediskutuje a krajiny sa snažia nájsť riešenie, aký model dôchodkov by bol vhodný. Každý sa snaží nájsť riešenie, ktoré by na jednej strane zabezpečilo pre dôchodcov primerané dôchodky a na druhej strane bolo udržateľné z pohľadu verejných financií.

V tzv. starej Európe boli pôvodne bežné produkty, pri ktorých bola zmluvne garantovaná výška dôchodku (model definovaných dávok). Mnohé krízy finančných trhov a možno aj „cena", za ktorú je možné garantovať takéto produkty, však vyvolávajú potrebu zmeny týchto produktov. V posledných dekádach minulého storočia sa začali rozbiehať schémy, pri ktorých je definovaný príspevok, ktorý sa na účte klienta akumuluje, a výsledný dôchodok závisí od výnosov, ktoré boli dosiahnuté z investovaných príspevkov (model definovaných príspevkov).

Európska komisia sa tiež zaoberá udržateľnosťou dôchodkov a snaží sa nájsť spôsob, aby v existujúcom demografickom a ekonomickom prostredí zabezpečila primeranú kvalitu života svojich občanov aj po odchode na dôchodok. V tzv. Bielej knihe o dôchodkoch[9] upozornila na potrebu holistického prístupu, čo zjednodušene znamená kombináciu rôznych produktov. V tejto súvislosti Európsky orgán pre poisťovníctvo a dôchodkové poistenie zamestnancov (EIOPA) vytvoril a publikoval materiál o vytvorení jednotného trhu EÚ pre osobné dôchodkové produkty,[10] ktorý tiež navrhuje ako riešenie ďalšieho a dostatočného zabezpečenia na dôchodok použitie už existujúcich produktov regulovaného finančného trhu. Myslíme si, že väčšie rozšírenie osobných dôchodkov medzi spotrebiteľmi by mohlo výrazne prispieť k efektivite dôchodkového systému.

Vzhľadom na účel, na ktorý si spotrebiteľ takýto produkt obstaráva, je potrebné venovať osobitnú pozornosť regulácii.

9 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0055:FIN:SK:PDF

10 https://eiopa.europa.eu/consultations/consultation-papers/index.html?no_cache=1&cid=5706&did=31463&sechash=35656789

Aké dôchodky sa budú vyplácať z druhého piliera?

*Jana Kolesárová**

Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky predložilo na medzirezortné pripomienkové konanie novelu zákona č. 43/2004 Z. z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov v znení neskorších predpisov (zákona upravujúceho 2. dôchodkový pilier). Ide o tzv. anuitnú novelu, ktorej vypracovanie dlhodobo očakávali politici, odborná verejnosť i samotní sporitelia. Výplata prvých dôchodkov z 2. piliera bude totiž aktuálna už od 1. januára 2015.

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Súčasný zákon o starobnom dôchodkovom sporení obsahuje niektoré aspekty vyplácania dôchodkov z 2. piliera. Upravuje napríklad druhy dôchodkov (starobný dôchodok, predčasný starobný dôchodok a pozostalostné dôchodky), podmienky a formy ich vyplácania, ako aj podmienky výplaty nasporenej sumy v prípade smrti sporiteľa (tzv. dedenie). V súčasnej právnej úprave však absentujú postupy, ktoré sa týkajú samotnej realizácie celého procesu priznania a vyplácania dôchodkov, tak aby bol vykonateľný a komfortný pre sporiteľa. Súčasná právna úprava je okrem iného v niektorých oblastiach, ktorými sú podmienky vyplácania niektorých druhov dôchodkov, ako aj poistno-matematických a iných technických vlastností dôchodkov, prekonaná.

Účelom 2. piliera je zabezpečiť spolu s dôchodkom zo sociálneho poistenia (1. pilier) sporiteľovi príjem v starobe a pozostalým po sporiteľovi zabezpečiť príjem v prípade smrti sporiteľa. Za obdobie, v ktorom je osoba sporiteľom v 2. pilieri, sa jej starobný dôchodok alebo predčasný starobný dôchodok zo Sociálnej poisťovne primerane zníži. Dôchodok z 2. piliera teda nie je doplnkom k dôchodku z 1. piliera. Dôchodok z 2. piliera nahrádza časť starobného dôchodku alebo predčasného starobného dôchodku z 1. piliera.

Starobný dôchodok

Podľa anuitnej novely, ako aj podľa súčasného zákona o starobnom dôchodkovom sporení sa z 2. piliera má vyplácať starobný dôchodok. Ten-

to starobný dôchodok má spolu s kráteným starobným dôchodkom z 1. piliera zabezpečiť sporiteľovi do konca života príjem v starobe.

Podľa zákona o sociálnom poistení, ktorý upravuje dôchodky z 1. piliera, má nárok na starobný dôchodok taký poistenec, ktorý získal najmenej 15 rokov dôchodkového poistenia (v zásade odpracované roky) a dovŕšil dôchodkový vek. Toto sú podmienky na získanie starobného dôchodku v 1. pilieri. V 2. pilieri teda logicky musí byť možnosť vyplácania starobného dôchodku, ktorý, ako som už uviedla, nahrádza časť starobného dôchodku z 1. piliera.

Podľa anuitnej novely by sa starobný dôchodok z 2. piliera mal vyplácať rovnako ako v 1. pilieri dovŕšením dôchodkového veku. Podľa súčasného zákona je však ďalšou podmienkou na získanie starobného dôchodku z 2. piliera získanie minimálneho obdobia starobného dôchodkového sporenia najmenej 10 rokov. Ak by dôchodca túto podmienku uvedenú v súčasnom zákone nesplnil, poberal by krátený dôchodok z 1. piliera, ale dôchodkové úspory v 2. pilieri by nemohol použiť na zabezpečenie svojho dôchodku. Tie by boli predmetom dedenia až po jeho smrti.

Zachovať podmienku minimálneho obdobia sporenia najmenej 10 rokov v zákone o starobnom dôchodkovom sporení nemalo zmysel. Dôchodca by mal krátený dôchodok z 1. piliera, k dôchodku z 2. piliera by nemal prístup a ak by sa ocitol v hmotnej núdzi, museli by sa na neho skladať ostatní daňovníci. Preto bola podmienka minimálneho obdobia sporenia zrušená a jedinou podmienkou výplaty starobného dôchodku bude len dovŕšenie dôchodkového veku podľa zákona o sociálnom poistení.

Ak bude anuitná novela schválená v navrhovanom znení, podľa našich odhadov bude počet sporiteľov, ktorým sa môže vyplácať starobný dôchodok z 2. piliera v roku 2015, okolo 3 000. Ak by sme nenavrhli zrušenie podmienky minimálneho obdobia sporenia 10 rokov, k dôchodku z 2. piliera by malo v roku 2015 prístup iba približne 800 sporiteľov.

Predčasný starobný dôchodok

Vyplácanie predčasného starobného dôchodku z 2. piliera zostáva podmienené priznaním predčasného starobného dôchodku z 1. piliera. Predčasný starobný dôchodok sa bude vyplácať takému sporiteľovi, ktorému už bol priznaný predčasný starobný dôchodok z 1. piliera.

Na nárok na predčasný starobný dôchodok z 1. piliera je potrebné splniť tri podmienky. Jednou z nich je získanie minimálneho obdobia dôchodkového poistenia 15 rokov (v zásade odpracované roky). Ďalšou podmienkou je, že poistencovi chýbajú do dovŕšenia dôchodkového veku najviac 2 roky. Tým, že je predčasný starobný dôchodok z 2. piliera podmienený priznaním predčasného starobného dôchodku z 1. piliera, sporiteľ musí logicky obidve tieto podmienky splniť.

Predčasný starobný dôchodok z 1. piliera je krátený za obdobie, v ktorom ho dôchodca poberal. Za každých začatých 30 dní skoršieho odchodu do dôchodku sa kráti o 0,5 %. Toto krátenie sa však v zásade nevzťahuje na obdobie, v ktorom je výplata predčasného starobného dôchodku pozastavená z dôvodu, že dôchodca pracoval. Predčasný starobný dôchodok z 1. piliera však musí byť vyšší ako 1,2-násobok sumy životného minima (zhruba 240 eur), čo je treťou podmienkou nároku na predčasný starobný dôchodok z 1. piliera.

Ako vidíme, v prípade predčasného starobného dôchodku platí zásada „dôchodok alebo zárobok". Na rozdiel od podmienok v 1. pilieri platí, že ak sa raz začal predčasný starobný dôchodok z 2. piliera vyplácať, tak sa jeho výplata nepozastavuje, ani ak sa stane poberateľ tohto dôchodku znovu dôchodkovo poisteným (zamestná sa alebo je samostatne zárobkovo činnou osobou, ktorá má taký príjem z podnikania, že jej vzniklo povinne dôchodkové poistenie v Sociálnej poisťovni).

Ak sporiteľ nemá nárok na predčasný starobný dôchodok z 1. piliera vyšší ako 1,2-násobok sumy životného minima (zhruba 240 eur), môže si pomôcť úsporami v 2. pilieri. Má teda nárok na predčasný starobný dôchodok aj vtedy, ak jeho predčasný starobný dôchodok z oboch pilierov bude vyšší ako 1,2-násobok životného minima. Opäť aj v tomto prípade musia byť splnené podmienky, že sporiteľ v zásade odpracoval najmenej 15 rokov a do dovŕšenia dôchodkového veku mu chýbajú maximálne 2 roky.

Úpravou uvedenou v predchádzajúcom odseku sa zároveň odstraňuje deformácia v súčasne platnej právnej úprave, podľa ktorej stačí, aby výška úspor na osobnom dôchodkovom účte sporiteľa postačovala na výplatu doživotného predčasného starobného dôchodku najmenej v sume 0,6-násobku životného minima. Ak sporiteľ túto podmienku nesplnil, bez ohľadu na výšku priznaného predčasného starobného dôchodku z 1. piliera predčasný starobný dôchodok z 2. piliera nemohol poberať.

Na druhej strane poistenec, ktorý je sporiteľ, môže dnes poberať predčasný starobný dôchodok z 1. piliera v zásade aj vtedy, ak jeho predčasný starobný dôchodok z 1. piliera je vyšší ako 0,6-násobok sumy životného minima, pričom výška jeho úspor z 2. piliera alebo skutočnosť, že nečerpá predčasný starobný dôchodok z 2. piliera, je bezvýznamná. Takto sporiteľ s nižšou nasporenou sumou na osobnom dôchodkovom účte nemusí byť v starobe dostatočne zabezpečený.

Zámerom anuitnej novely je, aby úhrn súm predčasných starobných dôchodkov z oboch pilierov bol vo výške, ktorá minimalizuje možnosť vzniku nároku na dávku v hmotnej núdzi.

Z 2. piliera sa budú vyplácať aj pozostalostné dôchodky (vdovské, vdovecké a sirotské dôchodky). Podmienky vyplácania týchto dôchodkov, ako aj dôvody, ktoré nás viedli k predloženiu takého návrhu, vysvetlíme v nasledujúcom čísle.

Summary of Public event on Personal Pensions

The article summarises some of the points made by speakers at EIOPA Public event on Personal Pensions.

First panel – The future of Personal Pensions Plans in Europe

Moderator: Justin Wray, Head of Policy Unit, EIOPA
Speakers: Gabriel Bernardino, EIOPA Chairperson; Jung Lichtenberger, Team leader Pensions, DG Internal Market and Services; Matti Leppälä, Secretary General/CEO, PensionsEurope; Michaela Koller, Director General, Insurance Europe, and Peter De Proft, Director General, European Fund and Asset Management Association – EFAMA

The opening session of the event focused on strategic considerations regarding the future of pensions and more specifically personal pensions in Europe. The COM representative opened the floor with key considerations as to current and future plans of the EU COM for further enhancing the EU framework for pensions. While the recently published IORPII proposal is already under discussion with Council presidency, the work on personal pensions is still to be initiated by way of a Call for Advice to EIOPA. At the time of the intervention, COM representative noted that it is expected EIOPA will be asked to provide technical input with regard to the following areas: relevant market for PPPs; governance of financial services providers offering PPP; information disclosure requirements for PPP holders; quantitative rules where none are in place; distribution rules; cross border activity aspects and product regulation considerations.

Pensions Europe CEO welcomed the remarks of COM and noted that the key to a successful EU framework for pensions is diversity of retirement income sources and support for solutions that have already been proved successful for retirement provisions. Mr Lepalla also noted that occupational pensions are not products and as such need to be seen in full separation from the current discussion on PPPs. Mr Lepalla noted that PPP's can be a very important source of retirement income for those EU citizens that are not covered by an occupational pensions scheme like those that are self-employed.

Madame Michaela Koeller highlighted the need to diversify the sources of retirement income for future generations. The Director General of Insurance Europe noted that all discussions revolving around PPP products needs to start from their main purpose i.e. providing a retirement income i.e. any regulatory discussion around these products needs to take into consideration that these are not plain savings products but products subject to incentives and constrains, aimed solely at providing retirement income. As currently more than 90% of the PPP's offered EU wide are insurance products offered by undertakings soon to be subject to the Solvency II stringent requirements, Madame Koller underlined the need to need to avoid regulatory arbitrage among various PPP providers, especially in the area of capital requirements.

Peter De Proft, Director General, European Fund and Asset Management Association – EFAMA welcomed the EIOPA Preliminary Report to COM

and strongly encouraged EU regulators to initiate action towards development of the EU PPP market. The EFAMA and its members call for the establishment of an alternative to the existing MS arrangements for retirement income provision, an optional second regime where EIOPA would play a key role in safeguarding the interest of EU PPP holders. Mr de Proft underlined the importance of the upcoming COM Call for Advice to EIOPA in the area of personal pensions. In preparation for the work and discussions/consultations for developing this technical input to COM, also EFAMA is further developing the details for its proposed OCERP framework.

The panel discussions also focused on the following key issues: specificities of PPP potential role for in ensuring a decent retirement income for Europeans; PPP role in boosting Long term investments and merits/drawbacks of the concept of a single EU PPP product.

Second panel – Enhancing Personal Pension Plan holders protection – key areas of focus for developing a way forward

Moderator: Adrian O'Brien, Consumer Protection Team, EIOPA
Speakers: Julia Cillikova, National Bank of Slovakia, Guillaume Prache, Managing Director of Better Finance For All, Jan Sebo, Associate Professor, Matej Bel University, Hannie De Cloe-Vos, Authority for the Financial Markets – AFM, and Fod Barnes, Senior Adviser, Oxford Economic Research Associates Ltd

The second panel discussion focused on consumer protection issues and benefitted from participants representing all key stakeholders for this discussion.

Mrs Cilikova presented the view of the national supervisory authorities and noted that consumer protection legislation needs to be seen as part of a bigger picture where financial mediation regulation and financial regulation also play a key role.

Mr Prache provided in-depth insight into the needs and priorities of future retirees / consumers. Mr Prache noted that European savers therefore welcome the recently released EIOPA report on personal pensions requested by the Commission, and the upcoming call for advice on the same issue. The Managing Director of Better Finance For All also noted that is all the more important as pension savings will be more and more needed to supplement mandatory pension schemes which are struggling due to the ever increasing life expectancy, the high level of unemployment and the poor state of public finances in the EU. Mr Prache also undertook to present the 10 policy measures developed by Better Finance For All in order to tackle the current challenges pension systems across EU are facing.

While Mr Sebo advocated in favour of simple designs for PPP products, NL-AFM representative Ms Vos provided a unique insight into how behavioural economics can help policymakers choose the best regulatory options available for providing enhanced levels of consumer protection levels.

Mr Fod Barnes, OXERA Senior Adviser provided a highly insightful presentation as to long term saving/ investing which in fact covers all types of pensions arrangements. Starting from the overarching principle that long term saving needs to be paired with long term investment options so that at end of pension contributory period the "savings pot" is large enough to allow a sustainable provision of retirement income, Mr Barnes noted that in terms of consumer protection and information disclosure requirements, the key challenge regulators are facing is deciding the granularity of the information disclosure requirements for the consumers they are trying to protect. In the context of the behavioural economics approach, and the information needs of a "average consumer / aka Max", Mr Barnes provided a highly interesting insight as to how the investment decision can differ depending on the time horizon/frequency of information provided and on how regulatory intervention may influence investment decisions to move away from investing in the real economy.

Third panel – Main discussion themes for EU work on Personal Pensions Plans: taxation, product standardisation, contract law

Moderator: Peter Pénzeš, National Bank of Slovakia, Chair of EIOPA Task Force on Personal Pensions
Speakers: Dirk Staudenmayer, Head of Unit, DG for Justice; Ambrogio Rinaldi, Director, Supervisory Commission of Italian Pension Funds COVIP/OECD Working Party on Private Pensions; Hans van Meerten and Pascal Borsjé, Clifford Chance LLP and Gerry Dietvorst, Competencecentre for Pension research, Tilburg University

The Head of the OECD Working Party on Private Pensions and member of the EIOPA TFPP, Mr Ambrogio Rinadi gave a highly insightful presentation as to the main challenges and opportunities around establishing a European second regime for personal pensions. A well designed second regime could ensure a regulatory playing field across all financial sectors for PPP provision, help reinforce consumer protection, increase coverage /penetration of pension, develop economies of scale, facilitate cost reductions by decreasing distribution costs, increase cross border provision etc. Considerations were presented at the importance of having a certain level of standardisation in a second regime (benefits including cost reductions; increased product comparability; economies of scale) and potential for the second regime to become, in fact a benchmark for all the other "pension pillars" in terms of profitability of operations and sustainability.

The Clifford Chance LLP representatives shared their extensive experience in establishing cross border IORPs. furthermore, they noted that in order to promote mutual recognition and equal legal and (facilitated) tax treatment of plans originally established under the laws of another Member State, it might be an idea to develop a kind of 'standard' EU pension plan in which, in our view, it makes no difference at all whether the plan in question qualifies as "occupational" in the Second Pillar or "personal" in the Third Pillar

The speakers also put forward their arguments in favour of initiating a second regime, initially on the basis of a "communication" or a "recommendation" (i.e. "soft law"); since, in principle, a measure of this sort can be adopted more quickly by the EC (in collaboration with EIOPA), it could provide a further stimulus for the European pension market in the short term.

Rounding up the discussion regarding tax hurdles, professor Dietvorst reminded those attending that taxation is one of the key instruments available for a legislator to incentivise / deter development of a certain financial product or even market.

Dirk Staudenmayer, Head of Unit in COM DG Justice provided a highly insightful presentation of the work done by the COM Expert Group on European Insurance Law (tasked to carry out an analysis in order to assist the COM in examining whether differences in contract laws pose an obstacle to cross-border trade in insurance products). Mr Staudenmayer informed that the report finds that differences in contract laws impede the cross-border supply of insurance products by increasing costs, creating legal uncertainty and making it hard for consumers and businesses to take out insurance in other EU Member States. Furthermore, the main findings of the report on European Insurance Contract Law were:

- For many life, motor or liability insurance products sold to consumers, insurance companies have to adapt their contracts to the national rules where the policyholder is based. This means they have to develop new contracts to comply, for instance, with rules on pre-contractual information.
- The report finds that problems are less likely to occur in insurance for large risks markets if linked to a trade or certain insurances for bigger companies – such as in the area of transport insurance.

Peter Pénzeš and Simona Murariu

Conference on personal pensions in Bratislava

The European Insurance and Occupational Pensions Authority (EIOPA) and the National Bank of Slovakia (NBS) were holding on 15 April 2014 in Bratislava (Slovakia) an international conference dedicated to the creation of a single market for personal pensions in the EU.

The conference aimed at discussing regulatory changes that are needed to facilitate cross-border provision of personal pensions in order to improve the adequacy, sustainability and safety of pensions in Europe. Participants discussed such challenges as increasing effectiveness of communication by providers to personal pension plans holders, delivery of high-quality and low-cost pension solutions, and the possible influence of behavioural economics on the policy making process. The discussions helped to identify ways to deal with obstacles to the creation of a single market for personal pensions.

Vladimir Dvoracek, Member of the NBS Bank Board, said: „Helping to improve the adequacy, sustainability and safety of pensions is imperative for the National Bank of Slovakia. I am glad that our institution is actively involved in this important policy debate through this conference and our participation in designing relevant regulatory actions in EIOPA."

Gabriel Bernardino, Chairman of EIOPA, indicated: „The creation of a single market for personal pensions in the EU can play an important role in filling the current „pension gap" and, thus, raising the overall adequacy of pensions for all EU citizens. Furthermore, it has the potential to mobilise more sustainable long-term investment into the EU economy. I am pleased that we could gather an impressive list of speakers from the consumer, industry, academia and public institutions to debate this challenge. I am thankful to our colleagues from the National Bank of Slovakia for their active participation in this debate and for the opportunity to organise this conference here in Bratislava."

B I A T E C