



**aba response**

**to the**

**EIOPA Discussion Paper**

**on a possible EU-single market for**

**personal pension products**

**Executive Summary**

The aba welcomes the early EIOPA discussion paper on a possible EU-single market for personal pension products. While the aba recognises the role of personal pensions, we would like to emphasise the following general points:

- Demographic developments paired with cuts in state pension provision create the need to supplement retirement income by private pensions. The first choice in this regard are occupational pensions. Because of the involvement of employers, occupational pensions can be organised on a collective level. Occupational pensions are therefore good value for money, particularly for those on low incomes. They balance security against returns and provide a life-long pension for their beneficiaries, who share the risks around death and invalidity. In contrast to personal pensions, occupational pensions can therefore address these risks without undertaking an individual assessment. In contrast to those taking out a private pension, members and beneficiaries of occupational pensions are mainly protected through social and labour law.
- Before the next consultation is conducted, EIOPA should answer the following question: What are (if any) the existing problems? In which countries are they concentrated? How could they be addressed? Who could address them?
- Most providers of personal pension products (PPP) are already regulated, mainly by EU Directives. EIOPA should identify those providers, who currently are not covered under any EU Directive and work to close these gaps. The aba argues against any additional product-regulation on EU level which would include a range of different providers. We therefore do not answer any of the questions in this consultation pertaining to product regulation.
- In practice any obstacles are primarily related to the different requirements regarding the tax treatment of contributions to private pensions in the Member States. This is not a question of prudential regulation to which EIOPA could provide a solution. Rather, this is a key question regarding tax law, which is decided in each Member State. State and occupational pension systems are diverse across the EU, and with them varies the function of personal pensions. In addition, the Member States also have varying degrees of financial leeway to support personal pensions. An EU-wide definition of the requirements for tax relief would therefore not be desirable.
- It is neither sensible to aggregate the broad range of PPP as discussed in the EIOPA paper, nor to create a common EU framework for those products. The aggregation includes for example in Germany Riesterrenten and Basisrenten, as well as pension and capital life insurance products, on the EU-level it includes the 1<sup>st</sup> pillar bis products of Central and Eastern Europe. EIOPA should focus its work on those areas, where there is an actual need for further regulation and where it is possible for EIOPA to add something.
- The aba argues against a Second Regime and instead calls for the further development of the tried and tested systems of the 2<sup>nd</sup> pillar.

## I. General Points

### **The special role of occupational pensions**

The European Commission has stated in their White Paper on pensions that the 2<sup>nd</sup> pillar holds a yet unused potential for further efficiency gains through economies of scale, risk diversification and innovation. These advantages should be used – occupational pensions should be strengthened further in all 28 Member States, thus ultimately preventing old age poverty while at the same time relieving public finances. It cannot be the primary task of regulatory requirements or financial supervisory authorities to create sustainable retirement provision in the Member States. However, authorities should contribute through an adequate design of the regulatory framework so that citizens can build up funded retirement provision efficiently. Existing systems should be developed to reach their potential before additional systems are built up and supported.

There is broad agreement that in none of the 28 Member States pillar 1 alone will be able to finance adequate retirement incomes. It is therefore without doubt, that in all Member States pillar 1 will need to be supplemented through funded retirement provision. The aba confirms that pillar 2 (occupational pensions) offers Europe's citizens the most efficient form of funded retirement provision. Any Member State should encourage and motivate employers, companies and social partners - with the help of incentives - to introduce, maintain and develop efficient occupational pension systems. Already existing systems do not only need to be protected against damage, but EIOPA should do everything in its power to foster them. The European Commission and EIOPA should therefore create a regulatory framework which strengthens systems of occupational retirement provision.

### **Prudential regulation**

Most providers of personal pensions are already being regulated. If necessary, the existing directives should be developed further. Providers of personal pensions, who are currently not being regulated, should be identified. EIOPA should focus any future work in this area.

The existing EU Directives which create the prudential framework for providers of personal pensions do not pose any obstacles for a functioning single market. Any existing obstacles are related to the different requirements for tax treatment – however, the competencies for tax law lie with the Member States, EIOPA cannot do anything in this regard.

The aba calls for a system in which *providers* of personal pensions are regulated (as is currently the case) and argues against additional *product* regulation on EU level.

### **Aggregating Personal Pension Products**

The aba finds the current aggregation problematic: different PPPs have developed in the individual Member States over years. Depending on the design of pillars 1 and 2, government-supported 3<sup>rd</sup> pillar savings play a very different role in different countries. A European approach is therefore difficult to achieve, not desirable and impossible to implement without fundamental changes to the basics of national systems of old age provision.

Even within single Member States very different PPPs exist. They can have different functions and therefore be

follow different requirements. Examples from Germany are the Riesterrente and the Basisrente: They have very different functions and consequently the requirements for tax relief and the government support they receive are very different. The 1<sup>st</sup> pillar bis systems in Central and Eastern Europe are another example: These cannot be compared to other 3<sup>rd</sup> pillar systems. In this area the EU-Commission could potentially work together with the relevant stakeholders to develop a set of guidelines as outlined in Initiative 14 of the White Paper for the 2<sup>nd</sup> pillar.

## Second Regime

We are generally against the introduction of a Second Regime. The requirements for the receipt of tax relief vary according to Member State and the function of the personal pension product and should be determined on a national level.

## II. Questions

### Scope of personal pension products

**Q1. Do you find the list of common features of PPPs identified by EIOPA complete? Would you add any other features (e.g. periodic income)?**

- The crucial distinction between occupational and personal pensions is whether the members and beneficiaries are protected by national social and labour law or not. In Germany, the legal obligation for the employer to ensure that the pension promise is met as well as the link to a current employment contract are particularly important. The protection through social and labour law requires the employer to make a pension promise to the employee. Based on whether this pension promise is made or not, the payments an employer makes into an employee's pension can be either an occupational or a personal pension.
- This concurs with the EIOPA Regulation, which stipulates that EIOPA's provisions cannot touch national social and labour law.
- This definition would exclude the 1<sup>st</sup> pillar bis of Central and Eastern European countries. It is not clear to us if all providers of this type of arrangement are regulated. If this was the case, the EU Commission could potentially work together with the relevant stakeholders to develop a set of guidelines as outlined in Initiative 14 of the White Paper for the 2<sup>nd</sup> pillar.

**Q2. Do you think that EIOPA should focus more on DC or DB PPPs? What elements should be regulated for both types of PPPs in order to create a single market for PPPs?**

Currently we are only aware that the distinction between DB and DC exists in the occupational pensions space, where the employer makes a promise regarding a DB or a DC pension. For personal pension products the key question is whether the contract between customer and provider includes a risk limitation for the former.

We do not see any role for EIOPA in this area – if there was a role for EIOPA, it is unclear to us what it would look like. In Germany, EIOPA classifies both the Riesterrente (subsidized 3<sup>rd</sup> pillar pension) and the Basisrente (subsidized pension for the self-employed who are outside the state pension system, explanation for both see below), which are offered by different providers, as PPPs.

The requirements for tax relief for the Riester- and the Basisrente are very different.<sup>1</sup> The backdrop for the Basisrente is the German system of old age provision, in which only few self-employed face mandatory membership of the state pension. The tax framework surrounding the Basisrente is therefore very different to the one surrounding the Riesterrente, which is only intended to be an addition to the state pension. The conditions for the Basisrente partly mirror the ones for the state pension: For example it has to be paid out as a pension (rather than a lump sum), the accumulated capital cannot be used as collateral, it cannot be passed on or transferred to someone else. These requirements, which define the receipt of tax relief, are decided on the national level.

Life insurers, credit institutes and capital investment companies are all regulated on EU-level and are therefore able to operate across the EU. Is there really a need for further regulation? The cross-border supply is only hindered by the national requirements for the receipt of tax advantages, but these have to be fulfilled by all providers across the EU.

If the members states would agree to developing common rules for the treatment of personal pensions, this would very clearly mean entering the area of taxation. We do not see any work for EIOPA in this area.

See EIOPA-Paper Point 3.2.22 and 3.2.23.

**Q3. Do you think that future regulation of PPPs should also include additional prudential requirements in cases where the provider of certain PPPs is already subject to European prudential regulation?**

No, we do not see any need for further regulation and no role to play for EIOPA.<sup>2</sup> In a first step, EIOPA should analyse which providers of personal pensions currently do not fall under any regulation. It should then be EIOPA's main objective to close these gaps, rather than further regulating already regulated providers.

**Q4. What advantages do you see in creating/improving a single market for PPPs?**

We would like to emphasise again that occupational pensions should under no circumstances be included in this questionable project. The members and beneficiaries of occupational pensions are mainly protected by national social and labour law (in Germany, the legal obligation for the employer to ensure that the pension promise is met as well as the link to a current employment contract are particularly important). An inclusion of occupational pensions in a single market for PPPs would not be sensible and could cause serious damage, in particular because of the different national systems (different social, labour and tax law). In addition, occupational pensions which are linked to an employment contract and often financed jointly by employers and employees do not need competition to prosper.

There is currently already a host of regulation for the different providers of personal pensions. Within this framework, providers can offer their products across the EU. From this perspective, there already is a single market for PPPs.

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<sup>1</sup> See the rules set out in the Income Tax Law as well as in the „Gesetz über die Zertifizierung von Altersvorsorge- und Basisrentenverträgen“; additional circulars (Bundesministerium der Finanzen) regarding „Steuerliche Förderung der privaten Altersvorsorge und betrieblichen Altersversorgung“ from 24 July 2013.

<sup>2</sup> We are against the regulation of providers (as opposed to regulating products). The next step (see the work of the OECD) would be to apply the PPP regulation directly or indirectly to occupational pensions.

The creation of a single market for personal pensions understood as an EU-wide definition of the requirements for tax relief would mean a further loss of sovereignty of the Member States. As long as the responsibility for pensions is with the Member States and the diversity of the 1<sup>st</sup> and 2<sup>nd</sup> pillar remains as it is now, such a harmonisation in the area of personal pensions is not sensible.

Member States should be in a position to support different PPPs according to their function and the government budget, e.g. replacing state pension income in the case of the Basisrente, or partly replacing / topping up state pension income as the Riesterrente does. This includes different requirements as well as different levels of tax relief.

Aggregating PPPs as both EIOPA and the OECD are doing is therefore not sensible. For example according to the OECD Working Paper „Coverage of Private Pension Systems“ from June 2012, 40,5% of the labour force in Germany held a personal pensions (page 14, chart 3). Disregarding the fact that a substantial part of the 15.5m Riesterrenten<sup>3</sup> is likely to be held by individuals not in employment, it does not make sense to add this figure to the 1.6m Basisrenten<sup>4</sup>. It neither makes sense to aggregate nor to create a common framework for both Riesterrenten and the 1<sup>st</sup> pillar bis systems of Central and Eastern Europe.

Only big financial service providers operating across the EU are likely to have an interest in the creation of a single market for personal pensions understood as a common definition of requirements to receive tax relief.

**Q5. Do you think that these definitions fully reflect the EU personal pension landscape? If the answer is negative, what changes would you suggest in the wording of the definitions? Which of the definitions is better?**

A classification of PPP is difficult. Comparing the different approaches the OECD and the EU use exemplifies this difficulty: EIOPA classifies Riester- and Basisrenten, as well as life insurance and any other personal pensions as a PPP. In contrast, the OECD only considers Riester- and Basisrenten to be PPP.

Even on the national level, the classification of personal pensions is difficult. In Germany, we had a long discussion around the Riesterrente, as well as around cash value life insurance (are those contracts a personal pensions product?).

In addition, the distinction from the 2<sup>nd</sup> pillar needs to be considered – most importantly the protection the members and beneficiaries have in the 2<sup>nd</sup> pillar.

We would like to stress that we do not see the necessity of a uniform definition or the sense of the current aggregation (see Question 4).

**Q6. In some countries when a Personal Pension contract is chosen by an employer, the pension remains under the regulatory regime for consumer financial services rather than falling wholly under the regime for workplace pensions. Do respondents believe that such pensions are personal pensions?**

The crucial distinction between occupational and personal pensions is whether the employer has given the employee an occupational pension promise or not. The members and beneficiaries are only protected by social

<sup>3</sup> <http://www.bmas.de/DE/Themen/Rente/Zusaetzliche-Altersvorsorge/statistik-zusaetzliche-altersvorsorge.html>

<sup>4</sup> Alterssicherungsbericht 2012

and labour law (in Germany the legal obligation for the employer to ensure that the pension promise is met as well as the link to a current employment contract are particularly important) if an occupational pension promise is given (see response to Question 1). In Germany, this is for example the case when a Direktversicherung (explanation in the next paragraph) is used, where providers are regulated on an EU-level by the Life Assurance / Solvency II Directive.

In Germany, employers can choose one of five vehicles when offering an occupational pension. One of these vehicles is the Direktversicherung, a life insurance which the employer sets up for the employee, acting as the policy holder taking out the insurance. The employee or any surviving dependents have the legal right to receive the benefits paid out by the insurance company.

As the policy holder the employer has all rights and responsibilities resulting from the contract. He has to ensure through regular payments that the insurer can pay the agreed benefit to the beneficiary. In addition, he needs to comply with regulation around insurance contracts and general insurance requirements. The employee can contribute to the insurance using his own money or salary sacrifice. An annual contribution of 4% of the state pension's contribution ceiling (2013: € 2,784) can be made exempt from tax and social security contributions, an additional €1,800 can be paid into the insurance exempt from tax.

#### **Tax obstacles**

#### **Q7. How could a single market be developed for PPPs unregulated at EU level (e.g. cases where IORP Directive is voluntarily applied to PPPs)?**

EIOPA should identify which providers of personal pensions are currently not subject to any regulation. It should then limit its further work to this area. The aba is not aware of any PPP providers in Germany which are not subject to prudential law.

#### **Q8. Do you think that EIOPA should consider developing a framework for transferability of accumulated capital for passported PPPs? What obstacles to transferability can you identify and how can they be overcome? Can you identify the benefits of a transferability framework in the context of PPPs?**

It has to be considered that large and frequent capital transfers make it difficult or even impossible for long term oriented providers managing and taking pension risks to plan their cash management in the long run. This would be detrimental to those members and beneficiaries remaining in the system (e.g. lower returns because of excessive liquidity requirements) – a situation which should be avoided in any case.

#### **Q9. What are the prudential obstacles for creating a cross-border market for PPPs for different types of providers (banks, insurers, UCITS)?**

See answers to Questions 2 and 4. If there are obstacles which are related to the prudential framework, they should be addressed through EU provider regulation (Solvency II, OGAW (UCITS) etc.). An additional regulation of PPPs does not seem to add any value.

#### **Q10. Do you think it is feasible to develop a cross-border framework for PPPs with guarantees (DB PPPs and DC PPPs with guarantees)?**

See responses to Questions 2 and 4.

### Prudential obstacles

#### **Q11. Have you identified any other tax obstacles in addition to the four identified by EIOPA? Can these obstacles be eliminated in practice?**

No, the main obstacles are the requirements for tax relief, which differ by Member State and the function of the subsidized old age provision. For Germany the requirements are laid out in Income Tax Law and in a Law regarding the Certification of pension provision and contracts for Basisrenten.

See EIOPA Point 3.2.2.2.2

#### **Q12. According to your knowledge, how do MSs approach the principle of non-discrimination of foreign PPP providers in their national tax legislation as far as taxation of contributions, investments and benefits is concerned?**

We are not aware of any discrimination of foreign providers in Germany. The Law regarding the Certification of pension provision and contracts for Basisrenten includes in §1 (2) and §2 (2) providers of Riester- or Basisrenten “home in a different Member State of the European Economic Area.”

#### **Q14. Do you consider that transferability requires harmonisation of the tax treatment of pensions across MSs? In your view, are such changes feasible?**

There would be less problems if the Member States agreed on an EET-system of taxation. If this was the case, no harmonisation would be necessary, because the recognition of the different national regime should be sufficient. It needs to be kept in mind that taxation is a competency of the Member States.

### Social and labour law challenges

#### **Q16. Do you see the need of the creation of a single market for products 1st pillar bis? What would be the benefits of creating a single market for 1st pillar bis products? How could the challenges posed by existing social and labour law be overcome, in particular in the Member States which have no products 1st bis?**

The providers of 1<sup>st</sup> pillar bis products should be subject to prudential EU regulation. It should be clarified where this is currently not the case. The development of a set of guidelines with and for the 1<sup>st</sup> pillar bis countries could be a good approach.

#### **Q17. How could a single market be developed for PPPs unregulated at EU level? Should it be based on the IORP Directive or another directive?**

In a first step it should be clarified where providers currently do not fall under any EU regulation. Regulation in line with the IORP Directive makes sense if the providers in question are IORPs (Definition in Art. 6a IORP Directive). Occupational pensions differ from personal pensions because of the important role the social partners play. In addition, occupational pensions benefit from protection mechanisms not available for personal pensions. The IORP Directive can therefore only partly be used as the basis for currently unregulated PPPs.

The EU Commission could potentially work together with the relevant stakeholders to develop a set of guidelines as outlined in Initiative 14 of the White Paper for the 2<sup>nd</sup> pillar.

**Other obstacles****Q19. Can you identify any other obstacles to passporting of PPPs? How can these obstacles be overcome?****Disadvantages of the 2nd regime in general***(for all following questions regarding the Second Regime, Q 20-25)*

The aba is against the introduction of a Second Regime. The requirements for receiving tax relief, which vary according to Member State and function of the personal pension, should be determined on the national level. The tax framework mainly depends on the financial possibilities as well as on the level and structure of state and occupational pensions in each Member State. In addition, experience shows us that it would be more beneficial to foster occupational pensions.

EU regulation should maintain its current approach and regulate providers rather than products. The requirements for the receipt of tax relief on contributions to private pensions should continue to be decided by the Member States.

**Transparency and information disclosure****Q26: What information requirements are needed to protect PPP holders? What information should be presented in order to help them make sensible decisions and when and how should this information be presented? What are the differences to be considered with respect to occupational pensions and to the advice given by EIOPA to COM for the revision of the IORP Directive?**

Members and beneficiaries of occupational pensions are primarily protected by social and labour law. Because of the collective approach and the central role of the employer, the options for the individual are limited. The need beneficiaries have to receive information is impacted by these characteristics. To maintain the efficiency of the 2<sup>nd</sup> pillar, this should be mirrored in the disclosure requirements for occupational pensions. Detailed requirements regarding information and disclosure duties of the providers of personal pensions are laid out in the respective EU directives.

**Pre-contractual information**

See response to question 26: Detailed requirements regarding information and disclosure duties of the providers of personal pensions are laid out in the respective EU directives.

We have not answered questions 26 to 71. The aba argues that the EU should continue to regulate providers rather than products. The requirements for tax relief on personal pension contributions should continue to be decided by the Member States.

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