	Comments Template on Consultation Paper on a Report on Good Practices on individual transfers of supplementary occupational pension rights	Deadline 10 April 2015 23:59 CET
Name of Company:	aba Arbeitsgemeinschaft für betriebliche Altersversorgung (German Occupational Pension Association); Germany; NCA: BaFin, Bonn	
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Reference	**Comment**	
General Comment	**Introduction** In January 2015 EIOPA published the consultation paper report on Good Practices on individual transfers of supplementary occupational pension rights, which relates back to the Call for Advice (CfA) on portability EIOPA received from DG Employment and	

	Social Affairs. The consultation paper summarises the results of the EIOPA work regarding the CfA and is intended to form the basis for the future discussions around transferability of occupational pensions. We welcome that EIOPA is neutral in the discussions around whether it is desirable to leave vested rights where they are or whether to transfer them to the new employer. What is best often depends on the circumstances and has to be decided on an individual basis. We note that EIOPA stresses that the Good Practices proposed in the report will not be legally binding. Even though EIOPA stresses that social and labour law do not fall in its remit (p. 8), we would like to emphasise this point: it is the Member States who decide on matters regarding social, labour and tax law.[1] Within some Member States, transfers are addressed in collective agreements. These are most likely to be found in sectors where the different schemes deliver similar benefits (e.g. public sector in Germany). Collective agreements could facilitate transfers in other industrial sectors as well. Neither EIOPA nor the EU Commission can or should interfere with the right of the Member States to address these issues as they see fit. From a stakeholder perspective, we would like to emphasise that we do not find the way the Consultation is organised conducive to a good discussion of the issues. From our perspective it would have been better to structure the template for responses by topic and/or number of paragraph or heading. The reference to individual pages makes it difficult to concisely address all the relevant issues. Usually EIOPA asks	

[1] This is recognised in the Directive on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, which in Recital 2 addresses the Member States („The social protection of workers with regard to pensions is guaranteed by statutory social security schemes, together with supplementary pension schemes linked to the employment contract which are becoming increasingly common in the Member States.“).

stakeholders to reply to a number of questions. This would have been a more feasible way regarding the current consultation.Beyond this, we have a number of general remarks relating to the following topics:

- Increasing transferability
- The role of the employer and the definition of pension schemes
- Voluntary cooperation / agreement between pension schemes
- Obstacles to transfers which have not been addressed
- Will more transfers lead to more efficiency?

Increasing transferability

For over a decade we have advocated an adequate solution to issues around portability (see for example our Assessment of the proposal for a directive on improving the portability of supplementary pensions rights from 2005). We have contributed substantially to the solution implemented on the national level in 2005. We would also like to point out that in Germany portability is regularly practised in the second pillar provision for the public sector since the late 1970s.

The experience in Germany shows that the key issues regarding transferability are in the area of labour and, particularly, tax law. The cooperation between the Ministry for Social Affairs and the Ministry of Finance was the decisive factor at the time. The Financial Supervisory Authority was involved in the definition of the transfer value, but did not play a major role in creating the transferability rules. This all begs the question whether EIOPA with no experience itself and limited practical experience of the national supervisors in this area is best placed to answer the questions of the Call for advice.

The long-lasting discussion around the Directive formerly known as the Portability Directive has shown that introducing EU-wide transferability rules is difficult. In practice the following suggestions would already be a big step forward for the mobility of workers and their occupational pensions within the EU:

1. mutual (tax) recognition of occupational pension systems, at least for the time the worker is posted abroad, and

2. establish an efficient system of transfers of pension schemes between IORPs (Art. 13 of the Commission Proposal for an IORP II Directive), with DG EMPL involved in the design of such a system.

Bearing in mind EIOPA's competences and experience, we feel it would be better if the Authority focused on tasks which can be solved by prudential regulation. To foster the transferability of supplementary pension rights, from our perspective it would be best to use the Committee in the area of supplementary pensions (Pensions Forum) to work on mutual tax recognition and on establishing an efficient system for transfers of pension assets when individuals change employers.

The role of the employer and the definition of pension schemes

First of all we would like to stress the important role the employer plays in occupational pensions. In Germany, the employer initiates the occupational pension, supports it and is liable to ensure that the pension promise made is met. In particular this last point needs to be closely considered in relation to individual transfers: it is very important that in Germany a transfer means that this liability is passed on to the new employer. If the transfer is completed, the old employer is not liable to ensure that the pension promise is met; now the new employer has to ensure that the new promise she/he gave is met. In this context we would like to stress the difference between

	a transfer of pension rights and a transfer of a capital value (for a further discussion of the issue, see below): while a transfer of capital leads to liability from the point of the transfer onwards, a transfer of pension rights leads to a transfer of the liability dating back, including the rights accrued while working for the first employer From our perspective, a transfer of capital value can be a fair and sensible way of balancing the interests of the employee and the new employer. A transfer of pension rights is therefore not suitable as a Good Practice Example if heterogenous occupational pension structures exist. In Germany the Pensions-Sicherungs-Verein aG (PSVaG) can ensure that the occupational pension promised is met if the employer becomes insolvent. In case of insolvency it is carefully assessed for which pension liabilities the bankrupt employer had to stand in – only those are covered by the PSVaG. It is therefore important that questions regarding the liability of employers are clear after any transfer. Considering the role of the employer, it becomes apparent that occupational pensions are very different from personal pensions. As the aba has pointed out several times before, when using external vehicles, occupational pensions are characterised by the triangular relationship between employee, employer and the IORP or life insurance company. In contrast, personal pensions are built on a contract between a provider / an insurance company and an individual, meaning that they follow a very different concept. Because of these differences we would like to emphasise the importance of not mixing the two pillars together. We note that in some countries a transfer is possible even between pillars – in Germany, the law does not allow such transfers. The German pension pillar architecture is in general not designed for these transfers. In addition, from the perspective of social and labour law, such transfers are not sensible in the vast majority of cases.	

	We urge EIOPA to take these differences into account, starting with the terminology used. The title of the Consultation paper is "Report on Good Practices on individual transfers of supplementary occupational pension rights". We welcome that the title explicitly refers to occupational pensions, however, it seems unnecessary to add "supplementary" – in the EU occupational pensions are always supplements to a (mandatory) first pillar. The same applies to the definition (p.7) – from our perspective a definition of "occupational pension schemes" would suffice. When discussing a complex topic such as pensions, unnecessary complexity introduced by the language used should be avoided. Since the term "supplementary pension" includes both second and third pillar, we do not find it helpful that EIOPA throughout the paper refers to this term – even though in the definition it stated that "pension scheme" would be used as a shorthand for "supplementary occupational pension scheme". The use of the term "supplementary pension" is very misleading and should be replaced at least as EIOPA suggested, by using "pension scheme". For clarity's sake it would be even more beneficial to use "occupational pension scheme", which would reflect the link to an employment relationship and the important role of the employer. In addition, we suggest to replace the term "rights" in the title of the Consultation with the more accurate term „capital" (see our comments regarding p. 6 for a discussion of the differences between the two concepts for DB and DC schemes). Taking into account the amendment suggested in the General Remarks, the Title should read: „Consultation Paper on a Report on Good Practices on individual transfers of occupational pension capital". Nevertheless, it should be made very clear that any transfer of capital from the occupational pension scheme of the previous employer to the pension scheme of the new employer must have the legal consequence that the pension promise of the previous employer including a any kind of liability will end.	

Voluntary cooperation or agreement between pension schemes

We understand that EIOPA envisages a voluntary transfer agreement within and across Member States. However, it is important to be realistic as to what the involved stakeholders are prepared to do. This applies both to IORPs / insurance companies as well as to the beneficiary, who faces a more difficult decision the more different the two schemes are. Beneficiaries are likely to built their personal risk cover (e.g. invalidity, death) around what their employer offers. For example, if an occupational pension scheme does already include sufficient invalidity cover, there is no need to take out an additional personal insurance or it might not be possible because of limitations of total coverage (there is a limit to what can be insured relative to current income). Any change to what is offered by the employer therefore triggers a review of the personal insurances taken out. This is particularly critical because with increasing age it becomes more expensive and difficult to take out invalidity cover or survivor's protection. Therefore the beneficiary has in most cases an interest that the benefits offered by the employer remain similar. As a consequence a transfer between similar schemes is easier to complete than a transfer between completely different schemes.

For these reasons, voluntary agreements are well suited for transfers between employers and their schemes/IORPs operating in the same industrial sectors or branches within one Member State but do not seem to be an feasible alternative for a cross-border transfer.

From our perspective it is furthermore key what is addressed in the agreement. If for example it would include the use of the same actuarial assumptions, it is inconceivable that this would work in Germany across all five vehicles delivering occupational pensions, offered by either employers, IORPs or insurance companies.

We would like to stress that even under a voluntary cooperation, a transfer can be to

	the detriment of the beneficiary and, in the end, always depends on the individual and personal circumstances of the respective employee. Adequate information and involvement in the process are therefore important. In Germany transfers are regularly carried out in the public sector (which does not fall under the IORP Directive or under the scope of this consultation paper). Many thousand transfers with a value of several hundred million are conducted every year. However, it is crucial to the success of this model, that the schemes between which the transfers take place are relatively similar (based on tariff agreements). Transfers are therefore (relatively) straightforward to administer and the changes for the beneficiaries are limited. Pension rights are also often transferred within a corporate group when an employee moves from one subsidiary to another. We doubt whether these conditions which from our perspective are crucial to the success of the transfers in the public sector or within a corporate group could be recreated within the entire German private sector or, still less likely, across Europe by setting up voluntary cooperation or agreements between pension schemes. The fundamental differences between defined benefit and defined contribution schemes, differences in social, labour and tax law across the EU and other obstacles which EIOPA has not addressed are discussed in the following section. It is unlikely that any kind of voluntary agreement between pension schemes would be able to overcome these obstacles. **Obstacles to transfers which have not been addressed** We would like to point out a number of obstacles to transfers which have not been addressed (sufficiently) in the current Consultation Paper, but which from our perspective are relatively important:	

	• Regarding the **right** of both the transferring and the receiving IORP **to reject a transfer**: A rejection should not only be possible because of financial repercussions, rather, the IORP should be allowed to take all related risks into account. These include in particular the interest rate environment, biometric aspects and structural changes in the pool of members. The right of the employer and the IORP to reject a transfer is needed. • There are **other areas of law in addition to labour, social and tax law which have to be taken into account** during a transfer. In Germany these areas include pension sharing in case of divorce (Versorgungsausgleich), data protection legislation and rights of co-determination. In addition to tax obstacles, **social insurance contribution rules** might also impact on the attractiveness of a cross-border transfer for beneficiaries (for example in Germany health insurance contributions have to be paid out of occupational pension income). • Defined benefit and defined contribution schemes are fundamentally different from each other and therefore are subject to different challenges in the case of an individual transfer. These issues should be considered separately. One important difference becomes apparent when taking a closer look at what exactly is being transferred: in a pure DC scheme (i.e. without any actuarial or investment risk), it does not matter whether the capital value or the pension rights of the beneficiary are transferred, these two concepts are the same. However, for a DB scheme they are two different things: the pension right is what the employer promised, e.g. a certain level of benefit when the beneficiary reaches reitrement age, and additional risk cover such as against invalidity and/or death. The capital value is calculated according to certain standards and assumptions. In a DB scheme only the latter can be transferred. As a result, the previous employer is not liable anymore for the settlement of the given pension	

promise.

- Within the EU transfers could potentially include a **change in currency**, making it even more complex.

Will more transfers lead to more efficiency?

Regarding a general requirement to transfer, the answer to this question is no. We do not expect significant efficiency gains because of individual transfers, to the contrary, they could potentially even lead to efficiency losses:

- If a transfer takes place between systems with different rules (tax or social insurance contribution rules; e.g. in Germany Riester incentives and limited EET taxation for "classical" occupational pensions contributions) it is necessary that the transferred account is kept separately, i.a. to be able to comply with current and potential future legislation. The information which has to be maintained includes: information about the occupational pension part and the private continuation, employee vs. employer contributions, information on whether and to which extent the plan received Riester incentives.

- Occupational pensions vary across the EU. Because of these differences i.a. in social, labour and tax law, it will be impossible for a pension promise to be continued in exactly the way it was before. An example is insolvency protection, which exists in Germany, but not in all EU Member States. If a German pension right was transferred to a country without insolvency protection, the pension promise would have to change. From a legal perspective this raises the question whether the transfer would be allowed – and, important under German law, whether under these circumstances the employer can pass on their liability to ensure that the pension promise is met to the new employer.

- While from the perspective of the beneficiary it is usually attractive if the pension promise remains unchanged during a transfer, for the involved employers and IORPs the transfer can in most cases only include a capital value.
- Overall, administrative systems would have to be extended; the costs are likely to borne by the employers sponsoring an occupational pension scheme and ultimately the employees benefiting from it.

While there are also benefits from a transfer – it is more efficient to administer one larger pension entitlement than to administer several smaller ones – we doubt that they would offset the efficiency losses mentioned above.

Finally, we would like to point out that small changes in legislation / Good Practices can trigger relatively high administrative costs. An example from Germany is the reform of pension sharing in case of divorce (Versorgungsausgleich). It requires the IORP to hold a lot of information, which of course triggers additional costs, in particular investment in IT systems. In addition, transfers bring the risk that some information is lost.

Conclusion

Overall, we would like to stress the following points:

- Rather than promoting agreements governing individual transfers, from our perspective the labour mobility across the EU would be strengthened by mutual recognition in the area of tax and social insurance contributions for the time the worker is posted or delegated abroad. It should be allowed for the posted / delegated worker to stay in their home IORP – without rendering the scheme a cross-border IORP. In this case the prevention of a transfer would lead to higher pension benefits for the mobile worker and to lower costs for the employer

	and the IORP. • Neither EIOPA nor the Commission have any competencies in the area of social and labour law. • EIOPA regularly omits the role of the employer. Since it is the employer who sets up the pension plan, makes the pension promise and contributes to financing of the scheme, it is crucial to adequately consider this relationship. • Voluntary cooperation or agreement between pension schemes are used in certain sectors, but not across Germany. From our perspective it would be very difficult to achieve this at the national level, let alone at the European level because of very different benefit structures. What is possible from our perspective is the transfer of capital. As stated above, it is crucial that the responsibility to ensure that the pension promise is met then lies with the new employer; the former sponsor is fully freed of his responsibilities. Several obstacles have not been addressed, such as legal requirements beyond social, labour and tax law. • We propose a time limit of two years between the job change and the transfer. From the perspective of the employer, it is important to know whether they are still liable for the pension promise made. In addition, the rationale for a transfer is to allow mobile workers to collect their pension entitlement within one (or at least few) institutions/sponsoring employers. Furthermore, a fixed time frame reduces the possibility for the beneficiary to engage in arbitrage against the collective pool of IORP members. • In general, we doubt that efficiency is likely to increase through individual transfers: i.a. the diversity of occupational pensions and the administrative costs mean that a transfer is not automatically an efficiency gain – to the con-	

	trary. • Due to the diversity of occupational pension schemes, it generally should be a capital value which is transferred between different schemes. It is important to be realistic as to what the involved stakeholders are prepared to do. This applies both to IORPs / insurance companies as well as to the beneficiary, who faces a more difficult decision the more different the two schemes are. As stated above, it is crucial that the responsibility to ensure that the pension promise is met then lies with the new employer; the former sponsor is fully freed of his responsibilities.	
Page 4	We welcome that EIOPA does not have a preference for or against individual transfers.	
Page 5		
Page 6	Considering the diversity of occupational pensions across the EU, we welcome that the good practices are principle-based ("The Good Practice observations in this report should be regarded as principles-based, with Member States and market participants encouraged to apply them to the extent that they benefit their individual circumstances.") We note that the Good Practices are intended both for defined benefit (DB) and defined contribution (DC) schemes. However, as we have pointed out in the General Remarks as well as in other position papers[2], these two types of pension promise are very different from each other – the potential challenges transfers face therefore vary	

[2] See for example our position paper on the review of the IORP Directive.

with the type of pension promise.

One important difference becomes apparent when taking a closer look at what exactly is being transferred: in a pure DC scheme (i.e. without any actuarial or investment risk), it does not matter whether the capital value or the pension rights of the beneficiary are transferred, these two concepts are the same. However, for a DB scheme they are two different things: the pension right is what the employer promised, e.g. a certain level of benefit when the beneficiary reaches reitrement age, and additional risk cover such as against invalidity and/or death. The capital value is calculated according to certain standards and assumptions. In structurally different DB schemes only the latter can be transferred. As a result of the transfer, the previous employer is not liable anymore for the given promise.

In Germany pure defined contribution schemes do not fall within the scope of occupational pensions law and are thus not covered by national labour law. The transfer practice for the defined benefit and hybrid schemes is that the transferring scheme calculates a capital value based on the given pension promise; the receiving scheme then uses this captial value to calculate in turn what kind of pension promise the new employer can offer based on that. In other words, the transfer almost always takes the form of a capital value, never directly of pension rights. The pension rights are "translated" into a capital value, which then will be "translated" into a new pension promise, which is very likely to differ from the first promise. Looking at the German legal provisions, the new promise has to be of equivalent value. Such an equivalent value can be reached by multiple criteria but in general will not necessarily lead to the same benefits for the transferring employee or to the safeguarding of identical biometrical risks. Using the capital value as a bridge between different pension promises allows the receiving scheme to incorporate the accrued capital value of the new member into their benefit mechanisms, so that to an extent it can be administered together with the pension rights of the existing scheme members (see General Remarks for administra-

	tive problems related to transfers). Transfers which are conducted according to these principles mean that the liability to ensure that the pension promise is met is completely passed from the transferring employer to the receiving employer. As a further result, a transfer can also lead to a situation where certain security mechanisms are lost – e.g. if a transfer is made from a German IORP whose employer is coverd by the PSVaG to a Member State where this mechanism does not exist. In such cases, it could be feasible to compensate the lower security level by higher benefits for the employee. As stated above, the beneficiary is likely to face a different set of benefits after the transfer. It is not always straightforward to say whether the beneficiary is better or worse off - a single beneficiary might be happy to loose the entitlement to a survivor's pension in favour of a higher old age pension; for a beneficiary with dependants this would look differently. A comprehensive assessment always depends on the personal situation of the employee requesting a transfer. Therefore we would suggest to replace the term "rights" in the title of the Consultation with the more accurate term „capital". Taking into account the amendment suggested in the General Remarks, the Title should read: „Consultation Paper on a Report on Good Practices on individual transfers of occupational pension capital".	
Page 7	As already stated in the General Remarks, we have a number of concerns regarding the definitions proposed in the consultation document. • **"Supplementary occupational pension scheme":** The addition of the word "supplementary" in the title and in the definition of the subject of the Discussion Paper is not necessary: in the EU occupational pensions always supplement (mandatory) first pillar pensions. The term should therefore be dropped. In addition, we would like to emphasise that supplementary pensions include	

both the second and third pillar – the term should therefore not be used in this document, because it is misleading. The two concepts should be kept separate (see General Remarks) and a simple language should be used throughout the report. EIOPA should at least stick to the suggestion made in the definition to use "pension scheme". For clarity's sake it would be even more beneficial to use "occupational pension scheme", which would reflect the link to an employment relationship and the important role of the employer.

- **"Transfers":** First of all, the definition should state clearly that in this context only *individual* transfers are addressed. It should be clear that the Good Practices collected in this report do not relate to the transfer of pension schemes (see proposed Article 13 IORP II Directive). Second, as explained above, in Germany there can be no transfer of pension rights, we therefore suggest to delete "vested rights". Nevertheless, it should always be clear that any transfer of capital ends the old employer's liabilities for the given pension promise. Third, we would like to point out that individual transfers only happen because of job changes, "for example" should therefore be deleted.
  - We propose the following text: "'Occupational pension schemes': are understood as any occupational retirement pension scheme established in accordance with national law and practice and linked to an emplyoyment relationship, intending to provide a supplementary pension for employed persons."
- **"Transferibility":** Following from the amendments suggested for the definition of "transfer", we propose to replace "vested rights" in the definition of "transferibility" with the words "capital value".

Scope of the report

	We welcome that the scope of the report is limited to IORPs and other occupational pension plans provided by insurance undertakings (it does not apply to book reserves and PAYG schemes, from a German perspective it means that it does not apply to direct pensions promises (Direktzusage) and support funds (Unterstützungskasse)). Put differently, the Good Practices are mainly intended for individual transfers between occupational pension schemes already under the supervision of EIOPA.	
Page 8	**Automatic transfers**: We note EIOPA's positive stance towards automatic transfers. We would like to point out that while some Member States are testing this idea, we are sceptical. Automatic transfers can lead to a situation where the beneficiary is made worse off by the transfer – from our perspective it is therefore crucial that the beneficiary always takes an active role in any kind of transfer. Regarding the introduction of an **online platform** (potentially across the EU as suggested by the Track and Trace Your Pensions in Europe team) we would like to point out: • Any kind of pension information requirements have to create a real added value for members and beneficiaries. • The related costs have to be proportional to this added value. • A standardised EU occupational pension information which is simple and clear is unrealistic and comparability difficult to achieve due to the different national characteristics of occupational pension schemes. • Particularly in large companies different funding methods and pension schemes are combined (for historic reasons and because of the legal and fiscal back-	

ground).

- Information has to be transparent and easy to understand and therefore has to be adapted to the individual situation of the employee.
- One size does NOT fit all.

The world of pensions is diverse and complex, not only in Germany – an EU-wide online platform would not be a realistic instrument to pass on relevant information to beneficiaries at a reasonable cost.

We note that for specific employees who are very mobile across Europe, improvements have already been achieved: An internet-based platform is helping public sector researchers finding their pension rights both in the statutory state-run schemes and in occupational pension schemes all over Europe.[3]"

Legal basis

We note that EIOPA stresses that the Good Practices proposed in the report will not be legally binding. Even though EIOPA stresses that social and labour law do not fall in its remit, we would like to emphasise this point: it is solely the Member States who decide on matters regarding social, labour and tax law. Within some Member States, transfers are addressed in collective agreements, these are most likely to be found in sectors where the different schemes deliver similar benefits (e.g. public sector in Germany or when employees move from one subsidiary to another within a corporate group). Neither EIOPA nor the Commission can or should interfere with the right of the

[3] www.findyourpension.eu

	Member States to address these issues as they see fit. At the same time the main obstacles to individual transfers clearly fall into the remit of the Member States. To acknowledge this, we propose to amend the following sentence (addition marked bold): „Due to the fact, that the transferability of supplementary pension rights has several contact points with other issues, it was unavoidable to also address questions which relate to social and labour law as well as to taxation, **which constitutes the major obstacles to cross-border transfers due to different tax regimes in the Member States.“**	
Page 9		
Page 10	In the current language the notion of portability is evident and can be considered as synonym for transferability. This is also the case in other languages (e.g. “Portabilität” in DE, “portabilité” in FR or “portabilidad” in ES). Only due to the first proposal of the portability directive of October 2005, the European Commission started to redefine the insofar clear notion of portability. We therefore propose to add the following text (marked in bold): „There is no agreed use of the term "portability" **at least as far as occupational pensions at EU-level are concerned.”**	
Page 11	**Visualisation:** As we understand the visualisation, it shows two employment periods with different employers, in between which there is a gap. From our perspective this is not the most common scenario: often employees change employers without a signifi-cant break in between. From our perspective it would be better to depict this more common scenario. In Germany the current legislation addressing individual transfers can be found in Art.	

	4 (3) of Occupational Pension Law (Betriebsrentengesetz, BetrAVG). It clearly establishes a link to the termination of an employment relationship and therefore falls under labour law. It stipulates that the transfer must take place within one year after the termination of the employment relationship. Collective agreements and industry agreements (e.g. GDV Übertragungsabkommen) might go beyond the provisons in this Article. **OECD Guidelines for the Protection of Rights of Members and Beneficiaries in Occupational Pension Plans:** We would like to point out that the OECD Guidelines refer to a transfer of the "value of their vested account balance". This is fundamentally different from a transfer of "pension rights", which EIOPA refers to in the last sentence of this paragraph (see our comments regarding p.6). From the German perspective it would not be possible to require a transfer of pension rights. EIOPA points out that there is currently "no explicit legal rule on the European level which grants members of supplementary pension schemes the right to transfer". In this regard we would like to emphasie that from our perspective it would not be adequate to create a European level rule in this area. This is an issue which falls under labour law (due to the link of an occupational pension scheme to an employment relationship) – it is firmly in the remit of the Member States whether to change legislation in this area. Example from Germany: The transfer of an occupational pension scheme inevitably affects the legal relationship between the employer and the employee. With the transfer, the employer behind the transferring scheme is freed from her/his responsibility to ensure that the pension promise is met; this responsibility is passed on to the employer behind the receiving scheme (Art. 1 (1) BetrAVG). In addition we doubt that it would be possible to develop an EU-wide rule which would	

	do justice to all the existing differences in national labour law.	
Page 12	We propose the following addition to footnote 20: „and in DE for unfunded occupational pensions in the public sector."	
Page 13	Comment relating to the sentence „Outside of legislation and the statutory framework in each Member State, as discussed above, there is little common, voluntary practice such as industry codes or ad-hoc agreements above what is required in regulation.": In the public sector in DE, which covers roughly 30% of all persons with occupational pension entitlements, transfer agreements between the single pension institutions already exist since the middle of the 1970s even though these schemes are not funded. Nowadays, there are yearly about 60,000 transfers with a transfer value of almost 450 million Euros only in the local and church sector. As stated e.g. also in our comments regarding p. 15, this success is built to a large extent on the similarity of the schemes (based on tariff agreements) between which the transfers take place.	
Page 14		
Page 15	Comments on **Good Practice 1** • Due to the diversity of occupational pension schemes, it generally should be a capital value which is transferred between different schemes. Nevertheless and as already described, such a capital transfer means that any responsibility/liability of a former employer in accordance to the transferred capital/the given pension promise expires. It is important to be realistic as to what the involved stakeholders are prepared to do. This applies to IORPs / insurance companies as well as to the beneficiary, who faces a more difficult decision the more different the two schemes are.	

	• Beneficiaries are likely to built their personal risk cover (e.g. invalidity, death) around what their employer offers. For example, if an occupational pension scheme does already include sufficient invalidity cover, there is no need to take out an additional personal insurance or it might not be possible because of limitations of total coverage. Any change to what is offered by the employer therefore triggers a review of the personal insurances taken out. This is particularly critical because with increasing age it becomes more expensive and difficult to take out invalidity cover or survivor's protection. Therefore the beneficiary has in most cases an interest that the benefits offered by the employer remain similar. As a consequence a transfer between similar schemes is easier to complete than a transfer between completely different schemes. • We support the idea to start with voluntary agreements between schemes / in areas where the schemes are relatively similar. As already described above, voluntary transfer agreements like for example on a collective basis could be a feasible way to facilitate transfers between employers/their schemes within industrial sectors or other areas at a national level if the schemes operated and the benefits offered are relatively similar. • **Interests in relation to a transfer:** The proposed agreement would of course need to comply with existing legislation and should take into account not only the interests of the pension scheme member transferring the capital value, but also the interests of the transferring and the receiving IORPs, each of their collective memberships and the sponsoring employers. • Depending on the legal background, such an agreement would need antitrust clearance. • Any data exchange of personal data of an employee would need a legal agree-	

ment between the IORP and the employer, for which the agreement of the employee is necessary.

- Regarding the last sentence, we disagree. Agreements should be restricted to similar schemes at national level in order to establish a well-functioning transfer procedure. It might be tried to extend it to further schemes at national level or later to foreign schemes, if all the other legal and tax issues are resolved (see first point).

- From our perspective it is key what is addressed in the agreement. Transfers at a wider scale will only be feasible if the former IORP calculates the transfer value according to its own actuarial assumptions and if later, the receiving instutions "translates" this transfer value into pension claims according to its own rules. If on the other hand it would include the use of the same actuarial assumptions, it is inconceivable that this would work in Germany across all five vehicles delivering occupational pensions, offered by either employers, IORPs or insurance companies.

Comments on **Good Practice 2**

- A small amendment is necessary in paragraph 4 (marked in bold): "Receiving schemes can become underfunded if not sufficient assets are transferred to cover the associated rights e.g. as a result of different actuarial methods used by the schemes involved (see also section 3.6. Calculation of transfer value)."

- Comment regarding the above text: This problem can be solved by respecting the following rule: calculation of transfer value according to premises of transferring scheme and transfer of this value in new pension entitlements according to rules of receiving scheme.

	• From our perspective the focus on funding status and the potential reduction of transfer values is too narrow (paragraph 6) - the interests of the transferring and the receiving IORPs, each of their collective memberships and the sponsoring employers should be considered.	
Page 16	Further comments on **Good Practice 2** • **Rejection of a transfer:** In addition to financial repercussions for the IORP, the overall risk environment should be taken into account, this includes in particular the interest rate environment, biometric aspects and structural changes in the pool of members. The complete risk environment should be considered when deciding against a transfer (see General Remarks). In addition, accounting repercussions and tax implications from the perspective of the sponsoring employers have to be taken into account. Furthermore, technical aspects (e.g. the integration in the IT system of the receiving IORP) can lead to the rejection of a transfer. • **Establishing criteria for the rejection of a transfer:** We are opposed to the idea that the IORP should set certain criteria at the beginning of the transfer with the goal to only allow a suspension of the transfer if one or several of these criteria are met. As stated above, a decision against a transfer is made based on a consideration of the overall risk environment, not on a fixed set of criteria. • To conclude, the right of the employer and the IORP to reject a transfer is needed unless it is only a capital value which is being transferred and the transfer time as well as the transfer value is limited (in Germany: contribution ceiling of the statutory pension insurance – Beitragsbemessungsgrenze in der	

	gesetztlichen Rentenversicherung - €72,600 p.a. in 2015). It is important that the former employer is not liable anymore for the given promise in relation to the capital that is being transferred. Comments on **Good Practice 3** • From our perspective it is likely that cross-border transfers will need different requirements than a domestic transfer. In the case of the latter, compliance with national social, labour and tax as well as other relevant legislation (e.g. on data protection) can be taken as given, because the receiving IORP has to comply with the same national requirements. This is not the case for cross-border transfers and should be reflected in the requirements for cross-border transfers. Therefore Good Practice 3 does not make much sense when there are different national regimes; establishing the same requirements for both domestic and cross-border transfers would only be possible if there was a uniform legal framework across the EU. • Regarding footnotes 49 and 50, we would like to point out that for DB schemes a transfer is also about a capital value. As explained above (see comments regarding p. 6), the transferring IORP calculates the value, which is then transferred. The receiving IORP then calculates the benefits which can be offered based on the transferred value. We would like to stress that there is no negotiating between the two IORPs.	
Page 17		
Page 18		
Page 19	Comments on **Good Practice 4** • From the perspective of the (rational) employee, full flexibility in terms of the timing of the transfer is desirable. However, the point in time at which a trans-	

	fer is realised has financial repercussions on IORPs and therefore effectively on the other members and beneficiaries and / or the sponsoring employer. While without doubt few beneficiaries would change jobs (or even countries) with the sole aim of improving their occupational pension, once a job change has taken place, the beneficiary could signficiantly benefit depending on when the transfer takes place. A beneficiary could, for example, opt to stay in a scheme which offers a high guarantee during the accumulation phase until just before retirement, and only then transfer to a scheme which offers a generous formular for the calculation of the actual retirement benefits. Another example would be to use the change to benefit e.g. from a pool of beneficiaries with a higher life expectancy (and lower annuity rates) to one with lower life expectancy (and higher annuity rates). In addition, links to other issues (e.g. pension sharing orders - Versorgungsausgleich in Germany) have to be considered. • The rationale for a transfer is to allow mobile workers to collect their pension entitlement within one (or at least few) institutions/sponsoring employers. On this backdrop it makes sense for the transfer to take place relatively soon after the job change. While it is important that beneficiaries have an adequate amount of time to collect information and make a decision, a limit on this time might also serve as encouragement to finally complete the necessary documents and request the transfer (from a behavioural perspective, many beneficiaries might otherwise always postpone this to "tomorrow"). We therefore propose a time limit of two years between the job change and the transfer. • A fixed time frame also gives the IORP as well as the sponsoring employer the possibility to plan ahead (rather than expecting any number of transfers on any given day – but which might also never happen) as well as avoiding the risks around arbitrage (Point 1 regarding Good Practice Principle 4).	

Page 20	Looking at the issue from a practical perspective, the proposed layering of information is very elaborate. It is unclear who should provide this information: Employers or IORPs? The transferring or the receiving parties? We would also like to point out that it is very difficult to give legally accurate information which is easy to understand for the average beneficiary, even if the information is presented in several layers. Finally, cross-border transfers are likely to involve two languages, which adds further complexity. The information called for in paragraphs 4-7 is too extensive, the expected added value is likely to be much lower than the expected costs. We agree with EIOPA that information for members and beneficiaries needs to be "correct, understandable and not misleading". However, we would like to add that the information provided to the member also needs to fit the particular scheme and pension promise it is pertaining to. We would also like to point out that the KID stems from investment products and is therefore not appropriate for occupational pensions. Hence, any information document should be tailored to the specific situation of 2nd pillar provisions as described on the next page. The legal basis at the European level will probably be Art. 53b of the IORP II proposal.	
Page 21	We would like to point out that a personal pension product (PPP) has nothing to do with transferability of occupational pensions. We are not sure why in this report which discusses the individual transfer of occupational pension schemes, EIOPA sees it fit to advertise the idea of a European-wide PPP. We agree with EIOPA that demographic developments paired with cuts in state pension provision create the need to supplement retirement income with private pensions. From our perspective, however, the first choice in this regard are occupational pensions. Because of the involvement of employers, occupational pensions can be organised at 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 can also 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 personal pension, members and beneficiaries of occupational pensions are mainly protected through social and labour law. From our perspective the information about the potential loss of risk coverage e.g. invalidity is crucial. We believe that for members this might be an important factor when deciding on whether to ask for a transfer.	
Page 22	Comments on **Good Practice 5** To us it is not clear who will be responsible for the provision of this information – and, crucially, who will be liable in case it is not accurate. In particular information about tax implicatons (and social insurance contributions) is already very complex in national transfers. We are not sure how this would work for cross-border transfers. The Commission Proposal for the IORP Directive and the agreed Council Compromise4 clearly address the IORP when stipulating the information requirements. Neither the employer nor the IORP can provide real advice on issues like tax and social insurance contributions and potentially be liable for it. Considering the regulation of tax and financial advisors, they might not even be allowed to provide advice. From our perspective it is sufficient if the transferring beneficiary receives information on the value the transferring scheme is offering and the benefits the new scheme can provide based on that value. However, this should not only include bare numbers, but also refer to issues such as invalidity protection, survivor's pension, security mecha-	

[4] See the agreed Council Compromise which is based on the modified Proposal for an IORP II Directive from 28 November 2014.

nisms etc. It should explain what the beneficiary is entitled to under which circumstances.

Comments on **Good Practice 6**

- For efficiency reasons, information relating to the transfer should in principle only be delivered to an employee upon request.
- We are against the idea to establish such an information requirement in this Good Practice. We would also like to point out that the transferring scheme can only provide the beneficiary with the information of the transfer value they can offer – they cannot provide any information on the type of benefits the receiving IORP would offer. It is therefore impossible for the transferring employer / IORP to provide "the relevant information upon the termination of the employment relationship".
- In German law the beneficiary has a right to request information on a possible transfer (Art. 4a (1) Number 2 BetrAVG) from the potentially transferring IORP / the sponsoring employer. Correspondingly, Art. 4a (2) BetrAVG gives the beneficiary the right to request information from the potentially receiving IORP / the new employer. Calculating these values for all leaving employees (even if they never considered a transfer) would add additional administration costs and would make occupational pensions less efficient.
- The information members need as well as the amount of information they can compute varies from case to case. It is therefore not possible to create an automatic process which would lead to a package with all *relevant* information. What is relevant in an individual case will always depend on the beneficiary who has asked for the transfer.

	• Finally, we would like to point out that the proposal does not clearly address who is responsible to provide the information.	
Page 23	Comments on **Good Practice 7** • It is sufficient if one medium is used to provide the information – if it is done by mail it should not be required to also offer an online platform. • Since all information relates to a transfer, it would be necessary to set up an interface for the two employers and two pension schemes. Since this would render any online platform very complex and expensive, we are against the requirement to built up an online tool. • One problem we would like to emphasise is that while is it very efficient to use a company intranet to inform active members about their pension entitlements, it is not a means of communication for dormant members, because leaving a company often also means loosing the right to use the company intranet. • For any kind of online tool, extensive questions around data protection would have to be addressed. Any kind of external data storage goes beyond the employment relationship and therefore falls under co-determination procedures (Mitbestimmung). • Based on the comments above, we would at least propose the following addition (marked in bold) to Good Practice 7: „**If available,** EIOPA considers it as Good Practice to provide the scheme member with access to an online tool/portal with (additional) relevant information concerning his/her transfer." Comments on **Good Practice 8**	

	• We would like to emphasise that advice can only be free of charge if it concerns information delivered by the IORP or the employer. External advice has to be paid by the employee. The need for information and external advice and hence the related costs are likely to be lower if the transfer takes place between similar schemes (see also our comments regarding p. 15).	
Page 24	Comments on **Good Practice 9** • We would like to point out that the costs related to a transfer do not only relate to the transfer itself, but also to other aspects: e.g. options and guarantees, changes in the pool of members in the pension scheme (Bestandsänderungen), running administration costs, special requirements for the data keeping (e.g. parallel data keeping, data exchange for international tax issues), corporate tax for the employer etc. • In Germany employers and IORPs currently work a lot with lump charges (rather than calculating the exact amount it has cost for each case). Usually the costs for the transfer are independent of the sum of capital transferred. This practice works, it is quick and efficient. We are therefore opposed to a Good Practice Principle which calls for the calculation of the charges according to the actual work necessary to carry out the transfer. However, if EIOPA's concern is that costs and charges would be related to the transfer amount, a lump compensation would also solve this issue. • Finally, we would like to point out that small changes in legislation / Good Practices can trigger relatively high administrative costs. An example from Germany is the reform of pension sharing in case of divorce (Versorgungsausgleich). It requires the IORP to hold a lot of information, which of course triggers additional costs, in particular investment in IT systems. In addition, transfers bring	

	the risk that some information is lost.	
Page 25	Paragraph 4: In this context it should be taken into account that not only the IORPs and the beneficiary are involved, but also the employers.	
Page 26	Comments on **Good Practice 10** • From our perspective it is often the case that information which is important to make a decision on whether to transfer or not only emerge when the involved parties communicate with each other. Examples are the level and type of benefits the receiving IORP offers; which costs and charges will be deducted and how long it will take to complete the transfer. From this perspective it does not make sense if only the two IORPs communicate with each other, the beneficiary needs to be involved as well. We would like to stress again that the two IORPs cannot negotiate on behalf of the beneficiary. The beneficiary remains the main decision maker. • However, it does make sense from our perspective if the two involved IORPs discuss any purely technical details between themselves. • This Good Practice does not take into account the role of the employer: it neither considers that it is the employer who makes the pension promise, nor that the employer sponsors the IORP. • As mentioned several times above, this Good Practice would also raise data protection issues. Comments on **Good Practice 11**	

	• We disagree with this Good Practice: delays in processing transfers can be due to external factors (e.g. legal changes) or to the implementation of a new IT tool. Furthermore, what are the consequences of any delay if the conditions are already fixed? We therefore propose to replace the fixed time limits with the following: "Time limits should be reasonable and adequate for the task required". This takes into account the complexity of the topic while at the same time granting that the transfer should be completed within a reasonable time frame.	
Page 27	Comments on **Good Practice 12** • Good Practice 12 is very similar to Good Practice 10 – would it make sense to combine these two Good Practices? • Our comments to Good Practice 10 apply here as well. • From the German experience it is important to be careful here: the beneficiaries need to be aware of the benefits they are foregoing and what they get in return – if this is not clear but the transfer goes ahead, it is likely that the beneficiary will request a reversal of the transfer. Under German law it is not sufficient to request a transfer. • From our perspective it is important that the beneficiary first requests information on the transfer (e.g. capital value) and then makes a decision on whether to transfer or not. ➢ We therefore propose the following text for Good Practice 12: "The member first needs to request information regarding the transfer, after receving the information the member has to make a final decision on whether to transfer or	

	not." Comment regarding the sentence „Specifically in the case of cross-border transfers, satisfying additional requirements under national law may prove complex if there are insufficient procedural aids - one Member State noted strong market demand for a **central database** where the transferring provider can see all eligible receiving providers in order to fulfil its requirement to check the eligibility of the receiving scheme.": No, such a database is currently too ambitious, because first, we have never heard of any problems in this area at the national level, and second, it would be an inappropriate amount of work with respect to the relatively low number of individuals working in another Member State and accuring an occupational pension. Comments on **Good Practice 13** Paragraphs 3 to 5: The identification of the receiving scheme completely ignores that it is also a new employer who stands behind the receiving scheme.	
Page 28	Further comments on **Good Practice 13** • In 2013 3.3% of EU employees were mobile across borders[5]. It is unlikely that all of these workers have acquired and vested rights in an occupational pension scheme, but there are no figures on this questions. Nevertheless, as it currently stands it seems unnecessary to promote such a platform based on the limited number of people benefits from it. The related costs and benefits are not proportionate; in addition, there would be huge practical questions around who should set up and update such a register. We do not think that this falls in EIOPA's remit. We are therefore against the promotion of an international regis-	

[5] European Commission, Report on labour mobility in the EU, 2014.

	ter. • Again, the identification of the receiving scheme completely ignores that it is also a new employer who stands behind the receiving scheme. **Calculation of transfer value:** It is important to bear in mind that any transfer has direct and indirect costs (see our comments regarding p. 24). From the perspective of the employer it is problematic if the employee can singlehandedly decide the point in time for the transfer and the valuation.	
Page 29	We propose the following addition (marked in bold): "The method for calculating the transfer value to be paid from the transferring scheme may be considered as a potential impediment if the calculated sum to be transferred is less than the vested rights. This deduction can constitute major costs to the member from an economic point of view. **Therefore, sound and understandable information prior to the transfer decision are necessary."** We propose the following addition to footnote 124: „In order to avoid financial distortion, the transfer value should be calculated according to premises of transferring scheme and this value should be converted into new pension entitlements according to rules of receiving scheme." Again, it is important to bear in mind that any transfer has direct and indirect costs (see our comments regarding p. 24). From the perspective of the employer it is problematic if the employee can singlehandedly decide the point in time for the transfer and the valuation. While without doubt few beneficiaries would change jobs (or even countries) with the sole aim of improving their occupational pension, once a job	

	change has taken place, the beneficiary could signficiantly benefit depending on when the transfer takes place. A beneficiary could, for example, opt to stay in a scheme which offers a high guarantee during the accumulation phase until just before retirement, and only then transfer to a scheme which offers a generous formular for the calculation of the actual retirement benefits. Another example would be to use the change to benefit e.g. by moving from a pool of beneficiaries with a higher life expectancy (and lower annuity rates) to one with lower life expectancy (and higher annuity rates). We would also like to stress that there is no fixed transfer value, in particular the timing will have an impact on the level of the transfer value, which makes information about it even more complex (regarging paragraph 4 of this page). We very much agree with EIOPA that tax issues are an important obstacles for cross-border transfers. However, tax does not fall in EIOPA's remit of regulation, it firmly sits with the Member States.	
Page 30	Regarding paragraphs 6 and 7: From an efficiency perspective it can make sense to pay out very small amounts to avoid high administrative costs relative to the transfer value. In these cases it can happen that a transfer is neither in the interest of the beneficiary nor in the interest of the employer.	
Page 31	Comments on **Good Practice 14** • Regarding the idea of an automatic transfer for smaller entitlements, we would like to stress again that from an efficiency perspective it can make sense to pay out very small amounts to avoid high administrative costs relative to the transfer value. Therefore it is important to schemes,employers and beneficiaries that	

	very small entitlements can be paid out. • **Automatic transfers:** We note EIOPA's positive stance towards automatic transfers. We would like to point out that while some Member States are testing this idea, we are sceptical. Automatic transfers can lead to a situation where the beneficiary is made worse off by the transfer – from our perspective it is therefore crucial that the beneficiary takes an active role in any kind of transfer (see our comments regarding p. 8).	
Page 32		
Page 33	We do not understand why Good Practices 2,3,4 and 14 are not mentioned any more in the conclusions. Regarding paragraph 3: We would like to point out that any agreement between pension schemes needs to take into account the myriad of existing legal requirements. Regarding paragraph 4: We would like to point out that there are issues around liability if the employer or the scheme provides certain information or even advice to the beneficiary. The employer might even not be allowed under national legislation to provide advice for example on tax questions. Regarding the creation of online tools, we would like to emphasie that the related costs need to be in a sensible relationship to the added value the tool provides as well as to the number of potential transfers addressed. Regarding paragraph 5: All stakeholders benefit from efficient processes. However, it should be considered that the new processes should only be introduced if the related effort and costs are proportionate to the potential number of transfers addressed.	

Page 45	EIOPA describes the basics of the German Art. 4 (3) BetrAVG. It indeed requires that the occupational pension of the leaving employee is organised through an external vehicle. However, a transfer is also possible if the new employer (so far) only uses a direct pension promise (Direktzusage) or a support fund (Unterstützungskasse). In this case the beneficiary can also request a transfer with the transfer value up to the contribution ceiling of the statuatory pension insurance. The employer then has to offer a pension promise equivalent to the transfer value, which has to be administered through an external vehicle (according to Art. 4 (3) Sentence 3 BetrAVG).	
Annex I		
Annex II	Is there any evidence that women are more likely to need transfers than men (p. 40)? Caring for relatives normally does not lead to a transfer.	

SD/VM 09 April 2015