EUROPEAN COMMISSION
Directorate General Health and Consumers

Brussels, 05.03.2014

SUMMARY OF RESPONSES TO THE PUBLIC CONSULTATION ON THIRD-PILLAR RETIREMENT PRODUCTS

This paper should be regarded solely as a summary of the contributions made by stakeholders to DG Health and Consumers' public consultation on the Staff Working Document "Consumer protection in third-pillar retirement products". It cannot in any circumstances be regarded as the official position of the Commission and its services.

TABLE OF CONTENTS

About this document

This document presents a summary of stakeholders' contributions to the European Commission's public consultation on "Consumer protection in third-pillar retirement products", which was conducted between 25 April 2013 and 19 July 2013. The public consultation covered 12 specific questions; the answers received are analysed in section 4. Whilst some respondents also referred to second-pillar pensions on cross cutting issues (information to consumers and risks), this document only includes those responses related to second-pillar pensions which are closely linked to third-pillar retirement products.

1. Introduction

The purpose of the consultation was to collect stakeholders' views on the following: the appropriateness of the definition proposed for third-pillar retirement products (also previously used in the preparatory questionnaire circulated in 2012[1]); on what consumers' risks and needs are; and whether non-legislative measures, such as self-regulatory codes or a possible EU certification scheme, could be suitable to increase consumer protection. The goal was to assess the need for action at European Union level and to gather input on possible measures, if any, that could be taken to increase the level of information available to consumers and to enhance consumer protection standards in selling practices (marketing rules, inducements and advice to consumers).

The European Commission (hereinafter referred to as "The Commission") received 40 responses to the public consultation. This document provides an overview of stakeholders' comments.

The respondents can be classified into the following three main categories:

(1) 'consumers, shareholders[2] and civil society', which includes citizens, consumer associations, trade unions, academics and organisations representing civil society - 10 contributions;

(2) 'financial services industry' (insurers, asset management companies, collective investment schemes and pensions funds) and 'collateral service providers' (actuaries) - 22 contributions;

(3) 'national and public authorities' of EU Member States (Ministries of Finance, Ministries of Employment and Social Affairs, as well as Public Authorities having the mandate to act in consumer protection) - 8 contributions.

The list of respondents is included in the annex.

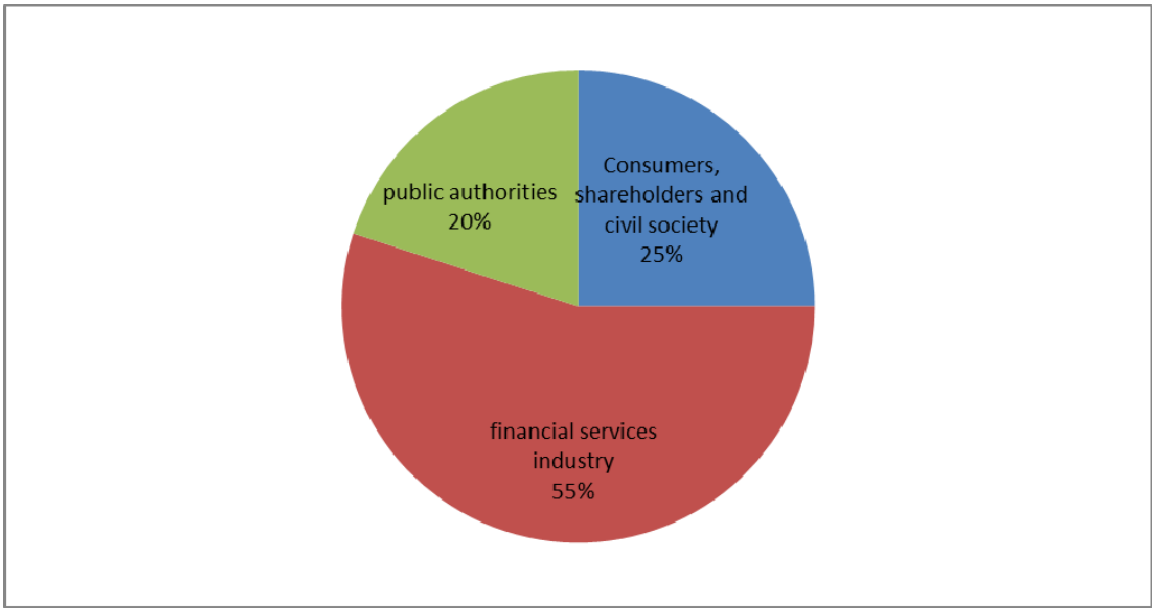
The graphic below shows how the responses are split between these three stakeholder categories. 30 contributions came from 17 EU Member States[3]; in addition, 10 umbrella organisations, mostly Brussels-based, representing the interests of their affiliates, participated in the public consultation.

---

1 See below, chapter 2

2 In this document the term "shareholders" refers to all the individual contributors who are also the final beneficiaries. It therefore covers users and consumers.

3 Austria (1), Czech Republic (1), Germany (4), Denmark (2), Greece, (1), Finland (2), France (1), Hungary (1), Ireland (1), Italy (3), Lithuania (1) Luxembourg (1), the Netherlands (1), Poland (2), Sweden (1), Spain (1), United Kingdom (6).



One respondent requested its submission to be treated confidentially. All the other contributions have been published on the website[4] of the European Commission.

2. CONTEXT OF THE PUBLIC CONSULTATION

This initiative follows the Commission's White Paper "*An Agenda for Adequate, Safe and Sustainable Pensions*" (February 2012) which presented options for national action and EU support with a focus on the need to encourage citizens to stay longer in active employment and to save more for their retirement through supplementary pension schemes. In particular, action 13 of the White Paper committed the Commission to present an initiative to increase the quality of individual retirement products (also defined as "third-pillar pension funds") by the end of 2013, notably by "*improving consumer information and protection standards*" in business practices either via voluntary codes or via an EU certification scheme.

As a first step, the Commission addressed a questionnaire to Member States and stakeholders in October 2012. The feedback to the questionnaire helped to identify the legal and commercial terminologies related to third-pillar retirement products in use across the EU; to understand the features of different markets; and to list the existing national rules on transparency and protection standards, including those stemming from self-regulation. Building on these elements gathered through the questionnaire, the Commission launched the public consultation.

3. SUMMARY OF STAKEHOLDERS' FEEDBACK

Stakeholders were invited to comment on a proposed definition of third-pillar retirement and on the risks consumers are exposed to (*pre* and *post* contractual phase); with the objective of gathering views on possible EU action to increase transparency (such as proper disclosure of information) and consumer protection standards. Moreover, stakeholders were asked to comment on the two non-legislative policy options aimed at delivering increased transparency and consumer protection standards in practice, i.e. *industry self-regulatory codes* and an *EU certification scheme*.

4 http://ec.europa.eu/yourvoice/consultations/2013/index_en.htm

3.1. General issues

The responses showed that consumers, shareholders, and associations representing civil society generally favour initiatives at EU level with respect to third-pillar retirement products. The predominant view across the financial industry is that any EU action should take into account and respect the national features of pensions markets. Some industry respondents stressed the need to address the fragmentation of the legal framework of private pensions, by extending the provisions of the existing EU legislation[5] on similar or contiguous fields (e.g. investment services or insurances), even when it does not cover third-pillar pension funds as such. Many other contributions, mostly from the industry and some public authorities, emphasised that the laws currently in force already guarantee sufficient protection of consumers' interests. Finally, mixed views were expressed by public authorities on what measures would be appropriate to improve third-pillar retirement products.

Most contributions from the industry, and some from the other stakeholders, also suggested that any possible future Commission legislative proposal should be consistent with the outcomes of the current inter-institutional negotiations on the Regulation on proposed Regulation on key information documents for investment products (the so-called PRIPs, "Packaged Retail Investment Products", covering aspects of transparency); the outcome of the review of the Directive on "Markets in Financial Instruments" (MiFID2); and the review of the Insurance Mediation Directive (covering sales practices).

Some industry contributions suggested that a common tax regime could effectively help to achieve better market integration. However, they also pointed out that market integration could be guaranteed via the extension of existing transparency requirements, already applicable to investment products; occupational pensions (second-pillar pension products); and individual pension products (third-pillar retirement products).

3.2. Definition and terminology

Concerning the definition of “third-pillar retirement products”, most respondents agreed that the definition (as proposed by the Commission in the questionnaire of 2012) was a good starting point. Some of the features proposed in that definition have been widely accepted, mainly the “individual” nature of the product.

However, different views were expressed on the possibility of including “mandatory” or “quasi-mandatory” pension schemes within the definition of “third-pillar”.

In particular, some respondents consider that certain types of individual pension funds, funded through statutory contributions (the so-called “*first-pillar bis*" pensions) would not fall under the definition of third-pillar retirement.

Moreover, some respondents consider that the pension funds subscribed to by workers on an individual basis within an occupational context (the so-called "Group Personal Pensions” – GPP), would not fall under the definition of third-pillar pensions.

[5] In particular, the proposal for a Regulation on "Packaged Retail Investment Products" (PRIPs), Directive on "Undertakings for Collective Investment in Transferable Securities" (UCITS), review of the Directive "Markets in Financial Instruments" (MiFID2), review of the Insurance Mediation Directive (IMD2), review of the Directive "Institutions for Occupational Retirement Provisions" (IORP).

In regards to the terminology used in the consultation, many respondents indicated that a systematic use of the terminology adopted by the European Insurance and Occupational Pensions Authority (EIOPA) in its "Personal Pensions Products" initiative would create a better understanding of the 120 different types of pension funds currently existing in Europe[6]. Any common terminology adopted should be consistent with the corresponding transparency and consumer protection provisions envisaged for first- and second-pillar pension products[7]; in order to provide consumers with a common set of definitions applicable to all three types of pension system. Moreover, a large number of respondents stressed that aligning the terminology with other existing legislation[8], could contribute to improving consumer understanding of complex financial products. A common terminology could also enhance cross-border comparability of products.

3.3. Risks and benefits for consumers

Regarding the risks faced by consumers, there was a general consensus amongst respondents on the need to offset shortcomings stemming from information asymmetry. However, there were mixed views on the most effective way to achieve this objective (e.g. through binding rules, improving financial education, strengthening consumer centres, investing in economic literacy in schools and universities, and reducing the possible conflict of interests of salespersons). In addition, some respondents emphasised that improving the governance of providers would be crucial in enabling consumers to obtain unbiased and independent advice. Some respondents pointed out that consumers would be better equipped to identify possible conflicts of interests, linked to the sale of a particular risky product, if they were informed about the commissions paid to their salespersons by product providers.

Most respondents stressed the need to ensure that consumers properly understand the financial returns which can be realistically expected from the product. In this context, the industry expressed the view that consumers should be aware of the link between their savings and the future revenues (the more you save, the more you receive). In contrast, consumer representatives stressed that consumers should be better informed of the role that charges, fees and other factors may have in negatively affecting the final expected returns.

More generally, several respondents agreed that improving transparency is not sufficient *per se*, if consumers are not able to effectively understand how these products work.

In this respect, financial services industry representatives are more optimistic than consumer representatives, about the role of financial education as an effective tool in enabling consumers to make informed choices.

3.4. Voluntary Codes and the EU Certification Scheme

Consumers organisations, shareholders, national authorities, and roughly half of the financial services industry, *did not* express real support for self-regulatory codes. The

[6] Report on pre-enrolment information to pension plan members, EIOPA, June 2011.

[7] For the second pillar pensions: proposed revision of Directive 2003/41/EC concerning Institutions for Occupational Retirement Provision (IORP II Directive).

[8] such as the "Key Investor Information Document" (KIID) of the Directive on "Undertakings for Collective Investment in Transferable Securities" (UCITS) and the "Key Information Document" (KID) of PRIPs

respondents' position is motivated by the intrinsic non-binding nature of such codes, and the difficulties in comparing third pillar retirement at national level and at EU-level, which would make it very challenging to monitor implementation. Due to the purely national nature of these codes, they would not result in further integration of the Single Market. The other half of the financial services industry are in favour of self-regulatory codes; as they consider these to be a better fit for the specificities of national markets and enable providers to be flexible in meeting customers' demands.

The EU certification scheme was favoured by a significant part of the financial services industry; half of the national authorities; and some consumer representatives. Furthermore, some shareholders expressed cautious support for a certification scheme, subject to the condition that an independent standards setting body supervises the certification process.

However, most consumer representatives expressed concerns that such a scheme would only play a limited role in consumer protection, and run the risk of being used as a pure marketing tool. They also feared that such a certification scheme may become a sort of EU passport undermining national protection standards.

Respondents from the financial services industry pointed out that the advantages of a certification scheme would include an increased comparability and the strengthening of the Single Market, despite the persistence of different tax treatments across the EU. The drawbacks would be an increase in costs, a possible standardisation that could undermine the variety of products meeting the needs of different consumers with different risk profiles, and ultimately a reduction in innovative products. The industry stressed that any scheme should be designed in such a way as to prevent consumers thinking that all "certified" products would be perfectly comparable. There should always be enough information on the different features and risks attached to such products. Finally, various industry representatives stressed the need to prevent the risk that such qualitative certification might be considered (erroneously) by consumers as some sort of financial guarantee.

4. STAKEHOLDERS' ANSWERS

4.1. Proposed definition

Question 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"

In general, respondents agreed that the definition proposed by the Commission in the 2012 questionnaire was a good starting point, and agreed with the idea that focus must be on the "individual" nature of the product.

More generally respondents also suggested that the Commission contribute to further defining what a retirement product is. In particular, various respondents explicitly suggested specifically linking the product to the purpose of increasing retirement income.

While all respondents agreed on identifying third-pillar retirement products with "individual pensions"; there were different opinions about the distinction between second and third-pillar products. Some respondents stressed that third-pillar retirement products only relate to pension funds that consumers subscribe to individually outside of their occupational context, and in the absence of any employers' involvement. As such, pension funds subscribed to by employees with the help or the direct involvement of their employers, represent second-pillar products even if the employer does not contribute financially[9]. Other respondents identified third-pillar pensions as retirement products entirely funded individually by the consumer.

Two national authorities stressed that the definition of third-pillar products should not include the compulsory (or quasi compulsory, with an opt-out possibility) private pension plans for individuals that in some countries (Eastern and Northern Europe) are funded through part of their statutory contributions.

In addition, the issue as to whether decumulation products[10] have to be included or not in the definition has also been raised by many respondents from all stakeholder categories, with mixed views.

4.1.1. Consumers, shareholders, and civil society

Some respondents stressed that a more expanded definition could further clarify the differences between second- and third-pillar products; by stressing the **voluntary** and **individual** nature of third-pillar retirement products in contrast to i) the *mandatory private* contribution foreseen in the so-called 1st-bis and to ii) the *employer's direct role* in the pension fund, typical of second-pillar products. As such the complex OECD definition of 2002 as opposed to the simple OECD definition of 1998, which was used for the purposes of this consultation document, could be re-considered[11].

Furthermore, the definition should clarify whether it also applies to accumulation; decumulation; or to both phases; and whether it also aims to include long-term financial investments offering revenue via a lump sum and/or annuities in the pay-out period. In particular, some respondents felt that pension products should always include a decumulation phase.

There is general agreement among consumer representatives that third-pillar pension products, in order to be defined as "*retirement products*", should also include a number of requirements such as: the provision of life-long regular benefits (payment of lump-sum included); the fixation of capital requirements against the risk of providers' insolvency; the restriction of access to the capital only for retirement purposes; the extension of benefits to cases of disability; and income provision to survivors.

4.1.2. Financial services industry

The majority of respondents agreed on the main features of the proposed definition, but most also called for further improvement in order to clarify aspects where were found to be ambiguous or unclear.

---

9 This position is particularly supported by most UK stakeholders, due to the recent reform of UK private pensions. So-called "Group Pension Products" (GPP), which automatically recruit workers into an individual private pension scheme recommended and negotiated by the employers but without their financial contributions, are considered to be second-pillar products.

10 In particular, the "annuities".

11 See the Commission Staff Working Document "Consumer protection in third-pillar retirement products", part 2.2.

A key problem is the role of the decumulation phase. Mixed views were expressed as to whether the decumulation phase should be included (or not) within the definition of a "retirement product". Even those respondents who felt it should be included, were conflicted as to whether it should refer only to the purchase of annuities; or only to the conversion of the capital accrued in a lump sum; or to a combination of both. Most industry respondents, however, seem to prefer that decumulation products (in general referring to annuities) are considered as falling outside the definition of third-pillar retirement products.

Another issue raised by various respondents, including from the industry, was the distinction between second and third-pillar retirement products. While all respondents agree that voluntary **and** individual products are part of the third-pillar; many of them (in particular all the industry respondents from the UK) also view any pension fund where the employer has a role (including where the employer does not contribute) as falling outside the third-pillar. Therefore, some respondents identify third-pillar products as being “voluntary” products only.

Some respondents from the financial services industry asked for clarification about the possible differences in the definition (if any) with the so-called "Personal Private Pensions" defined by EIOPA.

One respondent also proposed that home equity releases should also be analysed in this context as an alternative method of funding private retirement incomes, although not specifically linked to third-pillar pillar products.

4.1.3. National and public authorities

National authorities also pointed out the difficulty in achieving a common definition for third-pillar retirement products, since there is significant divergence in the characteristics and tax treatments of these products across the EU. Emphasis should be placed on the individual nature of the choice (implying that the consumer is alone when facing the industry, in contrast to collective schemes), and also on the fact that the expected return of the investment will be paid to individuals by privately funded institutions.

Some national authorities stressed the need to exclude private retirement products that workers must subscribe to as part of the national social security system (also known as “*first-pillar bis*" pensions), where the State mandates to individuals and private retirement funds the amount of the premium to be paid to private providers. The inclusion of pension products sponsored (but not paid for) by employers has also been questioned.

4.2. Possible alternative definitions

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

4.2.1. Consumers, shareholders, and civil society

Shareholders suggested stressing: i) that the ultimate objective of the accumulation phase must aim at guaranteeing adequate income over the retirement period; and that ii) the 1-bis category needs to be better defined.

4.2.2. Financial services industry

Some industry respondents stressed the need to adequately differentiate between pension products and long term investments.

Others insisted on the need to include so-called "Group Personal Pensions" (GPP) within the context of the occupational pensions, due to the direct role of the employer in these schemes.

Some wished to limit the definition solely to the accumulation phase; and to define retirement products as linked to any savings plan not freely redeemable at any moment, except in cases of disability, death, or long-term unemployment.

4.2.3. National and public authorities

In general, while national public authorities agreed on the proposed definition, they also suggested amendments. In particular they argued that private individual retirement products should be used for the accumulation of savings aimed at securing complementary or supplementary incomes at a specific age.

*4.3. **Risks linked to third-pillar retirement products***

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

Generally all respondents agreed that consumers must be protected against fraudulent, unethical, and aggressive selling practices.

Respondents pointed out that the main risks for consumers are mainly linked to the lack of understanding by individuals about the nature and complexity of such products (e.g. how fees, charges and the return of the investment are calculated; and the long-term nature of the engagement).

Some respondents pointed out that inadequate financial choices by consumers in this field, could also have a systemic impact on society and on the economy (potentially contributing to market volatility, bankruptcy or insolvency of financial providers and the uncertainty of pensionable age). Many respondents suggested that improving consumers' financial education could help in mitigating these risks.

Although risks for consumers can stem from macro-economic variables, in particular from the uncertainty of future taxation on these funds; from a consumer perspective the main risks concern the micro-economic sphere: job-insecurity, unemployment, and changes in personal and professional lives can be obstacles to continuity in contributions. As a result, many respondents suggested that providers should increase the flexibility of third-pillar retirement products to mitigate these risks.

Several respondents, generally on the consumers' side, proposed that these products should: 1) include capital guarantees and indexation to preserve monetary value; 2) protect against providers' insolvency; 3) cover biometric risks linked to longevity, disability, surviving dependants and long-term care provision; and 4) guarantee life-long regular payments (for example, in the case of annuities).

4.3.1. Consumers, shareholders, and civil society

Consumers stressed in particular the non-flexibility of products; the high costs of (early) withdrawal; the significant impact of fees on final returns; switching costs (limiting the possible advantages of competition); the uncertainty in regards to yields; and the uncertainty linked to the financial returns of first and second-pillar pensions, which prevents consumers to know their future financial needs and therefore to select the appropriate third-pillar retirement product. Moreover, while tax relief could act as an incentive, consumers pointed out the need to harmonise the tax treatment of long-term savings products.

In the pre-contractual phase, the inability to compare fees and charges seems to be one of the main causes in limiting consumers' understanding of what product best suits them. According to a consumer representative, the biggest risk is linked to the misalignment between the speed of the decision taken to buy the financial product, and the long-term duration of the contract and other long-term features of such savings schemes.

In the post-contractual phase it is the volatility of individual contributions; the provider's inflexibility towards adapting contributions to life changes (personal and professional); and the economic sanction of early withdrawal from schemes (through redemption penalties or late payment charges); which are often mentioned as the most important shortcomings. Moreover, it has been argued that the inadequate level of capital accrued (because of the impact of charges; capital losses; and/or inadequate contributions) lead to low annuities, which may be insufficient to sustain expected living standards.

Ultimately, in the pay-out phase, the main risks seem to be: the tax treatment of annuities; the impact of charges; the irreversibility of the "decision" (often an obligation) to convert part of (or the entire) accrued capital into annuities without being allowed to obtain a lump sum.

Finally there is the risk that in some Member States, the consumer may lose the benefit of the employer's contribution and the associated low administrative cost, as a result of opting-out from a collective occupational plan (generally a second-pillar product) in favour of a third-pillar one.

In regard to supply-side risk, shareholders agreed that consumers must be protected against the failure or insolvency of the provider. In addition, poor governance over the retail distribution network of the investment fund could undermine the provision of independent advice to consumers. The other risks are high charges and hidden costs.

Lastly, from the long-term macro-economic perspective, the volatility of interest rates and inflation could trigger a reduction in consumers' purchasing power, due to their impact on the value of capital accrued and thus on the amount of the final benefits (lump sum or annuities).

4.3.2. Financial services industry

Most industry representatives stressed that the main risk suffered by consumers is a lack of understanding about how pension funds work. Consumers may not be aware that contributions are irredeemable, that contributions must be sufficient if they want adequate income in retirement, and that they should be paid into the pension fund without interruption.

Some industry respondents mentioned other reasons preventing consumers from engaging in third-pillar retirement products include: difficulty in comparing fees; inflexibility in changing contribution rates; and the inability to switch to another provider nationally or across borders. In relation to *transparency*, consumers are concerned about: 1) the lack of information on the expected real financial return of the product (after taxes and inflation); 2) the lack of information on how savings will be invested (eligible assets); 3) the way yields will be calculated (complex formulas and uncertainty regarding the interest rate); and 4) the uncertain duration of the investment[12].

Furthermore, a few industry representatives also stressed the risk of pension funds' investment policies not performing well, leading to capital losses which are not always secured by enough guarantees. Industry representatives highlighted that inadequate investment returns can result from consumers receiving poor advice and lacking understanding of the nature of the purchased financial product (risk of being locked-in, non-transferability, and no possibility of early withdrawal). In the pay-out phase, consumers also run the risk of getting poor advice on the most suitable choice at the end of the accumulation phase: lump sum (when available) may be subject to high taxes; and annuities may be eroded by significant fees or may be calculated with parameters unfavourable to consumers[13].

At the macro-economic level, the absence of a common taxation regime across Europe could result in double-taxation or the loss of tax deductibility in cases of cross-border mobility;[14] which could reduce consumers' confidence and slow market growth. A policy recommendation was to create a "*pensioners' protection scheme*" to offset possible pension provider defaults via the establishment of more extensive guarantees (insurance provision and State-participating funds).

4.3.3. National and public authorities

According to some national authorities, financially literate consumers would be in a better position to understand the trade-off between investment risk and long term reward; the complexity of the products; and the advantage of starting to save early in acquireing a capital lump sum.

The risks linked to aggressive business practices (marketing inducements; mis-selling; fraud; maladministration; and the presence of hidden costs), and poor financial advice, could lower consumer confidence in the reliability of pension providers.

While recognising third-pillar retirement products as an important tool to ensure the sustainability of public expenditure linked to statutory pensions, national authorities stressed that this instrument should protect consumers' purchasing power against inflation and/or capital losses. Some authorities also warned against the impact of charges and management costs likely to reduce the value of the savings.

---

12 Few industry groups highlighted (hidden) costs as a risk for consumers.

13 Longevity risks and management fees.

14 A respondent noted that different taxations regimes apply for retired people when they transfer their annuities from one Member States to another.

4.4. *Information asymmetry*

Question 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?

Respondents commonly stated that the information asymmetry between the consumer and the provider is natural because of the high level of complexity of the financial product. Nevertheless, almost all of the respondents agreed that too detailed and technical information would also be detrimental to the consumer. The information provided should be relevant and targeted to the level of understanding of the investor, with the objective of enabling consumers to find the most suitable product likely to meet their future financial needs.

Respondents from consumer associations stressed that the provision of reliable and clearly understandable information is also linked to the governance structure of service providers. The lack of adequate management of conflicts of interest between product providers and intermediaries is deemed to contribute significantly towards biased advice to consumers.

4.4.1. Consumers, shareholders, and civil society

Respondents pointed out that the issue of asymmetric information (to the detriment of consumers) should be tackled by engaging providers to implement higher ethical and behavioural standards. The information provided to the consumer should include the structure of intermediaries' remuneration, in order to allow consumers to make a decision as to whether the advice received is biased or not. In general, the rules should be more focused on consumers' needs. The lack of information on the expected revenue from first and second-pillar products may prevent consumers from making informed choices on third-pillar retirement products

4.4.2. Financial services industry

Most industry respondents stressed the importance of improving financial literacy and agreed that consumers with little or no financial education are difficult to engage: this could be one major consequence of information asymmetry. Standardised and comparable information ought to help with this issue, such as the Key Investor Information Document (KIID) as foreseen in the UCITS[15] Directive and the Key Investor Document (KID) foreseen in the proposed PRIPs Regulation[16].
In this regard, harmonising the terminology between first, second and third-pillar retirement products would help consumers to better understand the different requirements and provisions of these different products; as well as possibly aligning this terminology to that used for other investment products (such as securities, life insurance, and long term savings plans).

4.4.3. National and public authorities

Two Member States do not consider information asymmetry to be a big obstacle for consumer protection as legislation already sets high protection standards in order to

---

[15] Directive on "Undertakings for Collective Investment in Transferable Securities".
[16] Proposal for a Regulation on key information documents for investment products (COM(2012) 352).

counterbalance its perceived negative impact on consumer choice. All respondents agreed that disclosing too much detailed and technical information produces the same negative effect as providing too little information; and that it must be tailored to the specific needs of consumers. Asymmetry might be mitigated if consumers were given expected yield projections following the information requirements as set out in the Key Information Document required by PRIPs.

One respondent suggested defining quality sales standards for salespersons, to correct miss-selling practices and increase behavioural standards. Another respondent argued that all types of information for pensions (related to all three pillars) must be consistent and that consumers would benefit from a national register of pensions (covering State and occupational pensions) offering projections of their revenue once retired, so as to be aware of their future financial needs.

4.5. Specific consumers' needs when purchasing third-pillar products

Question 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 pre-contractual and contractual information
- If so, how could protection standards be improved? Please cover marketing, sales practices inducements, advice and other aspects.

Most respondents stressed the key importance of comparing fees and charges, together with the pre-contractual information on the expected yields and the disclosure of annual or semi-annual information on the accrued capital. Almost all respondents stressed that pension products should aim at protecting the real value of capital against inflation. Some respondents, mainly from the industry, suggested that the products should be tax-incentivised and that taxation should be stable in the long-term.

4.5.1. Consumers, shareholders, and civil society

Respondents identified the following as fundamental consumer protection tools: the right of suspension, either for changes in their private life (e.g. purchase of property or divorce) and their professional life (e.g. unemployment); the possibility of *switching* to other products and other providers (mainly within the national border) without compromising the capital. The cross border dimension was raised by a few respondents. According to an industry representative, this is an indication that there is not yet a Single Market for third-pillar retirement products.

Various respondents indicated that consumers should be protected against the impact of unexpected events obliging them to decrease or temporarily stop their contributions; otherwise the main objective of guaranteeing adequate living standards in retirement could not be met. Contributions should therefore be flexible enough to meet changes in life and in employment, mainly in the starting phase of accumulation.

Respondents emphasised that pre-contractual information on costs should be standardised; comparable; easy-to-read; and should include management costs. Moreover, an overview of past performance and expected future yields, in real terms (after inflation, charges and taxation) should be included. Consumers would also benefit from having a basic and simple retirement product; accessible to all, with low charges and low taxation, having the sole objective of protecting purchasing power from inflation (a "safe harbour" product). Consumers run the risk of being misled about the nature and safety of some retirement products. There is also the risk of consumers engaging impulsively in products which do not suit them.

Regarding business practices, most respondents expressed the view that product providers should be obliged to periodically inform consumers about the value of the accrued capital in real terms; to give an estimated total expense ratio (total annual cost to consumer); provide estimated projections of accrued capital value at chosen retirement age (after inflation, charges and taxation if any); and possible annuity rates that could be purchased with this capital.

4.5.2. Financial services industry

Industry respondents considered that the main need in the pre-contractual phase is to provide consumers with a clear information document on the nature of the product, in simple language, outlining comparable charges and benefits. In the contractual phase, a few respondents suggested that consumers need to be periodically informed of the value of the capital accrued.

Mixed views were expressed on the consistency of information: on one side, some industry representatives stressed that the same set of common information rules should apply to all savings products (bank deposits, UCITS, life insurance, and occupational pensions), so that consumers become familiar with one set of transparency tools. In contrast, other respondents underlined the specificity of retirement products, the particular features of which cannot be captured by a single set of information.

In regards to selling practices, industry respondents were not unanimous in their views. Some respondents called for a possible extension of the protection standards defined in current EU legislation on investments and/or insurance to third-pillar retirement products. Other respondents disagreed and suggested that specific protection standards should be tailored to retirement products.

In terms of product requirements, consumers need to be supported by effective guarantees and enough variety of choice; implying the availability of various products. However, not all respondents agreed on the need to provide both accumulation and decumulation services. Lastly, consumers need a stable taxation regime, in order to be able to make long-term decisions.

4.5.3. National and public authorities

In general, most public authorities were not convinced that EU action would effectively improve consumer protection in this field. All of them emphasised the national nature of pension funds, particularly of information and protection standards.

Public authorities stressed that in most cases, consumer information could be improved through more focused disclosure; and all agree that “more information does not mean better information”. In some cases, public authorities suggested that an excessive burden on the industry from information-provision rules might discourage creativity from providers, thereby reducing the variety of products available to consumers. Regulations should therefore focus on key areas, such as charges, by enabling comparison and facilitating competition.

Some respondents stressed that on-going disclosure may contribute to mitigating the risk of underfunding. Providing consumers with periodic projections can help them understand whether they are on track to achieve their target income in retirement, thereby giving consumers the opportunity to increase contributions to their retirement product before it is too late.

According to some national authorities, selling practices (in particular: marketing; sales inducements; and advice) should be regulated by the same provisions currently in force for investment products, at both EU and national level. Similarly another respondent stressed that Markets in Financial Instruments Directive (MiFID), with its requirement for firms to "act honestly, fairly and professionally and in the best interests of clients", would be sufficient.

On remuneration policies, some national authorities suggested banning commission to advisers with respect to advised sales, would help to reduce the charges paid by consumers. In addition, one respondent emphasised that ethical selling and good advice might contribute to reduce consumers' fees.

4.6. First non-legislative policy option: a self-regulatory code

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

Most consumers, shareholders and national authorities do not consider self-regulatory codes a viable solution for improving the consumer protection standards of selling practices and increasing information to consumers. Even where respondents were not explicitly against such codes, their limits and shortcomings were always stressed.

The main reasons listed for opposing self-regulatory codes included: i) the non-binding nature of such codes; ii) the alleged lack of real interest by industry in bridging the gap in understanding stemming from information asymmetry; and iii) the current difficulty in comparing third-pillar retirement products at national level, which would make comparability at EU level even more difficult if many national codes were put in place.

The financial services industry was divided on self-regulatory codes. Roughly half of respondents did not support self-regulatory codes; while the other half indicated that such codes would bring about real improvements, in terms of transparency and the quality of products, as national codes would adapt better to the specificities of individual national markets.

It is important to stress, however, that the industry respondents in favour of such codes expressed this position with significant emphasis and strongly highlighted possible advantages, for example that codes could bring about real improvements in terms of transparency.

4.6.1. Consumers, shareholders, and civil society

All respondents from consumer and shareholder groups were (in varying degrees) against self-regulatory codes; and were more in favour of EU legislative action to tackle persistent issues with third-pillar retirement products; to strengthen the Single Market;

and to harmonise national initiatives. Some suggested reinforcing national supervisors. If self-regulatory codes were to be chosen as the solution, one shareholder suggested that a stakeholder council representing shareholders should have a role in designing the industry self-regulatory code.

4.6.2. Financial services industry

A relative majority of industry respondents did not show support for self-regulatory codes: but supported *effective rules* for all financial products (both at national and at EU levels). The provision of independent advice would foster consumer confidence and further integrate the market; ensuring fair competition due to possible sanctions.

Most respondents agreed that *self-regulatory codes could mean different things in different countries*, which would increase cost inefficiencies and slow down innovation, because different codes would be needed to adapt to local cultures. At the same time, putting in place a 'too strict' code would lead to more uniform products; thereby reducing choice to consumers' detriment. A few respondents argued that self–regulatory codes would work better if developed by the industry at national level rather than at EU level.

In general, industry respondents considered that compliance with self-regulatory codes should be monitored by industry associations.

Roughly half of the industry respondents supported, often with a significant degree of emphasis, self-regulatory codes as simple and effective tools. Some of them stressed that codes might help consumers to better understand the different features of third-pillar retirement products.

In addition, some industry respondents suggested extending the information and the protection standards requirements currently defined in the second pillar, to third-pillar retirement products so that consumers would benefit from the same rules and terminology. These respondents therefore called for high level principles to be established for certification schemes, but also for voluntary codes to be implemented to ensure high standards of protection for consumers while also giving providers enough flexibility.

4.6.3. National and public authorities

Few national and public authorities respondents reported that self-regulatory codes would the *best* tool, but agreed that it could be *one* of the possible tools; provided that a legislative framework is in place to monitor compliance and that codes are enforced by peer-reviews.

However, two respondents noted that self-regulatory codes could still help to increase consumer education and enable consumers to choose amongst reliable providers.

4.7. Objectives of self-regulatory codes

Question 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)?

According to the respondents that are in favour of such codes; the main objectives of self-regulatory codes are: to shed light on charges; increase the level of information available; and finally to raise the standards of product providers' conduct. In addition, a common single EU code could have a positive impact on market integration.

4.7.1. *Consumers, shareholders, and civil society*

In line with the previous answer set out above, consumers and shareholder groups do not consider self-regulatory codes as a tool which could provide a *guarantee* of quality; although codes could have a marginal impact on the quality of the information, but not necessarily in a uniform way across the EU or at national level. Codes would therefore not contribute to the further integration of the Single Market.

4.7.2. *Financial services industry*

The industry respondents supporting self-regulatory codes claimed that they could raise standards of conduct and would ensure a guarantee of quality. Some respondents suggested that codes would be less costly and more effective than legislation.

4.7.3. *National and public authorities*

The main positive point suggested by national authorities on codes is that they might help to increase transparency on charges.

However, in most cases public authorities are sceptical about the possibility of applying a single common EU code, due to the national nature of the pensions.

4.8. ***Other outstanding issues dealt with by self-regulatory codes***

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

Similarly to the responses to questions 6 and 7, only a few respondents indicated that self-regulatory codes could be a useful tool for consumer protection.

4.8.1. *Consumers and civil society*

Codes would not be deemed to meet the requirements for pension-specific protection issues. In particular, one shareholder group explicitly stressed the need to have binding legislation to increase consumer confidence and address consumer protection issues.

4.8.2. *Financial services industry*

According to the industry respondents in favour of self-regulatory codes, such codes could positively address the following issues: 1) increasing the variety of products[17], from products containing high guarantees of capital protection and lower financial returns for less literate consumers, to products with few guarantees of capital protection but the potential for higher returns for more financially educated consumers; 2) increasing transparency on how to preserve benefits after ceasing contributions; 3) increasing consumers' engagement by informing them about their accrued capital; losses; guarantees (if any); and projections of expected returns, via semi-annual reports.

---

[17] Increasing the variety of products also includes the possibility of pushing the market towards products providing only accumulation benefits, or only decumulation benefits; or which provide both.

Ultimately, voluntary codes or certification schemes might improve the governance of pension funds, and thereby reducing intermediaries' conflicts of interest. Nevertheless, a few respondents suggested waiting for the legislative outcome of PRIPs, MIFID 2 and IMD 2 negotiations; and highlighted the possible added value of extending the scope of these legislative proposals to third-pillar retirement products.

4.8.3. National and public authorities

National authorities generally stressed that national pension regimes and consequently consumer protection standards, differ widely across Member States. As a consequence, no one-size-fits-all approach would be appropriate.

However, one respondent suggested that a number of issues may be common across Member States and therefore could be dealt with through a common self-regulatory approach. Common issues might include: removing unreasonable barriers when switching products before their retirement date; improving the transparency of charges; clearly informing consumers about their expected retirement benefits; and encouraging consumers to shop around for retirement products.

4.9. Monitoring of self-regulatory codes

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

While the industry largely agreed that professional associations should monitor the application of self-regulatory codes; public authorities stated that this competence should be placed on those national bodies already in charge of supervising financial institutions.

4.9.1. Consumers, shareholders, and civil society

Some respondents suggested the creation of a fourth European Supervisory Authority specifically dedicated to analyse the market from the consumers' protection perspective as a tool to foster more integration within the Single Market. At the same time, the enforcement of voluntary codes by industry associations could in some cases not be as effective as expected because not all companies are associated with an industry association.

4.9.2. Financial services industry

Considering the voluntary and non-binding nature of self-regulatory codes, the industry agreed that the monitoring of compliance should be left to professional associations, and to a lesser extent to national supervisory bodies. Two respondents opposed the creation of a new authority, noting that it would be difficult for one single body to monitor products regulated by different EU legislation (covering insurance, UCITS, and bank products). In addition, there would be the risk that this supervisory body would impose binding rules which would not be the result of a specific legislative process, but only the administrative decision of a technical body.

4.9.3. National and public authorities

Most national authorities indicated that the most suitable bodies to ensure the effective application of the codes would be the national authorities already in charge of supervising financial institutions. One respondent also mentioned that consumer associations could play this role.

4.10. Second non-legislative policy option: an EU certification scheme

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

An EU certification scheme was supported by half of the industry respondents. Shareholder groups and national authorities adopted a more cautious approach; with the exception of one consumer representative who expressed more support.

4.10.1. Consumers, shareholders, and civil society

Respondents again stressed the importance of binding legislation, with some questioning whether an EU certification scheme would result in a voluntary label for the industry to better market their products; or in a compulsory certificate for all third-pillar retirement products.

Three respondents, however, supported the certification scheme as a tool to foster transparency provided that its features and requirements were established by an independent standard setting body; the scheme is placed under the supervision of the European Securities and Market Authority (ESMA) or the European Insurance and Occupational Pensions Authority (EIOPA) to ensure its quality; and it does not lead to further costs for retailers.

4.10.2. Financial services industry

A significant number of industry respondents indicated that certification schemes could increase the number of subscriptions and improve comparability among products (including cross border products); provided that the schemes do not aim at standardising existing products, but at creating a new product featuring specific EU standards. This "European" third-pillar retirement product should be provided with a sort of “EU passport”. Once certified in one Member State, this EU-branded product could be easily marketed elsewhere.

In this respect, an EU certification scheme could strengthen the Single Market, although the persistence of different tax treatments amongst Member States would still be an obstacle to further integration. One stakeholder expressed support for a certification scheme provided that the label is based on binding harmonised EU legislation; thereby proposing to emulate the UCITs model, which builds on a harmonised set of requirements that Member States mutually recognise. A certification scheme which was not based on binding legislation would fail to exploit the full potential of fostering market integration.

A cautious approach was taken by those respondents who argued that certification schemes only work if properly supported by independent advice to consumers.

The other industry respondents expressed no strong support for such a scheme, on the basis that it would increase costs and administrative burdens, especially if the scheme is about ex-ante product control. These costs are likely to be transferred onto consumers and it is not clear how quality would be monitored or guaranteed within the scheme. Moreover, it could push consumers into neglecting non-certified products which could generate higher yields. In addition, the certification could imply a sort of standardisation, reducing the variety of flexible, innovative and consumer-oriented products.

Similar to the arguments raised in regard to self-regulatory codes; the scheme could also induce consumers to think that all products were comparable. Although risk and quality are two different features; consumers may be misled when considering two different products (bearing the same quality label) and assume that they have the same risk profile.

A few industry respondents mentioned the risk that a certification scheme would only marginally contribute towards ensuring the quality of the product. Moreover, consumers might interpret the EU certification as also providing a financial guarantee; while the cost of such a guarantee would need to be funded and these costs would be passed onto consumers.

In this respect, most of the industry raised the need to distinguish between a quality brand and a financial guarantee.

4.10.3. National and public authorities

Three Members States did not share the view that an EU certification scheme would provide added value to the market; and argued instead that it would be an obstacle because Member States already have effective legislation in place. These Member States are of the view that there is currently no one product in the whole EU that could meet high-level certification requirements. One respondent indicated that such a certification scheme could be mis-used by industry to adopt mis-selling practices.

4.11. Objectives of an EU certification scheme

Question 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)?

Respondents expressed diverging views. Some respondents from consumer organisations stressed that such as scheme would not improve confidence; but would rather mislead consumers into thinking that these were "safe harbour" products certified at EU level, and could suit all consumers in the same way. Some industry respondents and some national authorities emphasised that the benefits of an EU certification scheme could be: increased consumer choice; enhanced competition, improved transparency and improved providers' conduct, provided that effective control mechanisms are in place.

4.11.1. Consumers, shareholders, and civil society

Two respondents did not consider the scheme as the best way to improve consumer confidence: on the contrary, consumers could be misled, if erroneously convinced that a particular 'safe' product suits the needs of all consumers. To reduce this risk, the scheme should distinguish amongst different consumers' profiles, taking into account the differences in risk aversion, level of contributions and final objectives (lump sum or revenue upon retirement).

4.11.2. Financial services industry

According to the respondents who supported an EU certification scheme, such a scheme would increase consumer choice, by making products available to a wider range of consumers across the EU. Furthermore, even without providing a guarantee, the scheme could improve transparency.

4.11.3. *National and public authorities*

While not supporting the idea of an EU certification scheme, national authorities indicated that it could serve as indication of industry good conduct, provided that it fixes pre-qualification criteria, that quality control mechanisms are in place, and that the sanction system allows for the non-complying providers to be removed from the market.

4.12. Other outstanding issues dealt with by EU certification scheme

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

In line with previous answers, consumers and shareholders did not express strong support for this policy option. Both of them emphasised that a certification scheme could be a tool to protect consumers only if they properly understand its nature, which makes the role of salespersons to duly advise their customers critical. On the other hand, industry suggested that the benefits for consumers would include an enhanced ability to easily recognise similar products and to compare costs; it would also lead providers to better inform consumers on the projections of expected yields. National authorities stressed the potential to clarify costs and to allow switching of products and providers.

4.12.1. *Consumers, shareholders, and civil society*

Respondents did not generally support the idea of resolving specific consumer problems through an EU certification scheme. On the contrary, they believed that a certification and labels could be misleading. Shareholders stressed that certification could work only if providers are obliged to properly advise their clients and take their needs into consideration.

4.12.2. *Financial services industry*

Industry respondents indicated that a certification scheme has the potential to make products easily recognisable, to foster investors' ability to compare the costs and benefits of products.

4.12.3. *National and public authorities*

National authorities expressed the view that a certification scheme might contribute, inter alia, to improve the transparency on charges, to facilitate the switch from one provider to another, and to provide better information on the expected outcome upon retirement. Nevertheless, one respondent questioned whether such a scheme could slow down innovation and reduce consumer choice.