

Comments Template on Consultation Paper on a Report on Good Practices on individual transfers of supplementary occupational pension rights		Deadline 10 April 2015 23:59 CET
Name of Company:	Name (Sector) (Country)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Confidential/Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Please insert the name of your NCA in the box next to "Name of Company". Please also specify the sector of your business in brackets (Consumer Associations, Training/Eductaion bodies, Industry), as well as your Country; ⇒ <u>Do not change the page numbering</u> in the column "reference" ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row, giving reference to the paragraph number where given. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-15-001@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The page numbering refers to the Consultation Paper on a Report on Good practices on individual transfers of supplementary occupational pension rights.</p>		
Reference	Comment	
General Comment	<p>In January 2015 EIOPA published the consultation paper report on Good Practices on individual transfers of supplementary occupational pension rights, which relates back to the Call for Advice (CfA) on portability EIOPA received from DG Employment and Social Affairs.</p> <p>With the adoption of the Directive on the acquisition and preservation of supplementary pension rights, Member States have made a conscious choice not to include transferability and to leave it</p>	

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to Member States to improve transferability. We welcome therefore the fact that EIOPA remains neutral as regards the topic of transferability of pension rights itself i.e. does not provide any advice or comments as regards whether a transfer may be preferable to the simple preservation of dormant rights. We strongly believe that many obstacles still remain and would like to emphasize that a general right to cross-border transfer pension rights or capital can be problematic for occupational pension schemes and its members.

Transferring supplementary pensions is a very complex operation and should not put members of adequately functioning pension systems at risk. Direct transferability of pension capital can only happen if there are clear mutual agreements between Member States and institutions. As mentioned, a general right to cross-border transfer of pension rights or capital can be problematic for some occupational pension schemes in the EU as well as to their members. Differences in life expectancy between Member States are significant, which if not properly taken into account, can result in an imbalance between outgoing and incoming transfers. This is particularly the case for DB schemes transferring pension rights. Moreover the technical, actuarial, legal and fiscal challenges show the complexity of cross-border transfers. Importantly, the main areas do not fall in EIOPA's remit.

Good practices on the calculation of transfer value and taxation have not been proposed in this consultation, but are still important - and even fundamental - obstacles to the practice of transfers. That there are no good practices on these issues shows how complex it is to tackle these obstacles. These issues relate to Social and Labour Law and taxation. Even though EIOPA recognizes in the consultation that social and labour law do not fall in its remit (p. 8), we would like to emphasize this point: the Member States decide on matters regarding social, labour and tax law.

We find it also important to highlight that workplace pensions are regularly not-for-profit and some/all of the costs are borne by the employer. Considering the role of the employer, it becomes apparent that workplace pensions are very different from personal pensions. Workplace pensions are characterized by the triangular relationship between employee, employer and the IORP.

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	<p>Personal pensions are built on a contract between a provider and an individual. They follow a totally different concept. The term “supplementary” in the title of the consultation is therefore misleading as it includes both workplace pensions as individual pensions. We would like to emphasize the importance of not mixing these two different systems. Transfers between workplace pension schemes and personal pension schemes are often, even domestically, not possible due to the different tax arrangements and the different setup of a scheme.</p> <p>Moreover, we suggest to replace the term ‘rights’ in the title of the Consultation with the more accurate term ‘capital’. The transferring scheme calculates a capital value based on the given pension promise, the receiving scheme then uses this capital value to calculate in turn what kind of pension promise the new scheme can offer based on that.</p> <p>Lastly, we welcome the fact that EIOPA invites stakeholders to comment on the Report on Good Practices on individual transfers of supplementary occupational pension rights before sending the Report to the European Commission. However, we don’t find the way the Consultation is organized conducive to a good discussion. Asking concrete questions is in our view a better way to address the impediments and the possible solutions towards overcoming these.</p>	
Page 4	<ul style="list-style-type: none"> • We welcome that EIOPA is neutral as regards the topic of transferability of pension rights itself i.e. does not provide any advice or comments as regards whether a transfer may be preferable to the simple preservation of dormant rights. 	
Page 5		
Page 6	<ul style="list-style-type: none"> • We welcome that the Good Practices mentioned in this report are principle-based and that is mentioned that due to the nature of the individual legal framework or the costs and benefits Good Practice observations may not be readily applicable in certain Member States. • The consultation mentions that all Good Practices may be applied to both DB as well as DC schemes. These two types of pension promise are very different from each other and they are therefore facing different challenges in the case of individual transfers. 	

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Page 7	<ul style="list-style-type: none"> As mentioned, we find the word ‘supplementary’ misleading as it could refer to both workplace pensions and personal pensions. EIOPA should at least stick to the suggestion made in the definition to use “pension scheme”. For clarity’s sake it would be even more beneficial to use “workplace pension scheme”, which would reflect the link to an employment relationship and the important role of the employer. 	
Page 8	<ul style="list-style-type: none"> Automatic transfers : indeed some Member States have looked into possibilities to transfer the pension entitlements automatically (‘pot follows member’). However, we are sceptical about this as automatic transfers can be to the detriment of the beneficiary who can be worse off by a transfer. It could lead to a possible reduction of pension rights for the beneficiary or it could have a negative impact for people when the receiving scheme doesn’t fit the personal needs of the beneficiary (in particular with regard to the risk cover for invalidity or death that is offered by some schemes and not by others). Legal basis : We note that EIOPA stresses that the Good Practices proposed in the report will not be legally binding. It is the Member States who decide on matters regarding social, labour and tax law. Within some Member States, transfers are addressed in collective agreements, these are most likely to be found in sectors where the different schemes deliver similar benefits. Neither EIOPA nor the Commission can or should interfere with the right of the Member States to address these issues as they see fit. 	
Page 9		
Page 10		
Page 11	<ul style="list-style-type: none"> We don ’t think the visualization shows the typical situation of an employee. It shows two employment periods with different employers with a gap in between. Most employees change jobs without a significant break in between. The OECD guidelines indeed state that « individuals who are changing jobs should be able, upon request, to move the <i>value</i> of their vested account balance from their former employer’s pension plan either to the plan of their current employer (where permitted) or to a similar, tax-protected environment provided by an alternative financial instrument or 	

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	<p>institution. ». EIOPA hereafter states there is currently no explicit legal rule on the European level which grants members of supplementary pension schemes the right to transfer their <i>pension rights</i>. We question the feasibility to develop such a European rule due to the diversity in the EU pension landscape and the differences in taxation and social and labour law.</p>	
Page 12		
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Page 15	<ul style="list-style-type: none"> • We support the idea to start with voluntary agreements between schemes where the schemes are relatively similar. The interest of the transferring and receiving IORPs should be duly taken into account, as well as the other members in the scheme and the impact on their pension capital. We understand that EIOPA envisages a voluntary transfer agreement within and across Member States. However, it is important to be realistic as to what the involved stakeholders are prepared to do. This applies both to IORPs / insurance companies as well as to the mobile worker, who faces a more difficult decision the more different the two schemes are. Mobile workers are likely to built their personal risk cover (e.g. invalidity, death) around what their employer offers. For example, if an occupational pension scheme does already include sufficient invalidity cover, there is no need to take out an additional personal insurance. Any change to what is offered by the employer therefore triggers a review of the personal insurances taken out. This is particularly critical because with increasing age it becomes more expensive and difficult to take out invalidity cover or survivor’s protection. Therefore the mobile worker has in most cases an interest that the benefits offered by the employer remain similar. As a consequence a transfer between similar schemes is easier to complete than a transfer between completely different schemes. • From our perspective it is key what is addressed in the agreement. Transfers at a wider scale will only be feasible, if the former IORP calculates the transfer value according to its 	

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	<p>own actuarial assumptions and if later, the receiving institutions “recalculates” this transfer value into pension claims according to its own rules. If on the other hand it would include the use of the same actuarial assumptions, it is inconceivable that this would work.</p> <ul style="list-style-type: none"> • When stating that such an agreement should cover as many scheme providers/sponsors as possible, we deem it important to state that transfers should be limited amongst ‘regulated’ institutions. Moreover, we question who should set up such voluntary agreements. • The reference in the 4th paragraph « see also section 3.5 Calculation of transfer value », should be « section 3.6 Calculation of transfer value ». 	
Page 16	<ul style="list-style-type: none"> • When transferring pension capital it is not only of importance to take into account the funding of the transferring pension scheme, but to also look into the overall risk environment, such as the interest rate environment and biometric aspects. It should be possible to add this in the criteria for reasons to suspend a transfer. • With regard to Good Practice 3 we deem it important to highlight that indeed it is more difficult in a cross-border context to make a transfer than in a domestic context. It is important to focus first on the domestic level. 	
Page 17		
Page 18		
Page 19	<ul style="list-style-type: none"> • We understand that it is beneficial for the employee to allow for a sufficiently long period to request an out-transfer. However, the point in time at which a transfer is realised has its effects on the financial situation of the IORP and therefore on the funding of the scheme, it should therefore be possible for the IORP to limit this timeframe to a certain extent or to limit this timeframe by collective agreement. 	
Page 20	<ul style="list-style-type: none"> • We agree with EIOPA that information for members and beneficiaries should be correct, 	

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	<p>understandable and not misleading. However, a KID document is tailored to investment products and does not fit workplace pensions. Any information given should be tailored to the specific situation of IORPs.</p> <ul style="list-style-type: none"> • We agree that the information about the costs of a transfer should be made available to the member who requested the transfer, so that he/she can make an informed decision. 	
Page 21	<ul style="list-style-type: none"> • As this consultation is regarding IORPs as well as other occupational pension plans provided by insurance undertakings, we question the need to mention the PPP here. The first and the second pillar should provide the bulk of the retirement income; personal pensions (third pillar) can be an instrument to further top up retirement income. However, any pension scheme linked to a current or previous employment relationship should be considered as part of workplace pensions, with the involvement of the employer being a key factor to distinguish workplace pension from personal pensions. Workplace pensions have a different setup with different features that should be taken into account when transferring pension capital, such as intergenerational risk-sharing and risk-sharing around death and invalidity in some cases. 	
Page 22	<ul style="list-style-type: none"> • It is impossible for the IORP to give accurate information of all potential consequences of a transfer that result from other Member States' jurisdictions. The IORP can only provide information on the scheme and its contracts itself. Other issues, such as tax implications are out of the remit of the IORP and if the IORP were to inform its members on possible tax implications this might lead to a situation where the IORP becomes liable in case a Member States decides to change its tax rules. 	
Page 23	<ul style="list-style-type: none"> • Good Practice 8 : this good practice should imply that scheme members can receive information from the IORP, not advice. When a member of a pension scheme would like to receive advice, he or she should be able to hire external advice, but this should be on his/her own initiative and costs. 	
Page 24	<ul style="list-style-type: none"> • It can be difficult to determine the actual costs of a transfer, as there are so many aspects to be taken into account such as administration costs, changes in the funding of the pension scheme, corporate tax etc. We therefore think it should be up to the IORP, taking 	

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	<p>the interest of the member into account, to decide whether they calculate the charges according to the actual work necessary to carry out the transfer, to the transfer amount or whether they use a flat fee - as long as the IORP is transparent about the costs and charges.</p>	
Page 25		
Page 26	<ul style="list-style-type: none"> • Good practice 10: It is important to note that when two schemes directly communicate with each other they have to do this based on a set of rules in which the technicalities of transfers are addressed. • Good practice 11: Time limits should be reasonable for the processing and execution of transfers. However, sometimes external factors can delay the process. Therefore, the IORP should not be held liable for not meeting deadlines when this is out of their reach for example when changes in legal rules mean that a transfer takes longer than expected. 	
Page 27	<ul style="list-style-type: none"> • Good Practice 12 is very similar to Good Practice 10. It would make sense to combine these into one Good Practice. 	
Page 28	<ul style="list-style-type: none"> • Regarding the calculation of transfer value: as mentioned in the general remarks, there are several impediments to the transfer of pension capital cross-border related to the calculation of transfer value : <ul style="list-style-type: none"> ⇒ Differences in life expectancy : this has an impact on calculating the value of pension capital to be transferred, and on the translation of that value back into rights for the new scheme. ⇒ Technical and actuarial problems : it is very complex to determine the value that will be transferred due to the differences between Member States with regard to the types of schemes, the provided entitlements with regard to security (guaranteed or conditional) and different ambitions with regard to indexation. It should be taken into consideration that capital-funded pension rights, although they are transferable in an actuarial/technical sense, can still be subject to a completely different set of rules. ⇒ It can be difficult to calculate the administration costs of a transfer as there are, as mentioned earlier (comment on p.24), many issues that should be taken into 	

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	consideration.	
Page 29	<ul style="list-style-type: none"> The differences between tax treatment of pensions in the Member States are enormous. This complicates transferring pension capital cross-border. For example, when a transfer takes place from an TEE system to an EET or ETT system, this could result in double taxation when there are no taxation agreements. Whereas in the opposite situation double non-taxation may be the case. 	
Page 30	<ul style="list-style-type: none"> In some cases it makes sense to pay out very small amounts to avoid costs instead of transferring the capital. 	
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Annex III		