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COMMISSION STAFF WORKING DOCUMENT

Consumer protection in third-pillar retirement products

CONSULTATIVE DOCUMENT

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1. INTRODUCTION

The growing proportion of retired people in Europe is a significant challenge for the EU Member States. As a result of demographic change, pension systems must be financially sustainable, but also designed to ensure that pension benefits are adequate and that the living standards and economic independence of retired people are maintained. The challenge of meeting these requirements is made more difficult by the current financial and economic crisis, which has caused financial instability, reduced employment and disposable income, and the need for fiscal consolidation.

The European Commission's Annual Growth Surveys (AGS)[1] provide guidance on ensuring that pension systems are efficient, adequate and sustainable, particularly in the context of the need for growth-friendly fiscal consolidation. To achieve this, they highlight the importance of aligning retirement ages with life expectancy, restricting access to early retirement schemes, enabling people to work for longer and promoting complementary retirement savings.

Major national reforms during the last decade have begun to address the issues of adequacy and sustainability.[2] To support these reforms, building on the 2011 and 2012 AGS, and in line with the Europe 2020 strategy, the 2012 White Paper on pensions[3] outlines an agenda at EU level for ensuring that pensions are adequate and sustainable. It focuses on creating conditions that will enable people to work for longer and enhance opportunities for them to accumulate secure complementary retirement savings.

Complementary retirement savings[4] (including third-pillar retirement products) will play a greater role in securing the future adequacy and sustainability of pensions, reducing the burden on public pension schemes and increasing pensioner income.[5] It is vital to ensure that consumers are adequately protected, boosting their confidence in a complex market where a poor investment decision can have severe adverse consequences.

To this end, the White Paper announced that "the Commission will, by 2013, present an initiative aimed at raising the quality of third-pillar retirement products for women and men and improving consumer information and protection standards via voluntary codes and possibly an EU certification scheme for such products, building, where appropriate, on measures to improve information for consumers planned for 2012 on 'packaged retail investment products' (PRIPs)."[6]

In addition, the White Paper[7] announced a related action addressing contract-law issues for certain private pension products.[8] The Commission is currently discussing this topic in an Expert Group on European Insurance Contract Law.[9] The Group is expected to issue a report by the end of 2013. The Commission will decide on the need and the policy options to address possible contract-law related issues concerning third-pillar pension products taking into account the results of this consultation and the Expert Group's report.

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1 2011, COM(2011) 11 final, 12.1.2011; 2012, COM(2011) 815 final, 23.11.2011; 2013, COM(2012) 750 final, 28.11.2012.

2 See the 2013 Annual Growth Survey, Macro-economic Report, Annex, p. 8 (footnote 3) and 2012 Ageing Report (EC, European Economy 2/2012).

3 *An Agenda for Adequate, Safe and Sustainable Pensions,* COM(2012) 55, 16.2.2012. This Pensions White Paper reflected the views of stakeholders gathered during a wide-ranging consultation held in the context of the Green Paper *Towards adequate, sustainable and safe European pensions systems,* COM(2010) 365 final, 7.7.2010.

4 These also encompass workplace-based occupational schemes for which the White Paper pointed to a set of initiatives including a review of the Institutions for Occupational Retirement Provision (IORP) Directive.

5 Third-pillar pension savings could also increase the amount of household savings that could then be used to finance investment in the long term.

6 COM(2012) 55 final, 16.2.2012, Annex 1, Action 13, page 17.

7 COM(2012) 55 of 16.2.2012, Annex I, Action 19, page 18.

8 Action 19 aims to "*explore the need for removing contract law-related obstacles to the design and distribution of life insurance products with savings/investment functions with the aim of facilitating the cross-border distribution of certain private pension products*".

9 Commission Decision of 17 January 2013 on setting up the Commission Expert Group on a European Insurance Contract Law (OJ C 16/6 of 19.1.2013).

1.1 Consumer protection aspects in third-pillar retirement products

Consumer information, also referred to as transparency, includes the product details given to a consumer before, at the moment of, or after concluding a contract with a pension provider. Protection standards govern the relationship between a pension provider or distributor and a consumer before, at the moment of, or after the transaction, covering marketing, advice, inducements and sales practices in general.[10]

1.2 Scope and aim of this document

This document focuses on third-pillar retirement products. It builds on current literature and on studies carried out by the Commission. It also draws on a questionnaire sent to Member States and targeted stakeholders in October 2012, in particular with regard to current national consumer protection rules and the broader operation of national markets.[11] In the questionnaire, third-pillar retirement products were described as 'any type of private retirement product subscribed to by consumers on an individual basis (as opposed to occupational), whether voluntary or mandatory.' This definition is broad enough to cover most private individual retirement products, including products for which mandatory contributions are collected.[12]

Replies to the questionnaire indicated that stakeholders generally consider it reasonable to develop an EU approach in this area. A wide range of public authorities and industry representatives recognise the benefits of an EU common framework, notably in terms of the cross-border mobility of consumers. All consumer groups welcome attempts to improve consumer protection in this market. Stakeholders did however highlight the difficulty of implementing an EU approach due to the different features of regulatory frameworks and national markets,[13] as described in section 3. Some stakeholders also said that the rapidly changing national and EU regulatory framework, which affects third-pillar retirement products and providers, should be taken into account when designing an initiative in this area.[14]

Existing and forthcoming EU legislation that applies to investment products imposes general consumer protection requirements covering insurance and investment products, potentially covering most third-pillar retirement products.[15] However, despite the specificities of the third-pillar market and the unique risks consumers face, there are no specific EU provisions that adequately address consumers' needs. For the reasons outlined in section 4, consumers require particular protection in this market. Some Member States have introduced their own requirements in addition to EU requirements, resulting in market fragmentation and unequal levels of consumer protection. A common approach, in particular in areas not covered by EU rules, would help deal with possible divergences in the national regulatory regimes, thus avoiding further fragmentation in terms of consumer information and protection standards.

The purpose of this document is to identify the specific problems encountered by consumers in third-pillar retirement products and whether voluntary codes coordinated at the EU level or certification schemes could improve consumer protection. This document also aims at steering the debate towards identifying optimal ways of addressing some of the specificities mentioned below.

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10 Protection standards correspond to the sales practices requirements mentioned, for instance, in the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC, OJ L 145, 30.4.2004) and in the Insurance Mediation Directive (IMD) (Directive 2002/92/EC, OJ L 9, 15.1.2003).

11 Feedback can be found in section 3 (national regulatory framework) and section 5 (EU policy instruments).

12 The definition and main features of third-pillar retirement products are discussed in section 2.

13 German, Danish, French and UK public authorities in particular emphasised this.

14 E.g. Netherlands expressed a preference to await the outcome of pending EU legislative proposals in this area.

15 For example, if the retirement product is legally defined as insurance, it will be subject to rules imposed by the IMD. If the product is a financial instrument, the rules set out in the Markets in Financial Instruments Directive apply. The relevance of existing and proposed EU legislation to the third-pillar is discussed in section 3.3.

The results of the consultation will be taken into account in a broader initiative aimed at developing a genuine, consumer-friendly Single Market for personal pension schemes. They will also provide useful material for developing measures and initiatives on the basis of the MiFID and IMD reviews and the PRIPs proposal, as discussed below.

Stakeholders can send their responses to the consultative document until **19/07/2013**. Contributions should be sent to the European Commission at the following address: SANCO-THIRD-PILLAR-PENSION-FUNDS@ec.europa.eu .
Contributions received and the identity of the contributor will be published on the European Commission's consultation page at
http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca_current_consultations_en.htm,
unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case, the contribution may be published anonymously. Otherwise, the contribution will not be published, nor will, in principle, its content be taken into account. For more information on the processing of personal data in the context of this consultation, read the Privacy Statement available on the consultation page indicated above.

2. DEFINITION OF THIRD-PILLAR RETIREMENT PRODUCTS

2.1 Towards a common operational EU definition of the third-pillar

Action 13 of the White Paper on pensions focuses on improving consumer information and protection standards for third-pillar retirement products for all EU consumers. In order to determine the scope of a future initiative, the third-pillar needs to be clearly defined. This is not easy because the use of the pillar model itself is not based on unanimous understanding.[16] This is confirmed by the different responses to the questionnaire from Member States, as described in section 3.

While it is clear that a common notion of third-pillar retirement products cannot be drawn from current national legal or commercial definitions, the distinction between private occupational (or employer-arranged) and private individual retirement products, as defined by the OECD in 1998, seems appropriate for this paper. This operational definition builds on the aspects of third-pillar products that are common to all Member States, irrespective of their legal and commercial aspects.

2.2 Identification of third-pillar pension plans in Europe

While there are no official and legal EU definitions of third-pillar retirement products, various taxonomies are used to categorise pension pillars. The pillar structure was explained in the OECD document *Maintaining prosperity in an ageing society*.[17] The first pillar consists of statutory, publicly managed, mostly defined benefit pension schemes. The second consists of privately managed pension schemes provided in an occupational context. The third consists of personal private pension schemes.[18]

In its *Revised taxonomy for pension plans, pension funds and pension entities*,[19] the OECD elaborated on its previous 'simplified' approach. It suggested using descriptive terminology and a more sophisticated taxonomy, based on various distinctions: 'private/public', 'defined benefit/defined contribution', 'unfunded/funded' and 'occupational/personal'. This sophisticated

16 Some prefer to categorise individual pension schemes using qualitative criteria (as the IORP Directive does).
17 OECD Policy Brief (June 1998), available at http://www.oecd.org/insurance/pensionsystems/2430300.pdf.
18 This taxonomy was not used in other contexts however. The World Bank defines the second pillar as mandatory privately managed pension plans, while third-pillar schemes are identified by the voluntary nature of contributions.
19 OECD (October 2002), available at http://www.oecd.org/insurance/privatepensions/2488707.pdf.

taxonomy aimed to define the functioning of private pension plans more effectively and comprehensively.[20]

However, since the focus of this paper is on consumer protection, the 'simplified' 1998 OECD model seems preferable as a starting point. Authoritative literature also confirms the benefits of using the traditional distinction.[21]

2.3 Distinction among the three pillars

It is sometimes hard to distinguish between the three pillars, as any classification is complicated by various hybrid solutions available in the market. These hybrid products have characteristics associated with each of the three pillars, but the distinction remains blurred. There could be different opinions regarding the classification of several private individual retirement products that can be considered in between the second- and third-pillars. They include individual retirement products recommended in an occupational context but without any direct employer participation or contribution, and mandatory private individual retirement products for which part of the statutory contributions are collected.[22] However, due to the individual nature of these products and the fact that they are not funded by the employer, the third-pillar element is dominant.

Questions:

1 Is the following definition, used in the 2012 questionnaire, effective for identifying third-pillar retirement products?

> **"Third-pillar retirement products are defined as any type of private retirement product subscribed to by consumers on an individual basis [as opposed to occupational], either voluntary or mandatory"**

2 If not, what would be the most appropriate common EU definition for third-pillar retirement products?

3. REGULATORY FRAMEWORK FOR THIRD-PILLAR RETIREMENT PRODUCTS

3.1 National regulatory framework

This paragraph provides preliminary information gathered from the 2012 questionnaire. It invited Member States and stakeholders to describe current national rules on third-pillar retirement products affecting consumer information and protection standards, as well as the market situation at national level.[23] Respondents were also asked to give their preliminary views on the effectiveness of the instruments mentioned in the White Paper. These views are outlined in section 5.[24] The main trends that emerged from the responses of Member States and Croatia were:

A) Market situation of third-pillar retirement products

In most Member States, contributions to third-pillar retirement products are voluntary.[25]

[20] The 2002 OECD document also developed five different elements (Annex 3) to evaluate any taxonomy of private pension schemes. These are: 1) retirement purpose (benefit/account balance liquidity); 2) funding and risk bearing; 3) the administration of funding pension plans and the funding vehicles; 4) eligibility and participation; 5) tax treatment.

[21] See the recent study of the European Parliament *Pension systems in the EU — contingent liabilities and assets in the public and private sector* (EP, DG for Internal Policies, 2011).

[22] These products are also known as 'first-b pillar' (sub-group of the first pillar) products, because their funding is based on contributions originally intended to finance public pensions.

[23] More information on EU legislation applicable to pension schemes or institutions in Member States is provided in the 2010 Green Paper on pensions and its accompanying document [SEC(2010) 830 final, section 3 and Table 1]. However, this mapping (carried out by the European Insurance and Occupational Pensions Authority) focuses on prudential regulation.

[24] DG SANCO received 50 responses to the questionnaire circulated at the beginning of October 2012. They include responses from 25 Member States (excluding BE and SE, which did not reply) and Croatia, 15 responses from business representatives and 9 from users represented in the Pension Forum.

[25] The exceptions are mandatory private individual retirement products that collect statutory pension contributions (first-b pillar), where funds may be mandatory (e.g. Poland) or quasi-mandatory (opt-out possibility).

Responses indicated that in the EU, pension plans most often take the form of insurance contracts. This is the case in larger Member States including France, Germany, Italy and the United Kingdom, where insurance companies are the major providers. Apart from insurance contracts and pension funds, a small number of Member States mentioned other savings products that could be used for retirement income purposes.[26] Responses mention a range of pension product providers including insurance companies, deposit-taking institutions, fund management companies and other financial intermediaries.

The replies to the questionnaire relating to the size of the third-pillar pensions market as a percentage of GDP do not give us a consistent, comparable view of the situation in all Member States.[27] However, there is some data available in the 2012 Ageing Report that also compares second- and third-pillar schemes[28] and there are some coverage data expressed in terms of the number of active members in different schemes.[29]

B) Current national rules

Public authorities' replies to the 2012 questionnaire indicated a highly fragmented regulatory framework. Only four Member States appear to lack any legal instrument defining or indirectly dealing with third-pillar retirement products (BG, CY, CZ and EL). All other public authorities, whether or not they explicitly define personal pension funds, have provisions that deal with third-pillar retirement products to varying degrees. In particular, in EE, IT,[30] LU, PL,[31] RO, SK and MT,[32] an overarching legal framework covering individual complementary pension schemes (insurance and non-insurance) has been established. Legislative instruments covering some specific sub-groups of third-pillar retirement products were reported in AT, DE, DK, ES, FI, FR, HU, IE, LT, LV, NL, PT, SI and UK.

In relation to third-pillar retirement products in the form of insurance products, ten public authorities reported a lack of national legislative provisions[33] on information requirements beyond the implementation of current EU rules. 13 Member States have various legal instruments with specific provisions on consumer information (DE, EE, ES, FI, FR, IE, IT, LU, LT, MT, PL, SI and UK). Ten Member States do not have any specific national rules on consumer protection standards for individual pensions in the form of insurance products.

Most Member States reported the adoption of national consumer protection rules on non-insurance third-pillar retirement products through specific legal instruments or relevant provisions in broader legislation.[34]

Only AT, CY, EL, FR and NL do not have any legislation governing information requirements for non-insurance products. A slightly higher number of Member States have no legislative rules on sale requirements for non-insurance products or did not provide a specific answer (AT, CY, EL, FR, NL, PL and SI).

C) Self-regulation is not widespread in all Member States

Only 10 Member States reported the development of voluntary initiatives (AT, BG, DE, DK, EE,

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26 E.g. *'Banksparen'* in the Netherlands are long-term savings deposits that may be linked to the purchase of annuities on retiring. Savings can also be earmarked for purchasing residential property at the end of term, or held until death.

27 Available sources include the OECD and the European Commission. There is no comparable data distinguishing occupational from personal pensions.

28 2012 Ageing Report, p. 107-109 (see footnote 2).

29 In particular from the OECD (e.g. 'Complementary and private pensions throughout the world 2008') and from a study by Oxera Consulting Ltd, to be finalised in 2013.

30 Legislative Decree 252 of 5 December 2005 *('Forme pensionistiche complementari individuali').*

31 In Poland, two types of third-pillar retirement product are defined by the Act of Law on individual retirement accounts (IKEs), amended in 2011 to cover individual retirement account securities (IKZEs).

32 In Malta, the Pension Retirement Act adopted in 2011 is not yet in force.

33 No specific transparency legislation on insurance products was reported in BG, CY, CZ, EL, HU, LV, MT, PT, RO and SK.

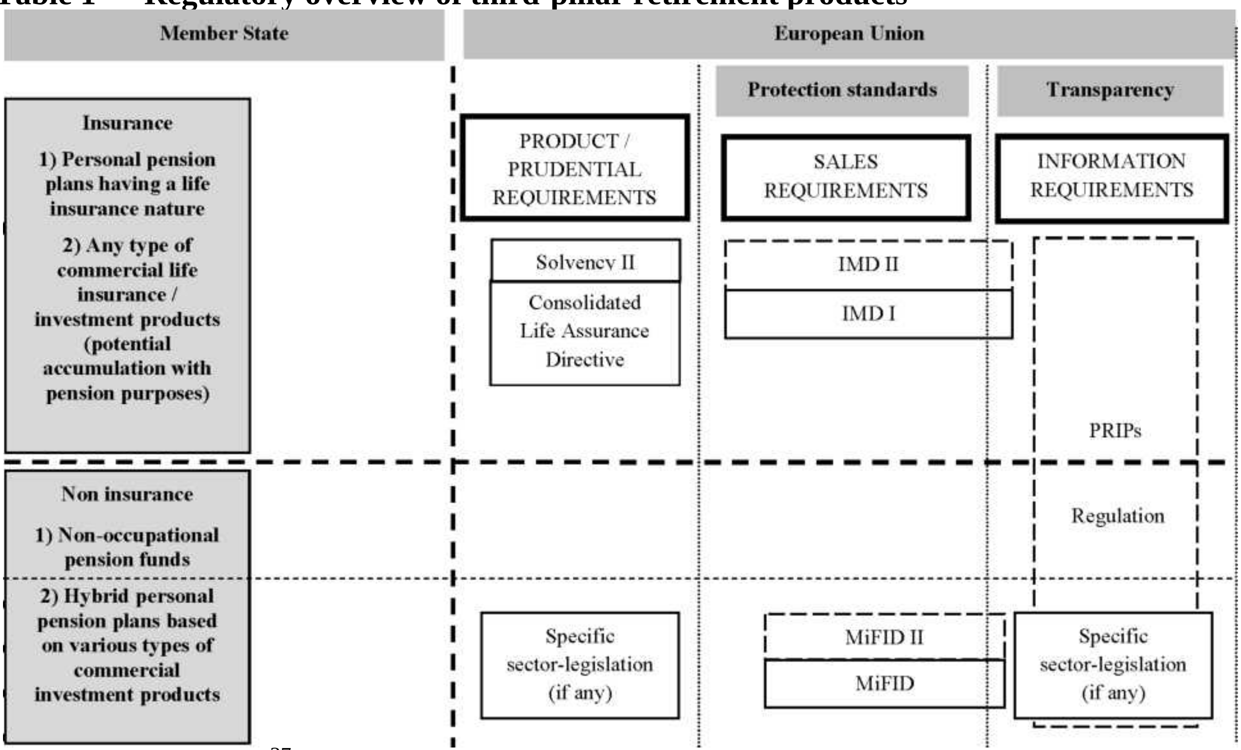
34 Legislative instruments on non-insurance third-pillar retirement products have been adopted in 19 Member States (BG, CZ, DE, DK, EE, ES, FI, HU, IT, LU, LT, LV, MT, PL, PT, RO, SI, SK and UK) and in Croatia.

FI, IT, SE, SI and UK).[35] Public authorities from 11 Member States replied that no self-regulatory initiatives have been registered at this stage.

3.2 EU regulatory framework

Third-pillar retirement products may fall within the scope of existing and proposed legislation, although there is no specific EU legislation applicable. With different national definitions of these products in use, boundaries between pillars may also be blurred, as outlined above. An overview of the circumstances in which EU legislation may apply to third-pillar retirement products is given in Table 1 below. It focuses on how existing and forthcoming EU legislation governs – or will govern – prudential rules on or substantial product requirements for third-pillar retirement products; their sale to retail clients; and the provision of information for retail clients about them. It distinguishes between two main types of product used by individuals as complementary private pensions: insurance and non-insurance products.

Table 1 — Regulatory overview of third-pillar retirement products[36]



• ***Insurance products***[37]

Two main categories of life insurance contracts can be considered third-pillar schemes: personal pension plans, whose main features the insurer and the client agree on, and hybrid insurance or investment products with an accumulation approach for pension purposes.[38] This includes insured pensions.[39] Both categories fall within the scope of IMD I,[40] which mainly establishes sales requirements for insurance products sold by intermediaries. The Commission

35 For example, the information recommendation and the code of conduct for insurance mediation of the German Insurance Association; the Italian insurance sector guidelines covering, *inter alia*, sales requirements and portability of pension rights; the codes of the Association of British Insurers.

36 Some information requirements are also dealt with by the consolidated Life Insurance Directive and have therefore been taken on board by Solvency II.

37 Other legislative instruments on insurance, such as the Life Assurance Directive (Consolidated Life Directive) and Solvency II, which contain provisions relating to product requirements, are beyond the scope of this document.

38 Some typical investment or insurance products (e.g. unit-linked products) consumers use as tools for their pension plans.

39 In section 2.2, the 2002 OECD document defined this category as pension plans offered by insurers and consisting exclusively of insurance products.

40 See footnote 10.

proposed to revise this legislation in 2012 (draft IMD II).[41]

The Commission proposal on packaged retail investment products (draft PRIPs proposal)[42] will introduce a key information document for retail investment products of any legal nature. It will contain simple, objective and comparable information in a common format, to be delivered before the product is sold to retail investors. This proposal, currently being discussed in the European Parliament and the Council, covers third-pillar retirement products and seeks to establish common requirements on information provision that might also be relevant to third-pillar retirement products. These requirements would be developed as 'level 2' measures,[43] once agreement has been reached on the 'level 1' framework.[44]

• ***Non-insurance products***

For the purpose of this document, non-insurance pension products include non-occupational pension funds, taking various forms in the different Member States, that consumers subscribe to individually, and hybrid personal pension plans (non-insurance), that are sometimes based on various types of other investment products. In the second case, consumers buy a typical investment product, such as an investment fund, that forms all or part of their pension plan.

With regard to information, some aspects of hybrid pension products might currently be regulated through sector-specific legislation that applies to the original product on which they are based. For example, if the basic financial vehicle is a retail investment fund, the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive will often apply to the fund itself, although it might be wrapped in another product layer. This Directive contains provisions aimed at helping potential investors understand the key features of the proposed investment fund, for example by helping them compare the risks of different funds.

Variations in specific sectoral requirements could be evened out by the forthcoming Regulation on PRIPs. It would cover third-pillar retirement products under a set of rules that could take their features into account.

With regard to sales requirements, MiFID I requires firms to act honestly, fairly and professionally and in the best interests of clients. It establishes other specific requirements depending on the investment service provided to clients, such as investment advice or the execution of orders. These requirements may apply to hybrid products when financial instruments are involved. The Commission has adopted legislative proposals for the review of MiFID (MiFID II) that strengthen the current sales requirements.[45] There are currently no specific EU consumer protection standards for the sale of non-occupational pension funds.

4. A SPECIFIC APPROACH FOR THIRD-PILLAR RETIREMENT PRODUCTS

4.1 Pensions as a unique investment decision

Choosing a pension plan is one of the most important financial decisions a consumer makes. This is particularly true for individual retirement products, where consumers make major

[41] Proposal for a Directive on insurance mediation (recast), C0M(2012) 360 final, 3.7.2012. Its aim is to make consumer advice more suitable and objective, to make the IMD consistent with MiFID for more complex insurance products and identify, manage and mitigate conflicts of interest. The forthcoming legislation will also cover direct sales by insurance undertakings.

[42] Proposal for a Regulation on key information documents for investment products, C0M(2012) 352 final, 3.7.2012.

[43] The 'levels' of legislation refer to the so-called Lamfalussy legislative process. The Lamfalussy process consists of four levels: adoption of the framework legislation (Level 1); detailed implementing measures (Level 2); cooperation between the supervisory authorities and convergence of their practices (Level 3); and, timely enforcement and correct transposition of EU legislation into national law (Level 4).

[44] Third-pillar products are not explicitly included however. Their inclusion is only a result of the non-exclusion of investment products with a pension purpose. The proposal explicitly excludes occupational pension schemes (covered by IORP) and pension products requiring a financial contribution from the employer under national law.

[45] Proposal for a Directive on markets in financial instruments repealing Directive 2004/39/EC. This proposal would extend consumer protection on sales requirements.

decisions themselves. This contrasts with the second pillar, where consumer decisions are usually collective. Third-pillar retirement products have certain characteristics that distinguish them from other retail investment products and may give rise to specific information and protection needs.

The most important of these characteristics is the long-term investment nature of investment products. Deciding long-term saving rates requires a complex assessment of likely rates of return, the accumulation of returns and the ratio of losses to costs. Evidence shows that consumers find it difficult to make such decisions. The 'lock-in' consumers often experience when restrictions are placed on withdrawal is also an important factor. It is due to the investment risks incurred during the capital accumulation phase and the annuity risks (longevity, financial) incurred during the pay-out phase. Making the wrong financial decision can therefore have serious consequences for consumers. A lack of transparent information on the impact of charges could also have serious consequences and be particularly punitive in the long run, especially if the consumer is locked-in to the product and cannot select a new provider without incurring penalties. However, in some Member States greater transparency and comparability of third-pillar retirement products is currently being promoted through web-portals on the subject (e.g. DK, SE and to some extent NL).

4.2 Need for specific consumer protection requirements

The development of the private individual pension market obliges consumers to make decisions that they would not have had to make in the past. It is therefore important that consumers are given clear, accurate and timely information, and especially sound advice, so they can make adequate decisions. It is also vital that rules that protect consumers against possible conflicts of interests and ensure fair marketing and sales requirements, including the provision of sound advice, are observed, enforced and developed if necessary.[46] There is an imbalance between consumers and providers or distributors in terms of awareness and expertise. If applicable to third-pillar retirement products, the reviews and proposals mentioned above,[47] could address these concerns to some extent, by improving information and sales requirements. In particular, the specificities of third-pillar retirement products could be taken into consideration when defining the details of these requirements through implementing measures, or when analysing market practices in applying the requirements. It is too early, however, to assess if the forthcoming EU investment and insurance initiatives will also be suitable for pension products.

4.3 Regulatory fragmentation

Although there are EU information and protection requirements that cover or may cover these products (see Table 1), the absence of specific rules for third-pillar retirement products has led to regulatory fragmentation, with Member States taking individual approaches to consumer protection issues in this area. The application of divergent national rules on consumer information and protection standards is problematic. EU consumers have the same protection needs regardless of where they purchase their third-pillar retirement product.

In this context, the application of different rules makes it difficult to compare products. This creates an obstacle, particularly for mobile workers, to choosing the most appropriate pension product for their needs. The very nature of third-pillar products makes them ideal for cross-border commercialisation. Consumers should therefore be enabled to access the most appropriate product for their needs, regardless of where the managing entity is located. The lack of specific EU rules on information requirements[48] and consumer protection, especially for third-pillar

[46] The question of whether or not to develop such rules should focus in particular on autonomous (non-occupational) pension funds.

[47] IMD II, MiFID II and PRIPs in particular.

[48] See however the PRIPs proposal which deals with information requirements.

retirement products, may hinder the development of this market. Experience in related areas shows that common EU rules can help create an effective Single Market. For example, retail investment funds owe their success to the adoption of and greater harmonisation brought about by the UCITS Directive. Another negative impact of the fragmentation of rules and requirements could be the lack of a level playing field for providers, including at cross-border level. This results in sub-optimal competition and restricted opportunities for providers. This in turn has a direct impact on consumer choice and product value, regardless of other issues related to these products (for example, tax treatment) that could also limit their cross-border commercialisation.

Questions:

3 What are the main risks for consumers when purchasing a third-pillar retirement product?

4 How problematic do you consider the asymmetry between the consumer and the provider in terms of information about and knowledge of third-pillar retirement products?

5 Are there specific needs of consumers purchasing third-pillar retirement products that have to be better taken into account, for example via EU voluntary codes or certification schemes on consumer information (transparency) and protection standards?

- If so, how could consumer information (transparency) be improved? Please cover precontractual and contractual information
- If so, how could protection standards be improved? Please cover marketing, sales practices, inducements, advice and other aspects.

5. INSTRUMENTS: SELF-REGULATORY CODE OR EU CERTIFICATION SCHEME

Consumer information and protection standards may be improved in a variety of ways, ranging from recommendations and the exchange of best practices to binding legislative instruments. The White Paper on pensions referred to two options, a self-regulatory code and an EU certification scheme. This consultative document focuses on these options, as discussed in the 2012 questionnaire.

As stated in section 3, the adopted or proposed EU legislation that affects third-pillar retirement products contains rules on consumer information and protection standards. This includes the following: precontractual and contractual information; marketing requirements; sales practices; inducements; advice; and any other aspect that may affect the interests or choices of consumers.

5.1 Role of a self-regulatory code

Previous experiences of self-regulation have provided positive outcomes in various areas. Implementation and monitoring have generally been patchy, however. As a result, in some cases the Commission decided to intervene by adopting more effective tools. The self-regulatory code for mortgage credits, for example, provided good results.[49] Due to its poor implementation however, the Commission eventually considered a legislative instrument on mortgage credits necessary.

Public authorities who responded to the 2012 questionnaire were divided. A few supported self-regulation (in particular BG, CY, PT and SI) whilst others would exclude it, questioning its effectiveness. Some stakeholders, industry stakeholders in particular, consider self-regulation a viable tool, for various reasons, such as reduced costs and easy applicability. Insurance associations in several Member States (CZ, DE, EE, IT, MT, PL, PT and UK) indicated their preference for self-regulatory initiatives in this area.

[49] This code, subscribed to by consumers and industry associations under the aegis of the Commission, has been very important for creating the European Standardised Information Sheet (ESIS) and identifying the main features of valuable consumer information.

Questions:

6 Would a self-regulatory code be the best tool for improving the quality of third-pillar retirement products?

7 For which objectives would it be the best way of doing so? (e.g. improving consumer confidence, providing a guarantee of quality, or others?)

8 What outstanding pension-specific consumer protection issues could a self-regulatory approach help deal with?

9 How and by whom should the effective application of the code be monitored?

5.2 Role and function of an EU certification scheme

An EU certification scheme would involve a direct relationship between a provider fulfilling a number of precise requirements (established at EU level) for a specific product or service, or some specific aspects (including information and protection standards), and giving a 'European brand' to the products or services that fulfil those requirements.

Due to market and regulatory differences across Member States, the added value of a 'European brand' in this sector is debatable. Although in a different context, the experience with the retail investment funds regulated by the UCITS Directives is relevant.[50] Applying common European rules, though limited to consumer information and protection standards, would in any case be a significant change of perspective.

Whilst a few Member States do not see the need for a certification scheme (CZ and PL), others (DE, FR and UK) point to the possible difficulties of setting up and implementing it in practice. Public authorities in several Member States (AT, EL, ES, FI, HU, IE, IT, LT, LV, MT, RO and SK) express cautious support for EU intervention, stressing it would amount to progress in the pensions market. Industry groups, while highlighting the difficulty of setting up such a scheme, are more open to an EU-level initiative.

Questions:

10 Would an EU certification scheme be the best way of improving consumer protection for third-pillar retirement products?

11 For which objectives would it be the best way of doing so? (e.g. improving consumer confidence, providing a guarantee of quality, or others?)

12 What outstanding pension-specific consumer protection issues could an EU certification scheme help deal with?

[50] The term UCITS, initially indicating only the undertakings managing collective investment funds, became synonymous with the retail investment funds regulated by the Directives, identifying a well-known 'European brand'.