



Vrije Universiteit Brussel

Faculty of Economic and Social Sciences & Solvay Business School

An EU Single Market for Personal Pensions

Promoter: Prof. dr. dr. Doris Hildebrand

Student: Ana Teresa Breda

Student Number: 0106029

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Abstract

The EU role in pension policy has emerged and evolved thanks to the interaction of a number of factors. An ageing European population that puts pressure on public budgets, a common currency that obliges member states to ensure the sustainability of their public finances and the competitiveness of the EU economy in a globalized world all contributed to include pension policy at the core of the EU agenda.

Already in 1971, an EU directive on the coordination of social security systems was adopted and since then, the European Commission has continued its legislative action in pursuit of the Treaty values of citizens' mobility and the internal market. However, academics and some representatives of the financial industry have been quite critical of the current state of the pensions market. Lack of economies of scale and taxation impediments on the one hand, and the increased role of occupational and personal pensions in future pension provision on the other, have inspired the launch of innovative proposals calling for the integration of the market for pensions in the EU.

This study comes on the back of the European Commission's recent initiative aiming at creating an EU single market for personal pensions. Acknowledging the fragmentation of the personal pensions market in the EU, this study intends to go a step further by answering the following three questions: (i) what are the barriers for the cross border activity of personal pension providers within the EU, (ii) what are the consequences of these barriers for those personal pension providers which (intend to) sell personal pension products cross borders within the EU, and (iii) what are the possible actions that could be taken at EU level in order to facilitate the cross border activity of personal pension providers.

By means of a survey, this study has collected the views of 29 personal pension providers operating in the EU. Respondents attributed particular relevance to those barriers referring to differences across member states in taxation regimes, product design rules and requirements in notification and approval procedures. Providers revealed that this fragmentation affects the efficiency of their business, especially by impeding the creation of economies of scale and increasing their management,

administration and distribution costs. Finally, most respondents believe that the best solution that could be taken at EU level to promote the integration of the personal pensions market would be the creation of an EU personal pension product that, once approved in one member state, could be sold across the EU, competing with national personal pension products.

The findings of the survey highlight, from the perspective of personal pension providers, the importance of the initiative taken by the European Commission in the creation of an internal market for personal pensions. In particular, the results show that the currently fragmented market in which personal pension providers are operating would benefit from future EU action that could facilitate their cross border activity in the EU. The findings of this empirical exercise could assist the European Commission in its assessment of the most adequate measures to be considered in a future legislative initiative in this area.

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1. Introduction

1.1. Research question

This study intends to contribute to the current policy developments in the European Union (EU) on the creation of a single market for personal pensions.¹ The European Commission and the European Insurance and Occupational Pensions Authority (EIOPA) are the main actors which have recently engaged in exploring possible legislative initiatives that could help create an EU single market² for personal pensions.³

There could be several perspectives from which EU policy action in the area of pensions could be approached: from the consumers' perspective (Brinks *et al.*, 2011), from the pension providers' perspective (Tertàk, 2010), from the governments' perspective (Vandenbroucke, 2014), or from an EU economic growth and capital markets integration perspective (Bovenberg and Ewijk, 2011), for instance.

This study is dedicated to the personal pension providers' perspective, and intends to gather their views on the barriers to cross border activity⁴ in the EU. It also intends to

¹ Personal pension products can be broadly defined as retirement savings that individuals purchase from pension providers, selecting material aspects of the arrangements (adapted from the "*OECD Pensions Glossary*" (2005), available at <http://www.oecd.org/pensions/private-pensions/2496718.pdf>) Last accessed on 25 June 2014. In the OSE Report (2011: 29), Guardiancich and Natali also provide a simple definition by referring to "voluntary savings put aside by an individual for his/her old age". This is a private pillar of a member state's pension system "in that it is not established by law but is based on contracts signed by (...) individuals with private institutions".

² In this study, "single market" and "internal market" are used interchangeably.

³ The European Commission asked EIOPA, in July 2012, to develop technical advice specifically on (at least) two legislative approaches for the creation of a single market for personal pensions: European Commission (18/07/2012) "Technical advice to develop an EU Single Market for personal pension schemes". Available here:

http://ec.europa.eu/internal_market/pensions/docs/calls/072012_call_en.pdf (last accessed on 3 August 2014).

⁴ "Cross border activity" of an economic operator can occur either directly, through the use of the freedom of establishment or indirectly, through the use of the freedom of provision of services. According to the European Commission: "The freedom of establishment, set out in Article 49 (ex Article 43 TEC) of the Treaty and the freedom to provide cross border services, set out in Article 56 (ex Article 49 TEC), are two of the "fundamental freedoms" which are central to the effective functioning of the EU Internal Market. Information available at http://ec.europa.eu/internal_market/top_layer/living_working/services-establishment/index_en.htm (last accessed on 24 June 2014).

collect pension providers' views on the action needed at EU level that could facilitate an internal market for personal pensions that can be easily accessed by providers.

In this context, this study aims at shedding light on three questions:

(i) what are the barriers for the cross border activity of personal pension providers within the EU,

(ii) what are the consequences of these barriers for those personal pension providers which (intend to) sell personal pension products cross borders within the EU, and

(iii) what are the possible actions that could be taken at EU level in order to facilitate the cross border activity of personal pension providers.

By answering these questions, this study expects to demonstrate the need for action at EU level in this domain and suggest possible solutions that could be considered by the European Commission in a future legislative proposal.

1.2. Methodology

In order to answer the three questions above, this study builds on primary data sources in the form of an on-line questionnaire. The questionnaire was sent to a wide range of personal pension providers operating in the EU.⁵

This study also uses secondary data sources, namely the EIOPA Database of Pension Plans and Products in the European Economic Area (EEA)⁶. Legal texts and

⁵ As will be explained in Section 3, the sample was composed of asset managers, insurance companies and pension funds. Banks were excluded from the survey as in most member states they act as a distribution channel for all the above providers and do not build pension solutions themselves. Insurers can often act as a distribution channel for asset managers but have also their own pension solutions.

⁶ EIOPA (2013): "EIOPA Database of pension plans and products in EEA countries". Available here: <https://eiopa.europa.eu/publications/database-of-pension-plans-and-products-in-the-eea/index.html> (last accessed on 27 July 2014). The European Economic Area (EEA) includes the EU Member States and the three EEA EFTA States (Iceland, Liechtenstein, and Norway). More information here: <http://www.efta.int/eea/eea-agreement> (last accessed on 29 July 2014).

information gathered from specialized journals, academic papers and policy papers have also been used in his study.

1.3. Outline

Section 2 describes the gradual EU intervention in pension policy, focusing both on the factors that contributed to this intervention and the means used to intervene. The legislative initiatives led by the European Commission and the public consultations in this area are analyzed. The section ends with the analysis of academics and industry representatives' calls for action for the integration of EU pensions market. The recent initiative taken by the European Commission in the creation of a single market for personal pensions and EIOPA's current work on its advice merited a careful analysis since they will be the core focus of the empirical exercise presented in the following section.

Section 3 explains the methodology used for primary data collection through an on-line survey. The results of the survey are analyzed, summarizing the views of personal pension providers on the most relevant barriers to the provision of personal pensions across the EU, the consequences of these barriers and the possible solutions to be taken at EU level.

Section 4 concludes and summarizes the key questions and findings of this study. It also acknowledges its limitations and proposes future research to be developed in this area.

Finally, Section 5 presents three recommendations for EU policy-makers to consider that could help ensure a successful policy outcome on the creation of a single market for personal pensions.

2. Developments in the EU pension policy-making

2.1. Introduction

This section outlines the dynamics and evolution of EU intervention into pension policy. It focuses on the factors that contributed to this intervention, the tools used for intervening and their scope. The complexity of the negotiations with member states, the accomplishments of the EU intervention and its shortcomings are also described. This leads then to the barriers still perceived in the EU pensions market and the support for action at EU level that has been expressed by stakeholders in a number of consultation processes conducted by the European Commission. A number of innovative solutions have also been proposed by academics and the financial industry towards the creation of an integrated EU pensions market. The section ends with an explanation of the specific work that has recently started at EU level on the integration of the market for personal pensions. This segment of the pensions market will be the scope of this study.

2.2. Milestones of the EU intervention in pension policy

EU intervention capacity in pension policy has been gradually extended throughout the years. Common demographic challenges that weight on social expenditure of public budgets in a monetary union where member states need to ensure the sustainability of their public finances for the sake of the competitiveness of the single market, raised the “need for some form of transnational policy coordination”. (Trubek and Trubek, 2005: 345).

EU intervention can be broken down into coordination and harmonization measures.⁷ This subsection starts with the analysis of the emergence and development of “soft

⁷ Natali (2009: 3) refers to two sets of instruments used by the EU to intervene in the policy field: “regulatory” and “post-regulatory” instruments. Whilst the former refer to harmonization measures through the adoption of directives and regulations using the “community method”, the latter refers to the coordination of national policies based on non-legislative instruments. David Trubek and Louise Trubek (2005) also base their study on the construction of social Europe in the distinction between the

governance modes” (Natali, 2009: 1) of coordination between EU policy-makers and stakeholders in social policy issues with a particular focus on pensions.

The definition of coordination strategies at EU level in social policy was formally defined at the Lisbon Council of 23-24 March 2000⁸, on the basis of the need to modernize the “European social model” that would contribute to a competitive EU in a globalized world. A new Open Method of Coordination (OMC) was referred to as a decentralised approach to help member states reach the desired goals. This would be done through the establishment of indicators and benchmarks to compare best practices among member states, the definition of targets and measures that would be monitored and evaluated through peer review on a mutual learning basis.

In order to achieve the commitments endorsed at the Lisbon Council, the Commission launched, in June 2000, a communication on a social policy agenda for 2000-2005 setting out concrete actions to “modernize the European social model”. One of the action points was the creation “of a Pensions Forum to address the issue of supplementary pensions and mobility” with all relevant actors.

The approval of this agenda at the Nice Council of December 2000 marked the future direction of European social policy in the 21st century (Neal, 2004).

The Stockholm Council held on 23-24 March 2001 cautioned that the common demographic challenge EU countries were facing (referring to the increasing proportion of retired people relative to working-age population) should be dealt with in order to ensure the adequacy of pension systems while maintaining the

role of “hard law” through the “community method” and soft law through the Open Method of Coordination (OMC). Pochet and Natali (2005: 4, 5) take a different approach in the means by which the EU influences pension reforms, outlining five sources of influence: i) “forums for discussion created by the EU”, ii) “economic integration and monetary union” that make member states more attentive to the policies being pursued by each of them, iii) the EU capacity as “an agenda setter for member states”, iv) the EU as a pretext for national leader to implement unpopular but necessary measures and v) “lobbying practices (...) at the European level do not cover national plans”.

⁸ The conclusions of the Lisbon Council held on 23-24 March 2000 can be found here: http://www.europarl.europa.eu/summits/lis1_en.htm (last accessed on 9 August 2014).

sustainability of public finances. In this instance, the OMC was introduced as a potential tool to be used specifically in the field of pensions.⁹

In line with the Lisbon and Stockholm Council conclusions, the Göteborg Council of 15-16 June 2001 endorsed the needed to meet the challenges of an ageing society in a threefold objective: i) ensuring the adequacy of pension systems, ii) securing the long-term sustainability of pension systems and iii) meeting changing socio-economic conditions.¹⁰

On 9 July 2001 the Commission set up the Pension Forum as an advisory committee in the area of supplementary pensions composed of national administration experts, social partners, industry representatives and independent experts.¹¹ The goal was to “depoliticize the discussion and neutralized the ideology surrounding the issue, to turn it into a technical matter” (Pochet and Natali, 2005: 7).

The Laeken Council of 14-15 December 2001¹² endorsed the first joint Report from the Social Protection Committee (SPC) and the Economic Policy Committee (EPC)¹³

⁹ The conclusions of the Stockholm Council held in 23-24 March 2001 can be found here: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00100-r1.%20ann-r1.en1.html (last accessed on 9 August 2014).

¹⁰ The conclusions of the Göteborg Council of 15-16 June 2001 can be found here: <http://www.consilium.europa.eu/press/press-releases/latest-press-releases/newsroomrelated?bid=76&grp=3565&lang=en> (last accessed on 9 August 2014).

¹¹ “The Forum’s remit is to act as a consultative body for the Commission with regard to problems and developments at Community level affecting supplementary pensions. The Committee has 55 members and is made up of experts from national administrations in the EU and in other countries of the European Economic Area (EEA), social partners represented at European level and bodies involved in the area of supplementary pensions. The Committee may also invite anyone with particular knowledge of a subject included on the agenda of a Committee meeting to attend as an expert.”

(more information available here: http://europa.eu/legislation_summaries/employment_and_social_policy/social_protection/c10124_en.htm# (last accessed on 9 August 2014).

¹² The conclusions of the Laeken Council held on 14-15 December 2001 can be found here: <http://www.consilium.europa.eu/press/press-releases/latest-press-releases/newsroomrelated?bid=76&grp=4061&lang=en> (last accessed on 9 August 2014).

¹³ “The Social Protection Committee (SPC) is an EU advisory policy committee for Employment and Social Affairs Ministers in the Employment and Social Affairs Council (EPSCO), established by the Treaty on the Functioning of the EU (article 160)” (more information available here: <http://ec.europa.eu/social/main.jsp?catId=758>). “The Economic Policy Committee (EPC) was set up in 1974 (under Decision 74/122/EEC) to improve coordination of Member States’ economic and budgetary policies”. The EPC “is made up of representatives of the Member States and contributes to the work of the Economic and Monetary Affairs Council as regards the coordination of Member State and Community economic policies. The EPC also provides the Commission and the Council with advice

“on objectives and working methods in the area of pensions”. This report outlines the future functioning of the pensions OMC on the basis of the definition of common objectives, which should be translated into national policy strategies and monitored on the basis of common indicators and as part of a mutual learning process.¹⁴

By identifying common challenges and goals and establishing an integrated framework for future cooperation in the pension’s field, the floor was open for a close dialogue between member states and the EU.

In this second part, the analysis is focused on the evolution of the EU intervention in pension policy through harmonization measures, i.e. “hard law”. The main legislative initiatives undertaken by the European Commission in the field of pensions are outlined below.

Before going into detail in the analysis of the legislation, a brief explanation is provided of how pension systems can be broadly classified in the EU. Frequently, literature refers to the World Bank¹⁵ “three pillar” –system: the first pillar as a mandatory publicly managed pillar, the second pillar as a mandatory privately managed pillar and the third pillar as a voluntary pension savings pillar. Nevertheless, this classification has been widely criticized. The European Social Observatory (OSE, 2011) provides further information on the criticisms and alternative classifications that have arisen since. The classification used in the chart below follows the terminology used in the EU legislation itself which results in a generic classification of

in this area, focusing particularly on structural reforms.” (more information here: http://europa.eu/legislation_summaries/economic_and_monetary_affairs/institutional_and_economic_framework/125055_en.htm) (last accessed on 9 August 2014).

¹⁴ The joint EPC and SPC report “on objectives and working methods in the area of pensions” is available here:

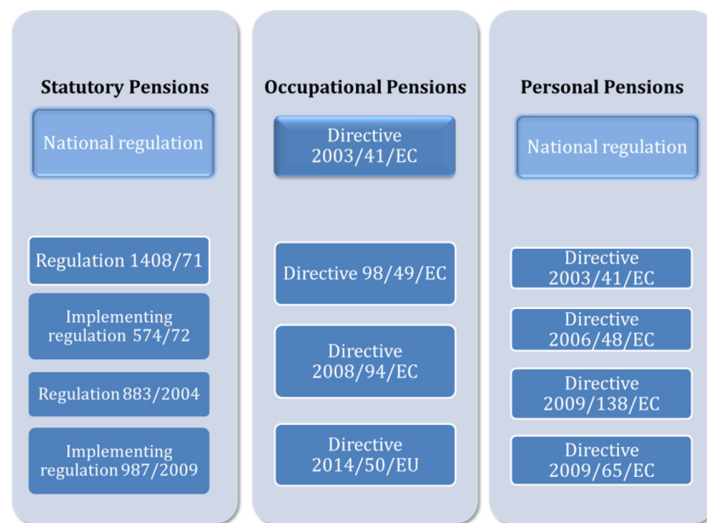
<https://www.consilium.europa.eu/uedocs/cmsUpload/Quality%20and%20viability%20of%20pensions.pdf> (last accessed on 9 August 2014). This report had been prepared on the basis of the outcomes of the Stockholm and Göteborg Councils. The previous communication from the European Commission on “Supporting national strategies for safe and sustainable pensions through an integrated approach”, which is mentioned in the joint report, had already set the ground for the establishment of common objectives in the area of pensions and the roles to be shared among the different actors in the OMC arena. (document available here: http://europa.eu/legislation_summaries/employment_and_social_policy/social_protection/c10126_en.htm, last accessed on 9 August 2014).

¹⁵ World Bank (1994): “Averting the old-age crisis”.

EU pension systems into statutory pensions, occupational pensions and personal pensions¹⁶.

Chart 1 below shows the initiatives that have been taken at EU level (until the first half of 2014) on the basis of the EU legislative competences established in primary law (Treaty rules).

Chart 1: EU legislative initiatives in pension policy



Brink *et al.* (2011) alert to the fact that it is not the lack of EU competence to regulate national pensions that can inhibit the EU from taking initiatives if those are justified on appropriate legal basis. Indeed these authors argue that the subsidiarity principle¹⁷ – that is often invoked against EU action in pensions - is indeed a powerful tool to justify EU action “if and insofar as the EU is better suited to achieve policy objectives” (Brink *et al.*, 2011: 6). Brink *et al.* also mention that *a priori* rejection of EU action in certain domains do not make sense in a changing world, since new developments make the subsidiarity principle a dynamic one, where the need for EU action calls for

¹⁶ Statutory pensions refer to state-based social security pensions, occupational pensions refer to workplace-related pension funds and personal pensions refer to voluntary private pension savings by individuals.

¹⁷ The subsidiarity principle is referred to in Article 5 (3) of the Treaty on European Union (TEU): “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

an analysis of the context. In a nutshell, Brink *et al.* (2011: 34) highlight that each decision to regulate at EU level “must be made on an *ad-hoc* basis” and detached from any “reservation of national prerogatives” (Brink *et al.*, 2011: 10).

Indeed, although the EU initiatives shown in the chart below are related to pensions, they have different legal basis that have justified the need to act at EU level.

Article 48 TFEU¹⁸ has been used as the legal basis for the regulation 1408/71 adopted in 1971 on the coordination of social security systems and its implementing regulation 574/72 (later replaced by regulation 883/2004 and its implementing regulation 987/2009). The aim of this regulation (which covers only statutory pension schemes) was to avoid discrimination in relation to social security entitlements based on nationality. Regulation 2004 strengthens the principle of exportability of benefits, under which neither the acquisition nor the retention of social security entitlements can be denied on the basis that the person does not reside in the member state where the social security institution is located (OSE, 2011).

The second EU legislative initiative based on Article 48 TFEU was Directive 98/49/EC on safeguarding the supplementary¹⁹ pension rights of employed and self-employed persons. This directive was a first step on the removal of obstacles to the free movement of workers by establishing that any acquired pension rights must be preserved in case an employee leaves the job and moves to another member state to the same extent as those from people who remain in the same member state. Also, benefit payments can no longer be restricted to the territory of that member state. OSE report (2011: 21) mentions that this directive “gives considerably less protection than regulation 1408/71 and has proved disappointing”, given that fierce opposition from some member states turned it into a minimum standard-directive.

¹⁸ Article 48 of the Treaty on the Functioning of the European Union (TFEU) (ex-Article 42 TEC) provides that “The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self-employed migrant workers and their dependants: (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries; (b) payments of benefits to persons resident in the territories of Member States”.

¹⁹ Also defined in the legislation as “occupational” (Article 3 (b)).

Transferability of pension entitlements from one scheme or country to another and the harmonization of waiting and vesting periods²⁰ were kept out of scope.

In October 2000, the European Commission launched a proposal for a directive for Institutions for Occupational Retirement Provisions (IORPs). The legal bases used were ex-Articles 47(2), 55 and 95 EC (currently Articles 53, 62 and 114(1) TFEU). Brink *et al.* (2011: 5) mention that these legal bases made the directive “an internal market directive and not a social policy measure”. The goal of this directive was to promote cross border activity of occupational pension funds, which would “reduce transaction costs”, “stimulate intra-firm labor mobility” and “make pension products cheaper” if investment restrictions were removed (Haverland, 2007: 4). However, the negotiation process between the European Commission, the European Parliament and the Council proved to be quite difficult and lengthy, as Haverland (2007) describes. In order to avoid the conciliation procedure²¹ it was agreed during the informal dialogues that the European Parliament would only adopt amendments that could be accepted by the Council. This represented a victory for those member states who wanted to keep their investment restrictions untouched, “defending their domestic status quo (...) when it comes to the social dimension of occupational pensions” (Haverland, 2007: 17). The adoption of the directive in 2003 was “difficult to achieve and turned out to be an enabling directive” (Terták, 2010: 143). It should be noted, however, that an area of public policy that was previously purely regulated at national level “has been made subject to European integration” (Haverland, 2007: 18).

Still in relation to occupational pensions, the so-called “Insolvency Directive” (2008/94/EC)²² was proposed under Article 115 TFEU and it “provides employees with a minimum degree of protection under Union law” (Barnard, 2012: 643). In particular, “if an insolvent employer had activities in at least two EU Member States, an employee’s outstanding claims must be met by the institution in the Member State

²⁰ Waiting period refers to the “pre-entry” period to become a member of a pension fund and vesting period refers to the “post-entry” period within the pension fund to be entitled to receive a benefit at retirement (adapted from OSE, 2011: 49).

²¹ Article 294 (10) TFEU.

²² Repealing directives 80/987/EEC and 2002/74/EC.

where the employee worked”.²³ According to Barnard (2012: 643) between 2006 and 2009 around 292,000 claims were made in total in Germany, France and Spain and “nearly 18 billion euros have been paid out by the guarantee institutions in the EU as a whole”.

In 2014, another milestone was achieved with the adoption of the so-called “Portability Directive” (2014/50/EU), which had first been proposed in 2005 and was blocked at the Council in 2007. The initial draft proposal from 2005²⁴ included provisions for the acquisition, preservation and transferability of pension rights that should apply to occupational pensions located within the member states or across borders within the EU. This was a new tentative from the European Commission to regulate those provisions that had been kept out of scope of Directive 98/49/EC.²⁵ Given the disagreements between the Council and the European Parliament, the European Commission proposed a revised directive, deleting all references to transferability and portability and renaming it “Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights”²⁶ (OSE, 2011). Despite this, no common position was achieved at the Council, due to the lack of agreement on the appropriate vesting period. In May 2013, the Irish Presidency in May 2013 tabled a revised proposal, which was endorsed by the Council in June 2013. According to an article from I&PE, this agreement was reached after some bargaining in relation to the announced revision of the IORP Directive: “(...) a number of EU member states would be willing to reach an agreement with the Commission on a proposed Pension Portability Directive only if

²³ European Commission website on “employer insolvency”: <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=198> (last accessed on 8 August 2014).

²⁴ COM (2005) 507: “Proposal for a Directive of the European Parliament and the Council on the improvement of portability of supplementary pension rights”. Available here: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=193442 (last accessed on 9 August 2014).

²⁵ “Directive 98/49/EC does not cover the “portability” of supplementary pensions, i.e. the possibility of acquiring pension rights (...) and keeping pension entitlements by transferring them to a new scheme in the event of professional mobility. (...) This is why the Commission proposed on 20 October 2005 a “Directive on improving the portability of supplementary pension rights” (http://europa.eu/rapid/press-release_MEMO-13-587_en.htm, last accessed on 9 August 2014).

²⁶ COM (2007) 603 final: “Amended proposal for a Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights”.

Brussels agreed to drop pillar one of the revised IORP Directive”²⁷. In April 2014, the European Parliament adopted the directive, lowering the vesting period to three years for accrued occupational pension benefits across the EU. Again, another article from I&PE shows the mixed reactions to the outcome of this directive, with some stakeholders welcoming its adoption and others invoking the lack of observation of the subsidiarity principle.²⁸

Finally, chart 1 also shows that statutory pensions are regulated at national level²⁹ whilst occupational pensions should all be IORPs³⁰ after the implementation of directive 2003/41/EC and personal pensions³¹ are regulated at national level although some member states have also implemented EU regulation on pensions (Directive 2003/41/EC)³², insurance (Directive 2009/138/EC), banking (Directive 2006/48/EC) or investment funds (Directive 2009/65/EC).

During this process of legislative initiatives, the European Commission was also releasing a number of consultation papers related to pensions, collecting stakeholders’ views that helped then to define the European Commission’s line of action.³³

²⁷ Investment & Pensions Europe (I&PE), “Council adopts Portability Directive one month after major move on IORP”, 21 June 2014 (<http://www.ipe.com/council-adopts-portability-directive-one-month-after-major-move-on-iorp/53571.fullarticle>).

²⁸ I&PE, “European Parliament passes supplementary pension rights directive”, 16 April 2014 (<http://www.ipe.com/european-parliament-passes-supplementary-pension-rights-directive/10001568.fullarticle>, last accessed 9 August 2014).

²⁹ “There are no EU prudential rules for pension funds that are part of statutory funded pension schemes/institutions. Most of the member states concerned therefore do not apply EU prudential regulation. Some member states have, however, applied the Life or UCITS directive to pension funds” (OSE, 2011: 45).

³⁰ According to the European Commission “Working Document Accompanying the Green Paper” (2009: Table 1) on pension institutions outside the statutorily managed first pillar has shown that in EEA countries there are some other pension schemes or institutions which do not fall under the exclusions mentioned in Art. 2.2 of the IORP directive but which fall outside the scope of any EU prudential legislation (including the IORP Directive).

³¹ The application of EU regulation to personal pension products will be further explored in Section 3, on the basis of the EIOPA Database of pension plans and products in the EEA.

³² The IORP Directive although usually applied to occupational pension schemes has also been adopted by some member states to regulate personal pensions (OSE, 2011: 45). This is also confirmed by the EIOPA Database of pension plans and products in the EEA.

³³ Public consultations from the European Commission can take the form of Green Papers. These are “documents published by the European Commission to stimulate discussion on given topics at

In light of the review of the single market, the European Commission launched in May 2007 a Green Paper “on Retail Financial Services in the Single Market”. This consultation asked stakeholders about the problems they face in retail financial services. This feedback would then help the European Commission “to establish the scope for and impediments to further initiatives in this area”³⁴. One of the questions in this consultation was related to personal pensions and asked i) whether stakeholders agreed that the European Commission could “play an important role developing a competitive, open and effective market for long-term savings, retirement and pension schemes that meet consumers’ needs”, ii) “how could the Commission contribute” and iii) whether “an optional legal EU regime (28th regime)³⁵ for savings and/or third pillar pension products [could] be envisaged”.³⁶

The answers collected show that “most respondents across all categories agreed that the Commission (...) has a role and a responsibility in relation to pensions and retirement planning”. Respondents asked the Commission to “carry out a study of pension services in all member states” and to “examine barriers to entry in each Member State and take steps to dismantle any barriers that may be identified”. Respondents also mentioned that the “Commission should ensure that users have

European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers”. (more information here: http://europa.eu/legislation_summaries/glossary/green_paper_en.htm, last accessed on 9 August 2014).

³⁴ COM (2007) 226 final: “Green paper on retail financial services in the single market” (page 3). Document can be found here: http://ec.europa.eu/internal_market/finservices-retail/policy/index_en.htm (last accessed on 9 August 2014).

³⁵ There is extensive literature arguing in favor of the use of a so-called 28th/optional/second regime for pensions in Europe (Castries, 2008: 6; Monti, 2010:57; Starink, & Meerten, 2011: 38; Liz, 2011: 81; Rinaldi, 2014: 24). However, it is not the goal of this study to explore the use of this optional legislative framework. Given the enlargement of the EU the 28th regime should now be referred to as the 29th regime, however, it was opted to keep the terminology used in the studies. The 28th/second/optional regime can be defined as “an EU legal framework outside the laws of [member states]. It does not replace national rules and does not require transposition. (...) [It] provides an alternative to existing member states’ legislation in a particular field. The 2nd regime is sometimes called as 28th regime in order to signal that it exists in parallel to legal regimes in 27 member states.” (in EIOPA Discussion Paper on a possible EU-single market for personal pension products”, page 5, available here: https://eiopa.europa.eu/consultations/consultation-papers/2013-closed-consultations/may-2013/discussion-paper-on-a-possible-eu-single-market-for-personal-pension-products/index.html?no_cache=1&cid=5706&did=31463&sechash=35656789 Last accessed on 9 August 2014).

³⁶ *Supra* note 34 (page 19).

access to suitable pension and long term savings schemes". Respondents also identified a number of barriers: i) tax and the social welfare system were considered the "major impediment to pension integration and portability"; ii) the "restriction of the range of products that can be provided as part of pension planning (...) discourages innovation" given that "third pillar pensions are almost invariably life assurance products as these products are where tax reliefs are targeted"; iii) "the lack of harmonization of consumer protection rules and differing information requirements were also highlighted by industry as barriers to the development of a pan-European market".³⁷ The feedback to this question, in particular, proved to be extremely useful for this study, as it helped to understand how stakeholders perceived the functioning of the pensions market and what they expected from the European Commission in the area of personal pensions. In relation to the use of an optional legal EU regime (28th regime) for savings and/or third pillar pension products, industry respondents were mostly in favor, while user groups and member states were against. Overall, the responses showed that more understanding on the use of a 28th regime in this area would be needed.³⁸

In July 2010, the European Commission launched a Green paper "Towards adequate, sustainable and safe European pension systems".³⁹ The aim of the European Commission was to "initiate a European debate on the key challenges concerning pensions, and how the EU can best support the efforts of Member States to ensure adequate, sustainable and safe pensions for their citizens"⁴⁰. 1,674 responses were collected among diversified categories of stakeholders. Most respondents highlighted

³⁷ "Summary of the written contributions received on the Green Paper on retail financial services" (page 13). Document can be found here: http://ec.europa.eu/internal_market/finservices-retail/policy/index_en.htm (last accessed on 9 August 2014).

³⁸ Following the results from this green paper, the European Commission published a report on the "Initiatives in the area of Retail Financial Services". The use of a 28th regime for financial services, in particular, was referred to as needing further assessment "to see whether this approach could be successfully applied in some specific areas of retail financial services".

³⁹ Document available here: http://ec.europa.eu/internal_market/pensions/consultations/index_en.htm (last accessed on 9 August 2014).

⁴⁰ "Summary of consultation responses to the Green Paper Towards adequate, sustainable and safe European pension systems" (page 2). Available at <http://ec.europa.eu/social/BlobServlet?docId=6624&langId=en> (last accessed on 9 August 2014).

that pensions should be dealt with at national level, given the specific arrangements of each member state. Coordination at EU level was nevertheless welcome and could be built through the OMC.

A White Paper on “An Agenda for Adequate, Safe and Sustainable Pensions”⁴¹ followed in February 2012, where the European Commission outlined 20 initiatives⁴² that it intended to implement. Given the enhanced role that occupational and personal savings are expected to play in future pension provision in the EU, the European Commission affirmed the need to revise the IORP directive with the view to facilitate their cross-border activity and modernize their supervision as well as the need to improve the quality of third pillar pension products. The European Commission also intended to initiate discussions with Member States on possible solutions to reduce the risk that cross-border pensions are subject to double taxation (or no taxation). Contract law-related barriers that may hinder cross border provision of insurance-based personal pension products would also be further explored.

These actions were soon materialized. In April 2013 the European Commission released a public consultation on “Consumer protection in third-pillar retirement products”.⁴³ The consultation received 10 responses from civil society, 21 from industry representatives and eight from national authorities. Overall, respondents favored EU intervention in personal pensions. In the consultation, the European Commission asked for stakeholders’ views on the use of a self-regulatory code and/or an EU certification scheme to improve consumer protection in third pillar pensions. Most respondents were generally against self-regulatory code because its non-binding nature would not give proper incentives to the industry and because the difficulty to compare different third pillar products within the same country or between member states would remain or become even more difficult. Industry representatives were the

⁴¹ COM(2012) 55 final: “An Agenda for Adequate, Safe and Sustainable Pensions”. Document available here: <http://ec.europa.eu/social/BlobServlet?docId=7341&langId=en> (last accessed 9 August 2014).

⁴² The status (as of 20/03/2014) of the implementation of the initiatives can be found here: <http://ec.europa.eu/social/BlobServlet?docId=11067&langId=en> (last accessed on 9 August 2014).

⁴³ Commission Staff Working Document “Consumer protection in third-pillar retirement products” Consultative document. Available at http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_third_pillar_pensions_en.pdf (last accessed on 9 August 2014).

most supportive group of an EU certification scheme as EU standards would help to reach more consumers and to improve comparability among cross border products. Binding legislation was the main concern of those who stood against this option.⁴⁴

In order to examine contract law-related barriers to cross-border provision of insurance products, an expert group was set up by the European Commission. The final report was published in February 2014 and concluded that i) “insurance companies have to adapt their contracts to the national rules where the policyholder is based”, ii) “contract law differences impede the supply of insurance products across borders” and iii) “contract law obstacles are found primarily in the sector of life insurance”.⁴⁵

Finally, the long-awaited proposal for a revision of the IORP directive was published by the European Commission in March 2014 with the aim to improve the cross border activity of occupational pensions as well as their governance and transparency. Meerter and Starink (2010; 2011) had been quite critical of the IORP directive. They argued that a number of barriers stood in the way of the internal market for occupational pensions: the lack of clarity in the definition of ‘cross border’ in the directive, the fact that host member states could impose stricter rules to foreign pension funds, the differences in supervision between member states and lastly, tax impediments that inhibit the consolidation of pension assets (usually referred to as asset pooling). Referring to an initiative put forward by the EFR⁴⁶, Meerter and Starink (2010: 9) referred to “a basic pension scheme that could qualify for tax relief in every member state” using a 28th regime as a possible solution applicable to both occupational and personal pension markets. Another option mentioned would be to

⁴⁴ “Summary of responses to the public consultation on third-pillar retirement products”. Available at http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/swd_consumer_protection_thirds_pillar_pensions_summary_replies_en.pdf

⁴⁵ Taken from the European Commission Press Release “Insurance Contract Law: Expert report pinpoints obstacles to cross-border trade”. Available here: http://europa.eu/rapid/press-release_IP-14-194_en.htm (last accessed on 9 August 2014).

⁴⁶ “The European Financial Services Round Table (EFR) is bringing together Chairmen and Chief Executives of leading European banks and insurance companies”. For more information, see <http://www.efr.be/about.aspx> (last accessed on 5 August 2014).

design a pension product that could meet the domestic tax laws of a number of member states in order to be acceptable there.

The EFR proposal Meerter and Starink were referring to was launched in 2005 and called for the creation of a European Pension Plan (EPP). EFR considered its proposal as a first step to achieve a single market for personal pensions, albeit respecting the existing solutions provided in domestic markets. Recognising that a step had already been taken by the European Commission in the direction of an integrated market for occupational pensions with the launch of the IORP directive, EFR called for an initiative that could help increase retirement savings. According to EFR, the EPP would provide consumers with more choice, portability and increased competition.⁴⁷ In 2013, the European Fund and Asset Management Association (EFAMA) also launched a proposal for a so-called “Officially Certified European Retirement Plan” (OCERP).⁴⁸ This proposal called for a European personal pension product that would have a number of standards related to investment options, communication, governance, administration and distribution. If a product would comply with those standards it could be certified in one member state as an OCERP and sold across the EU, competing with national pension products. The goal of the OCERP proposal is to contribute to the future adequacy of pension provision in the EU and the channelling of retirement savings to long-term investments in the EU economy.

Rinaldi (2014) also makes the case for the development of a highly standardised EU personal pension plan, arguing that the current EU legislation in place has not been able to favour the development of a single market. For this purpose, Rinaldi believes that the use of a second regime would answer the need for low costs and economies of scale.

⁴⁷ EFR Report (December 2005); “Pan-European Pension Plans - Deepening the concept”. Available here:

<http://www.efr.be/publicationdocument.aspx?pvs=72or6bZzkcHyRZzuYy3efDWCcqzPhv8bFQIP%2b1WHQQSG4t77EJZav%2bdPUrHYeKxR> (last accessed on 5 August 2014).

⁴⁸ EFAMA Report (September 2013): “The OCERP: a proposal for a European personal pension product”. Report available here: http://www.efama.org/Publications/Public/EFAMA_OCERP_Report_September_2013_Print_Final.pdf (last accessed on 6 August 2014).

Holzzman (2004) goes a step further and calls for a coordinated pension system in Europe, on the basis of common challenges brought about by the single currency. In this scenario, budgetary constraints call for a flexible labour market, which is currently hindered by the lack of portability of pension rights. Holzzman argues that for a pan-European pension scheme to work, occupational and personal pension should benefit from a coordinated approach at EU level in regards to regulation, supervision and taxation.

Borsjé and Meerten (2014: 21) refer to an “European Pensions Union” achievable through a revision of the IORP directive and a second regime for a new European personal pension product. According to them, the common strains faced by member states in the sustainability of their pensions systems and state budgets call for an EU approach.

So far, the only pension market segment where the EU has not yet taken a legislative initiative is the personal pensions market although, as evidenced above, a number of solutions have been put forward, calling for EU action in this market.

In July 2012, the European Commission sent a letter to EIOPA asking for advice on the creation of a single market for personal pensions, through the analysis of at least two approaches: i) common rules to regulate personal pension providers at EU level (similar to the IORP directive), and ii) a 28th regime for an EU personal pension product, along the lines of the certification scheme explored in the previous consultation on "Consumer protection in third-pillar retirement products". Following this request, EIOPA launched a consultation document on the merits and content of the two approaches.⁴⁹ 29 responses were received (2 finance ministries, 26 European trade federations and one European representative of retail investors). Seven respondents were generally in favor of an EU framework for an internal market in personal pensions, particularly emphasizing their support for an EU personal pension

⁴⁹ The consultation document and the responses collected are available here: <https://eiopa.europa.eu/consultations/consultation-papers/2013-closed-consultations/may-2013/discussion-paper-on-a-possible-eu-single-market-for-personal-pension-products/index.html> (last accessed on 09 August 2014).

product although not necessarily under a second regime. Nine respondents showed their skepticism on the intentions and motivations behind this initiative. In general, these respondents argued that before looking at different approaches to develop a single market for personal pensions, assessments should be carried out to understand whether there are any issues in the internal market for personal pensions, what the problems are and how and by whom they could be addressed. Some respondents referred to the need to understand first whether there is evidence of consumer demand for such a product, and that a mapping of the common features of personal pension products should be made if a policy framework is to be considered at EU level. Twelve respondents were generally against this initiative either arguing that member states should be fully in charge for the design and structure of their pension systems or by defending that EIOPA should rather focus on strengthening occupational pensions as the solution to increase pension provision in the EU.

After this consultation process, EIOPA released a preliminary report to the European Commission in February 2014, where it identified two approaches for creating a single market for personal pensions: i) a directive to harmonize consumer protection rules for all personal pension products and ii) a 28th regime to create a highly standardized EU personal pension product.⁵⁰ A formal call for advice sent by the European Commission to EIOPA in July 2014, set out specific instructions for EIOPA's advice which should be based on the two legislative approaches identified in EIOPA's preliminary report. In this document, the European Commission justifies its initiative particularly on the basis of the outcome of the consultation on "Consumer protection in third-pillar retirement products" and the EIOPA database on EEA pension products and plans. After EIOPA's final advice, the European Commission mentions that it "will

⁵⁰ EIOPA (19/02/2014): "Towards an EU-single market for personal pensions". Available here: https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/EIOPA-BoS-14-029_Towards_an_EU_single_market_for_Personal_Pensions-_An_EIOPA_Preliminary_Report_to_COM.pdf (page 44) (last accessed 9 August 2014).

examine whether a legislative initiative (...) is necessary and if so, which measures should be proposed”.⁵¹

2.3. Conclusion

This section described how EU intervention in the pension field evolved over time and the legislative initiatives adopted, sometimes after difficult and lengthy negotiations, in defense of citizens’ mobility and the internal market. A number of consultations have been launched in the recent past related to pensions.

The European Commission has recently engaged in a new initiative aiming at creating an EU-wide framework for personal pensions. The results of the EIOPA consultation show that many respondents argued that empirical evidence was needed on the barriers providers face selling their personal pensions in other member states and possible action that could be taken to address those barriers. These respondents believe that only after this assessment is done, could EIOPA consider engaging in a consultation on the merits of different legislative approaches.

The feedback from the EIOPA consultation, taken together with the EIOPA database and the responses to the European Commission’s consultations outlined in this section form the basis of the empirical analysis that is undertaken in the next section.

⁵¹ “Call for advice from the European Insurance and Occupational Pensions Authority (EIOPA) on the development of an EU single market for personal pension products”, 23 July 2014. Available here: https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/otherdocuments/Personal_pension_EIOPA_Anexx_-_CfA_EIOPA.pdf (last accessed 9 August 2014).

3. Empirical Assessment of the EU Personal Pensions Landscape

3.1. Introduction

Academia and industry's proposals and stakeholders' responses to public consultations seem to confirm that the internal market for (occupational and) personal pensions is yet to be achieved. In light of this evidence, the empirical exercise that is proposed in this section departed from the assumption that the market for personal pensions is fragmented.

This exercise was done by means of an on-line survey. The goal is to answer the three research questions proposed at the beginning of this study: i) the major barriers for the cross border activity of personal pension providers, ii) the consequences of such barriers for their business and iii) EU action that providers would support for the creation of an internal market for personal pensions.

The first part of this section describes the methodology used to collect data, choose the questions and the sample.

The second part of this section presents the findings of the survey using charts to illustrate the results obtained.

The section concludes with an overall assessment of how these findings answer the research questions initially proposed in this study and whether they are consistent with the analysis of policy action and academics' views outlined in Section 2.

3.2. Description of the goals and methodology of the survey

The methodology chosen to carry out this empirical exercise was an on-line survey.⁵² The survey link was circulated by e-mail and responses were collected between 4th June and 30th July 2014.

⁵² The survey has been included in Annex I. The software used to build up the survey and collect responses automatically was Vanguard Vista (<http://www.vista-survey.com>). It is important to be

The sampling criterion was to target different types of personal pension providers that could then be also aggregated per size and number of markets, in which they operated. The benefit of aggregating the responses from pension providers by type, size and number of operating markets is to understand the possible differences in the opinions of each group in terms of barriers to cross border activity, their consequences and the best solutions perceived at EU level.

The types of personal pension providers targeted were asset managers, pension funds and insurance companies that operate in one or several EU member states selling their personal pensions. For the purposes of this study, banks have been considered either as independent or tied agents. The reason being that they usually act either as independent distributors, selling personal pensions produced by insurers, asset managers and pension funds or as “linked” or “tied” agents⁵³, selling the personal pension products produced by their own pension fund / asset manager / insurance arm. The EIOPA Database supports this classification, since it evidences that Germany is the only EEA country where one of the possible personal pension products is a bank savings plan/contract (“Riester Rente Banksparplan” or “Riester-Rente Bausparvertrag mit lebenslanger Leistung”). The database shows that in most other EEA countries personal pension products are built either as insurance policies or investment funds. The goal of a segmentation between different types of personal pension providers is to understand how diverse the responses might be between them.

The survey was designed in a way that respondents could also be grouped by size, dividing them into “small companies”, “medium companies” and “large companies”. The intervals for segmentation have been made taking into account the information on assets under management (AuM) provided in other surveys that, despite having a

mentioned that in the e-mail that was circulated to the companies, a request was made for the survey link to be forwarded to an expert dealing with personal pensions.

⁵³ A tied agent can be defined as “a company sales person (or direct sales person) who promotes the products of his employer only, the company he or she is 'tied' to. They cannot search the whole market for the best product as an Independent Adviser can”. Definition from Encyclo.co.uk (English encyclopedia), available here: <http://www.encyclo.co.uk/define/Tied%20agent> (last accessed on 29 July 2014).

different scope, were using the same type of respondents. A survey conducted by Investment & Pensions Europe in 2011 collected responses from 148 investors consisting of asset managers, pension funds and insurance companies.⁵⁴ The average AuM of the respondents ranged between EUR 0.97 billion and EUR 46 billion. A survey conducted by the Organisation for Economic Co-operation and Development (OECD) in 2013 of 69 pension funds (sovereign and corporate pension funds) revealed that their AuM can be quite disparate.⁵⁵ It could be observed that in the EU there were 8 pension funds with AuM above USD 50 billion, 4 between USD 10 and 50 billion and 13 below USD 10 billion. Also, data published by A.M. Best Co. research⁵⁶ referring to non-banking assets of insurance companies as of end 2010 reveals that the top 20 European insurers had non-banking assets between EUR 10 billion and EUR 694 billion. From this analysis, it was believed that companies would be considered large if their AuM were above EUR 50 billion, they would fit into the medium sized company category if their AuM were between EUR 10 billion and EUR 50 billion, and they would be classified as small companies if their AuM were below EUR 10 billion. The goal of this segmentation is to capture whether the financial capacity of the companies has an influence in their answers.

A last form of aggregation used in the survey was based on the number of markets in which the provider sells its personal pensions: one member state, two member states, three or more member states.⁵⁷ This segmentation helps to understand whether the most relevant barriers and consequences of cross border activity would either be i) inhibiting providers' willingness to go cross border (to those operating in one

⁵⁴Investment & Pensions Europe (2011): "IPE European Institutional Asset Management Survey 2011". Available at

http://asia.ipe.com/resources/view.php?data=Q2F0ZWdvcnkMjAwMTQmY2F0ZWdvcmlcyZmaWxlJklwZVZpc2l0b3ImUmVzb3VyY2U=&name=eiams-2011-22_6_11.pdf. (last accessed on 31 July 2014)

⁵⁵ Organisation for Economic Co-operation and Development (2013): "Annual survey of Large Pension Funds and Public Pension Reserve Funds".

⁵⁶ Data taken from The Free Library referring to 2012 A.M. Best Company, Inc. publication *The Leaders Issue* (Jul 1, 2012). Publication: Best's Review. ISSN: 1527-5914. Data available here: <http://www.thefreelibrary.com/Top+global+insurers%3A+by+non-banking+assets+and+by+net+premiums...-a0296044939> (last accessed on 31 July 2014).

⁵⁷ Since only one respondent was operating in two member states, it was decided, when analyzing the results, to aggregate the categories of those companies operating in two member states with those operating in three or more member states, into one category denominated "two or more member states".

member state only) or ii) hindering their efficiencies in their cross border activity (to those operating in two or more member states). Once again, the goal is to understand whether the responses would vary between the group of companies that only operate in one member state and those who operate cross border in the EU.

The survey was also designed to allow an understanding of how relevant personal pensions are in the overall business model of the companies surveyed. A simple segmentation was made on the basis of the relative weight that the personal pensions business had in the total AuM of the company. The buckets chosen were [0-5]%, [5-10]%, [10-15]%, [15-20]% and more than 20%.

The three forms of grouping mentioned above (type, size and number of markets covered), together with the weighting of personal pensions business in the overall AuM of the company, formed the first part of the survey.

The second part of the survey was dedicated to the ranking of the barriers, their consequences and the solutions related to the cross border activity of personal pension providers. The survey was designed in a way that respondents could simply rank the answers ranging from 1 to 5, from the least relevant to the most relevant answer.

The EIOPA preliminary report to the European Commission released in February 2014 served as the basis to formulate the survey. Since the choice of solutions being explored by EIOPA have been made on the basis of the approaches indicated in the European Commission's letter to EIOPA⁵⁸, it was believed that a prior understanding of market players' perception of the relevant barriers they face in their cross border activity and their priority solutions for an integrated market for personal pensions would be useful. Also, a number of academic papers were valuable to understand different opinions in relation to the limitations to the cross border activity of personal pension providers and the need for a pan-European market for personal pensions (Castries, 2008); the differences in pensions taxation, which are "standing firmly in

⁵⁸ European Commission (18/07/2012): "Technical advice to develop an EU Single Market for personal pension schemes".

the way of allowing pension pooling” (Meerten & Starink, 2011: 35); the need for a “European approach in pension matters” to promote “greater efficiency and economies of scale” in the “provision of pension services” (Borsjé & Meerten, 2014: 15, 16). Commenting on the results of the EIOPA database, Rinaldi (2014: 23) mentions that although there is evidence that some countries are already using EU legislation to regulate their personal pensions, “the EU legislation in place has not been able to favor the development of an ample single market, economies of scale, critical mass and competition”.

In relation to the barriers chosen, EIOPA’s database of pension plans and products in the EEA proved to be very helpful in understanding that within the EEA, each country has different pension products with different design features (for instance those related to investment options, embedded guarantees, and the type of benefits paid at/during retirement).

Rinaldi (2014) also mentions that it can be observed in the EIOPA database that each country chooses to regulate its personal pension providers and products either using national or European legislation⁵⁹. From the European legislation chosen it is visible from the database that some countries do not open their personal pension market to all types of providers.

In particular, the EIOPA database indicates that 21 Member States still apply their own national legislation to their pension products. In practice, this means that if a German personal pension provider wants to sell personal pension solutions in Belgium it would need to adapt its offer to the pension products that are permitted and regulated by Belgian law. Also, the EIOPA Database show that insurance

⁵⁹ In its database, EIOPA mentions that EEA countries either apply national legislation to their personal person provider and/or they use EU legislation such as the Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP Directive), which applies to occupational pension schemes, Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II Directive), Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, which applies to investment funds and Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions, which applies to banks.

regulation is applied to pension products in 22 Member States, whereas asset management regulation is applied to pension products in 4 Member States and banking regulation applies to pension products in one Member State.

These observations led to the formulation of the possible consequences of the barriers: lack of competition between different types of providers given the possible lack of market access; lack of economies of scale given the different rules for product design; the consequent high costs dealing with the different requirements from member states; possible lack of financial innovation given that the personal pension products offered can only be those defined domestically.

Taxation, in particular, has been a source of concern to the European Commission, which recognizes that “double taxation⁶⁰ in a cross-border context as a result of inconsistent interaction of different domestic tax systems, is a major impediment and a real challenge for the internal market”⁶¹. Uncoordinated tax policies between EU member states has led the European Commission to engage in a number of actions to eliminate tax obstacles in the EU, namely those referring to different pension taxation regimes⁶². Borsjé & Meerten (2014: 19) mention that:

⁶⁰ The European Commission defines double taxation “as the imposition of comparable taxes by two (or more) tax jurisdictions in respect of the same taxable income or capital” (European Commission (COM 2011: 4), page 3. Available here: [http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/com\(2011\)712_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/com(2011)712_en.pdf)). Referring to occupational pensions, Borsjé & Meerten (2014: 19) are particularly keen describing the effect of double taxation: “the operation of various tax regimes of various Member States can, for example, result in double taxation because both the country where the member of the pension scheme (formerly) worked and the country where that recipient of retirement benefits (currently) lives, taxes the income (as the pension is accrued in a different Member State from the one in which (following emigration) retirement benefits are received”.

⁶¹ European Commission (COM 2011), page 3. Available here: [http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/com\(2011\)712_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/com(2011)712_en.pdf)

⁶² European Commission Communication (2010): “Removing cross-border tax obstacles for EU citizens”, available here: [http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/tax_policy/com\(2010\)769_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/tax_policy/com(2010)769_en.pdf)

European Commission Press Release (2014) “Free movement of people: Commission to tackle tax discrimination against mobile EU citizens”, available here: http://europa.eu/rapid/press-release_IP-14-31_en.htm (last accessed on 2 August 2014).

“(…) the different tax treatment of pension schemes in the Member States (…) is also seen as a considerable obstacle to establishing a common pension market in the EU. In practice it can, for example, be difficult for a pension scheme, designed according to the law of one Member State, to comply with the requirements for applying a tax facility in another Member State. (…)In practice, double taxation in such cases can only be prevented (or mitigated) if the Member States in question have concluded a treaty to prevent double taxation”.

The solutions for actions to be taken at EU level have been chosen taking into account the EIOPA’s February 2014 report to the European Commission on the introduction of common consumer protection rules (covering transparency and information disclosure, distribution practices, professional requirements) and on the introduction of a newly high standardized personal pension product.⁶³ Since the findings of EIOPA’s analysis have alerted towards the existence of tax barriers and contract law differences between member states, it was decided to include taxation agreements and harmonisation of contract law⁶⁴ in the area of personal pensions in the section of potential solutions to understand their degree of relevance to market players.

3.3. Analysis of responses to the survey

The survey reached a sample size of 29 respondents of which 23 were asset managers, five were insurance companies and one was a pension fund. Of the respondents, four were small companies (below EUR 10 billion AuM), four were medium companies (between EUR 10 and 50 billion AuM) and 21 were large companies (above EUR 50 billion AuM). The sample is roughly divided by half, between those providers which operate in one member state only (14) and those which operate cross border (15). In terms of the weight personal pensions business represent in their overall activity, 12

⁶³ More information on EIOPA’s proposals can be found in its report “Towards an EU Single Market for personal pensions – an EIOPA Preliminary report to COM” (page 44 in relation to the content of a directive of common consumer protection rules and page 57 concerning the elements of a second regime for a new EU personal pension product).

⁶⁴ The decision to include the harmonization of contract law in the survey was also based on the results from the final report of the expert group on Insurance Contract Law mentioned in Section 2.

companies had [0-5]% personal pension business as a share of their total AuM, 3 companies had a personal pensions business of [5-10]%, 7 companies had [10-15]% personal pensions business and other 7 companies had more than 20% of AuM in the personal pensions business. The charts below illustrate these results in percentages.

Chart 2: Type of provider

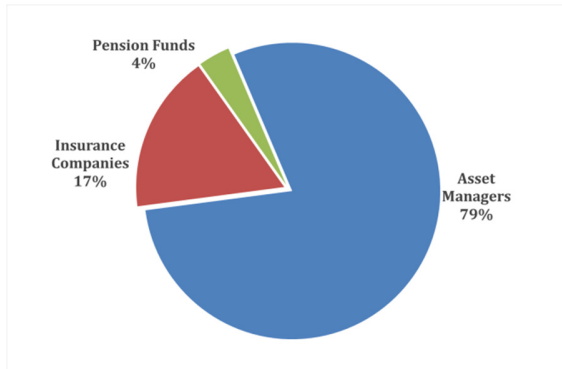


Chart 3: Size of provider

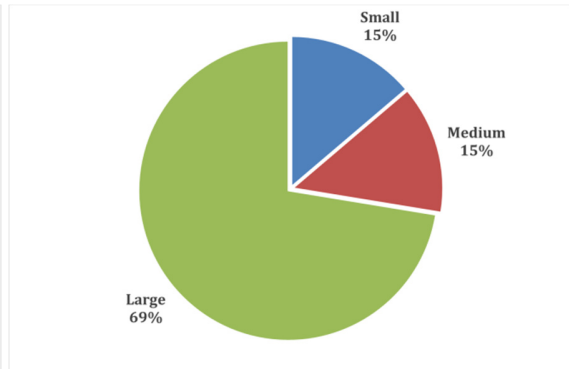


Chart 4: Number of markets covered

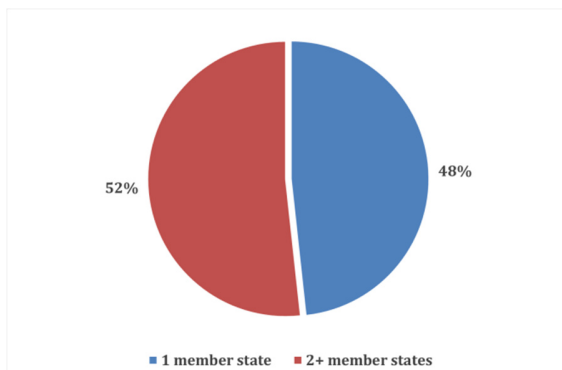


Chart 5: Personal pensions business

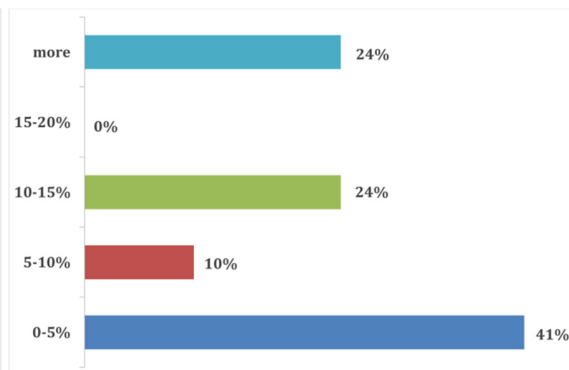


Chart 6 suggests that the dimension of the company is closely related to its capacity to engage in cross border business. The results show that small companies only operate in one member state, medium companies mostly operate in one member state (one medium company operates in more than three member states) and one third of the large companies operate in only one member state while the other two thirds is selling personal pensions in two or more member states. Given the high percentage of asset managers that responded to the survey, charts 7, 8 and 9 are naturally biased by the weight of this group in the sample. From chart 7, it can be observed that most

large and medium companies are asset managers, whilst insurers are mostly small and medium companies. Chart 8 indicates that asset managers represent 96% of those companies operating cross border and 64% of those operating in one member state. Insurers are mostly operating in one member state. Chart 9 shows that the weight of pension business in asset managers' overall activity is quite diversified across the percentage range of personal pension business activity defined in the survey. Insurers also have a quite diversified representation of personal pension business in their overall activity. Finally, it should be mentioned that the pension fund that responded to the survey is a small company, operating in one member state, with a personal pension business of 5-10% of its AuM.

Chart 6: Respondents per size and markets Chart 7: Respondents per size and type

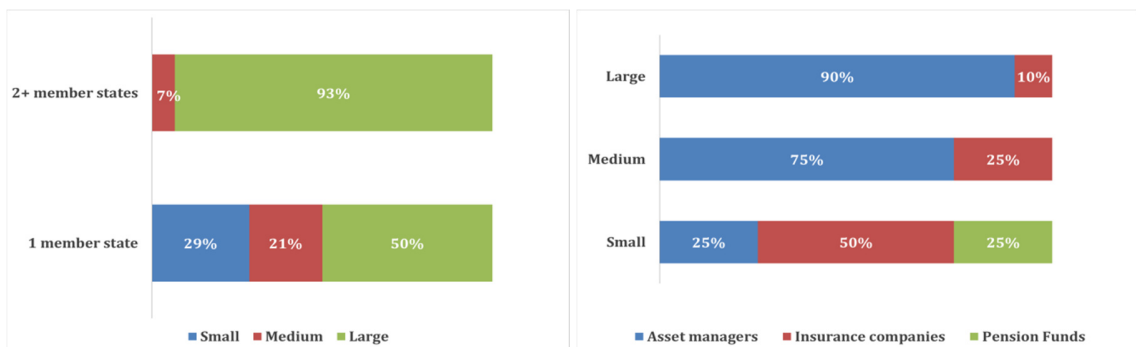


Chart 8: Respondents per market and type Chart 9: Respondents per business and type

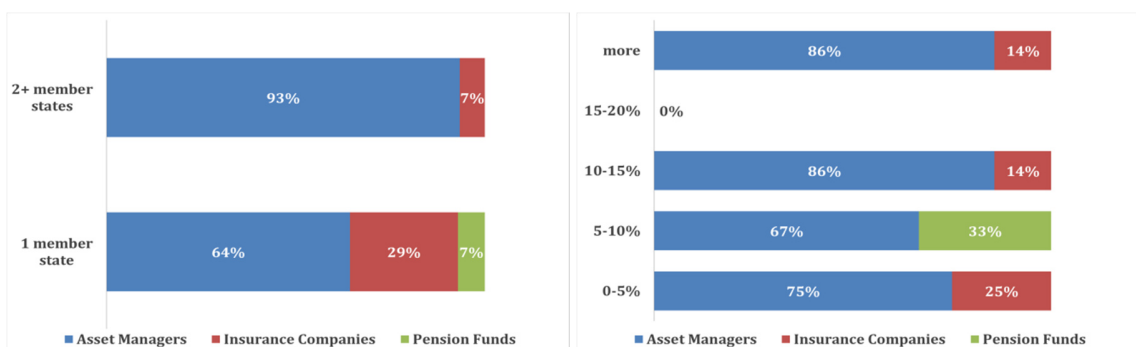
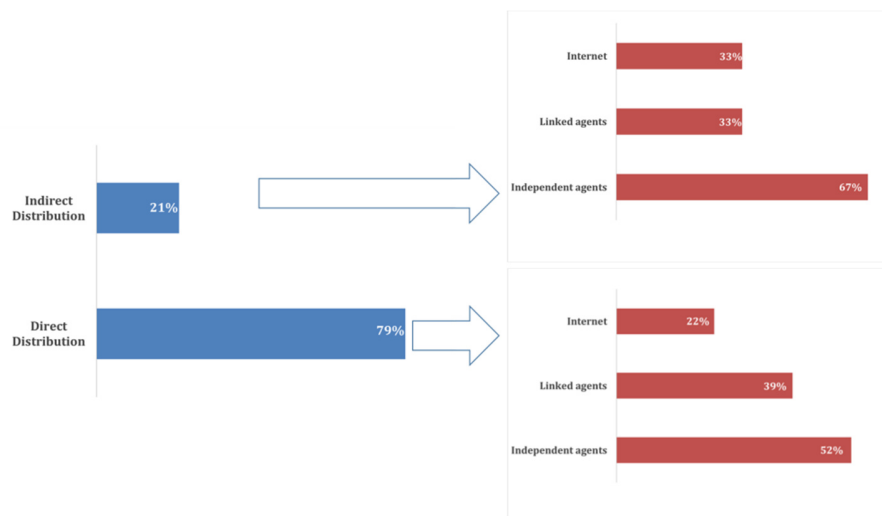


Chart 10 shows the distribution channels used by the companies to sell their personal pensions. 79% of respondents use direct distribution channels to sell their personal pensions, by establishing themselves locally in those countries. Although locally

established, these providers also use (one or several) indirect distribution channels: 52% use independent agents to distribute their personal pensions, 39% use linked agents and 22% use internet. 21% of respondents are not locally established and use mostly independent agents to distribute their personal pensions (67%) but also linked agents and the internet.

Chart 10: Distribution channels



A parallel exercise that was made was to analyze the results taking into account the distribution channels used according to the number of countries in which the companies are operating. Roughly half of the sample is compiled of companies which operate cross border (15) of which five only use direct distribution channels, nine use indirect distribution channels and one uses indirect distribution channels. It is interesting to note that, from the six companies exclusively using indirect channels, all but one are providing personal pensions in one member state only, using independent agents (5), linked agents (1) and internet (1) to distribute their personal pensions. The only provider that operates cross border without being locally established is a large insurance company that uses independent agents, linked agents and the internet to sell its personal pensions in two or more member states.

Turning to the analysis of the results of the second part of the survey, the barriers to cross border activity will be examined first, then their consequences and lastly, the

solutions that could be taken at EU level to facilitate cross border provision of personal pension products. The analysis of the results obtained for each of these three questions will be made taking into account the type of providers, their size and the number of countries in which they operate. For the purpose of this analysis the figures in the charts have been computed as weighted averages given the number of respondents for each answer and the ranking they attributed to each answer.

Chart 11 shows that the majority of the respondents believe that different taxation regimes for personal pension products between member states is the main barrier to the cross border provision of personal pension products in the EU. The second most ranked barrier was the different product design rules for personal pension products between member states. The third highest rated barrier was the different notification and approval procedures required by each local supervisor to authorize the selling of a personal pension product in its domestic market.

Chart 11: Ranking of barriers (all respondents)

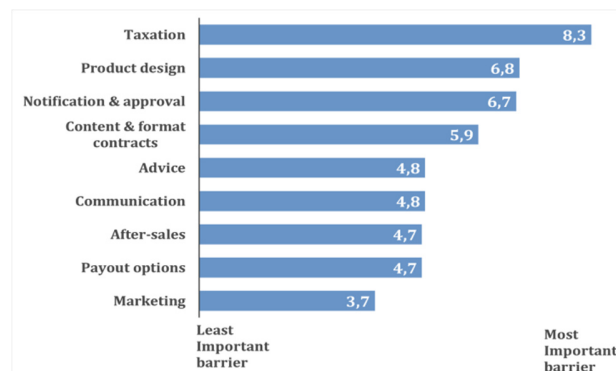
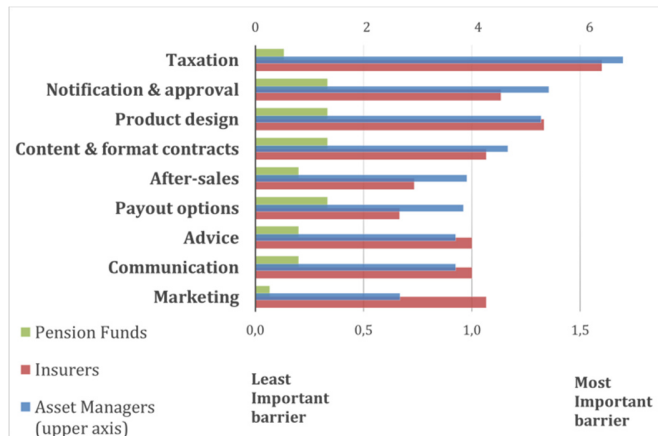


Chart 12 filters the answers per type of provider and shows that asset managers ranked national differences in taxation, notification and approval procedures and product design rules as their top three barriers for the cross border activity of their personal pensions business. Insurance companies selected the same three answers as the most relevant barriers but in a different order: taxation first, product design second and notification and approval procedures third. The pension fund rated four answers equally as the most relevant barriers that hinder its cross border activity. These were the differences in notification and approval procedures, the different

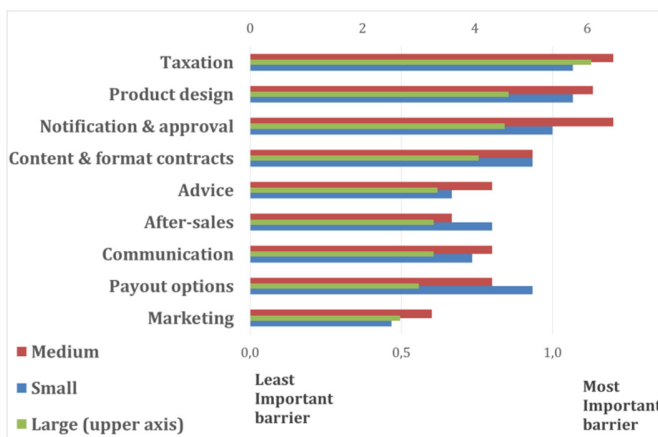
product design rules, the differences applied to the content and format of contracts and the different rules for payout options in each member state.

Chart 12: Ranking of barriers (per type of provider)



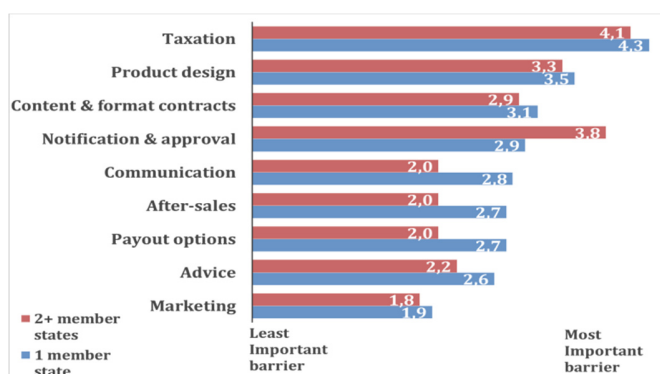
For small companies, the top two barriers for cross border activity are ranked equally and correspond to the differences in taxation and product design rules. The third most important barrier is the notification and approval procedures. Medium companies have also equally rated their top two concerns which are taxation and notification and approval procedures, placing product design rules as their third main hurdle to cross border activity. Large companies have chosen taxation, product design rules and notification and approval procedures as the main barriers to selling their personal pension products cross border in the EU. Chart 13 highlights these rankings.

Chart 13: Ranking of barriers (per size of provider)



The answers of personal pension providers per size are particularly interesting, especially given the well represented sample that is almost equally divided between those operating in one member state (14) or cross border (15). Providers that operate in one member state have answered quite differently from those which operate in two or more member states, namely in the way each group classifies their second and third most relevant barriers. Whilst companies operating in one member state rated notification and approval and product design as their second and third most important barriers, those companies operating cross border chose the inverse order for those two answers. Chart 14 highlights that companies operating in one member state have, in general, ranked all barriers higher than companies operating cross border. This may indicate that whilst companies operating cross border have already been forced to deal with those barriers and found their ways to overcome some of them (such as advertising and marketing requirements, given its low rating), companies operating in one member state still perceive all barriers as impediments to go cross border.

Chart 14: Ranking of barriers (per number of countries operated)

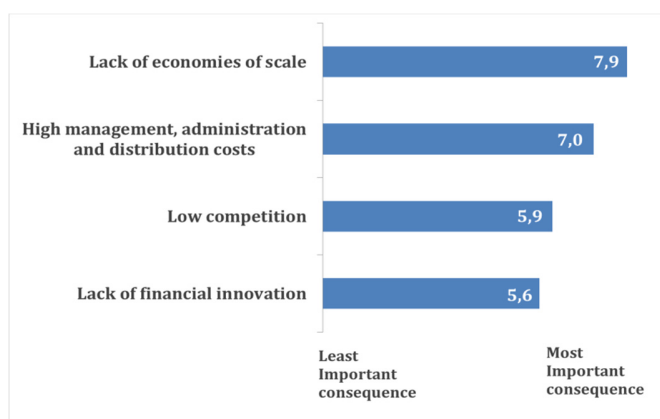


Moving on to the analysis of the consequences of these barriers for personal pension providers who wish to sell cross border in the EU, chart 15 shows that lack of economies of scale was ranked as the most important consequence, followed by high management, administration and distribution costs.

In relation to the lowest rated two consequences, an additional explanation should be given. During the period of collection of responses, a few telephone interviews were

made to some respondents, in order to understand better some rankings that were attributed. Some interesting clarifications were obtained, that also highlight the different interpretations that may be given to the questions in the survey, and thus warrants a cautious analysis of the results. In relation to the two lower rated consequences referring to low competition and lack of financial innovation, in particular, it is believed that respondents may have thought only of the reality of the market in which they are operating, whilst the goal of the question was “if you wish to sell your personal pension products in other EU countries, what would be the consequences of the barriers you would you face in those countries?”. From these telephone interviews it was understood that in the market where those providers were already operating, there was competition between providers and no major issues with financial innovation in the personal pension products being offered. Although the goal was to understand the difficulties perceived in other markets besides their own, the answers are also valid, since they show how providers perceive the functioning of the market where they are already operating.

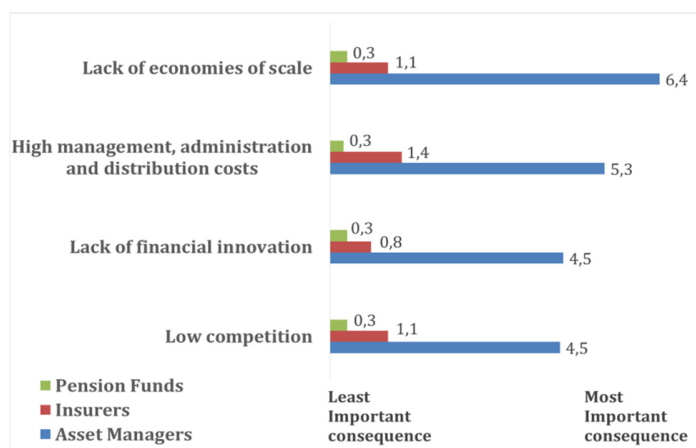
Chart 15: Ranking of consequences (all respondents)



The chart below presents the most important consequences of the barriers for cross border activity per type of provider. For asset managers, the lack of economies of scale is the most relevant consequence of the previous barriers identified as the most detrimental. This means that, since they need to deal with different taxation regimes and with different rules for product notification, design and contractual clauses, the

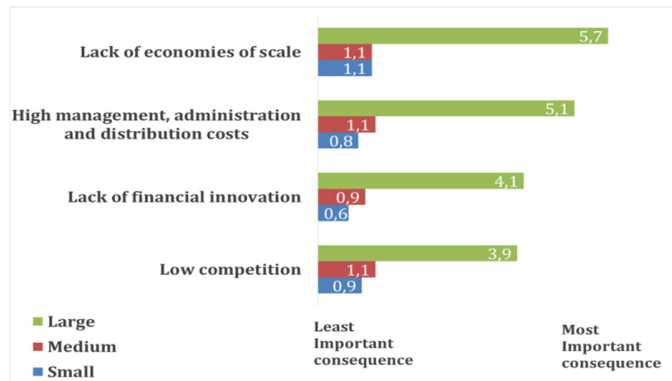
asset managers' sample believes that these barriers make it, to an important extent, difficult to reach scale in their personal pensions business. Insurance companies consider that high management, administration and distribution costs are a result, to a high extent, of differences in taxation regimes between member states and different national rules for product design. The pension fund has rated the four consequences equally high, albeit with a slight lower relevance attributed to the high costs.

Chart 16: Ranking of consequences (per type of provider)



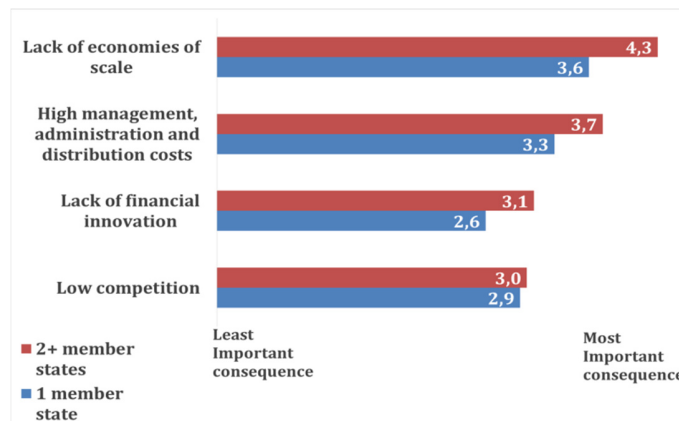
It is interesting to observe, in chart 17, that the most relevant consequence highlighted by small and large companies is the same: lack of economies of scale. This may give an indication that, independently of the financial strength of the company, the barriers to cross border activity impact both small and large companies' personal pension businesses. Medium-sized companies considered low competition and high management, administration and distribution costs as the two most relevant consequences deriving, to a large extent, from taxation regimes and notification and approval procedures applied differently in EU member states.

Chart 17: Ranking of consequences (per size of provider)



Similarly to the previous analysis per company size, chart 18 shows that there is little difference in responses when taking into account the number of markets in which personal pension providers are operating. The most relevant consequence, deriving mainly from different taxation regimes and notification and approval procedures applied in EU member states, is lack of economies of scale.

Chart 18: Ranking of consequences (per number of countries operated)



The last question of the survey asked respondents to rate the most relevant actions that could be taken by EU policymakers to facilitate cross border activity of personal pension providers in the EU. Respondents revealed a clear preference for the introduction of an EU personal pension product that could be authorized by the supervisory entity in one member state and then be sold across the EU, competing with local personal pension products.

One possible interpretation for the fact that respondents rated taxation agreements as their second preferred solution, despite considering it the main barrier to cross border activity, is the fact that it may be perceived as a solution that would be hard to reach by EU policy makers. Since taxation is a national prerogative⁶⁵ and pension products have a different taxation treatment per member state, taxation agreements to avoid double taxation naturally depend on member states' willingness to engage bilaterally in agreements between them. Having said this, although taxation agreements have been rated as a relevant solution by all respondents, it is believed that, per se, they would not help to solve the other highly rated barriers related to differences in product design and national notification and approval procedures. This may have justified the prime choice for the creation of an EU personal pension product as a solution that helps answer these obstacles.

Respondents have also shown some interest in common consumer protection rules and common contractual law for pension products. In both cases, it was considered to be useful to understand whether these are exclusive preferences or if there is a joint preference with the highest rated solution. For this purpose, a more detailed analysis was carried out focusing on: the number of respondents that have equally attributed a 5 ranking to i) common consumer protection rules and an EU personal pension product on the one hand, and to ii) common contract law and an EU personal pension product, on the other hand. The fact that 12 respondents attributed a 5-rank to both consumer protection and an EU personal pension product would suggest that there is a joint preference for both solutions in order to break down the barriers to cross border activity of these companies. The same conclusion is not as straightforward for common contract law and an EU personal pension product, as only 6 respondents attributed a 5-rank to both answers. Chart 19 summarizes the findings for the preferred action at EU level that could facilitate cross-border provision of personal pension products.

⁶⁵ See Article 114 (2) Treaty on the Functioning of the European Union (TFEU), where fiscal provisions are excluded from the ordinary legislative procedure and Article 115 where harmonizing measures would require unanimity at the Council.

Chart 19: Ranking of solutions (all respondents)

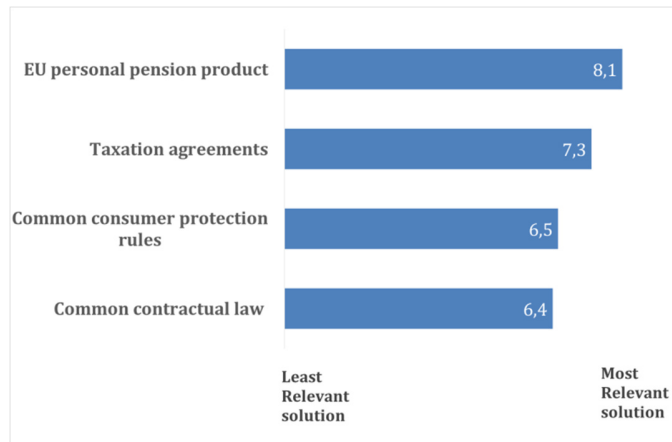
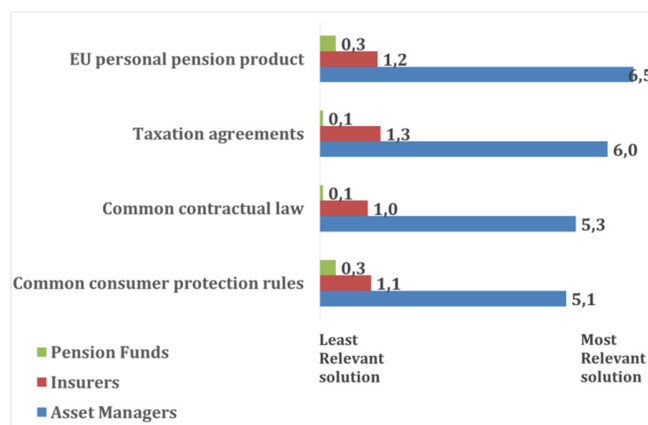


Chart 20 shows that asset managers indicated a clear preference for the creation of an EU personal pension product, and a secondary preference for taxation agreements. Insurance companies chose taxation agreements as their top solution, followed by the creation of an EU personal pension product. This is very much along the lines of the key barriers they had previously identified as the most relevant (differences in taxation first, and in product design, second). The pension fund rated the creation of an EU personal pension product as the most relevant solution, followed by the need for common consumer protection rules.

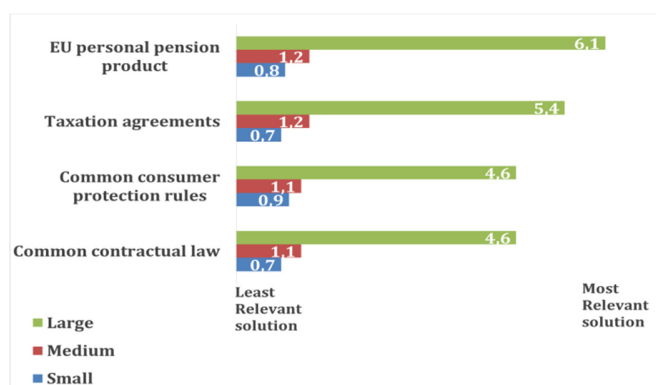
Chart 20: Ranking of solutions (per type of provider)



As can be seen in the chart below, small companies rated consumer protection rules as their preferred solution. This result was quite unexpected, since it is a solution that

does not seem to answer, per se, the previous relevant barriers chosen, namely, product design and notification procedures. When checking the relation between the ratings attributed to their first and second highest rated choices, it could be observed that, out of the four respondents, three rated them equally and one of them rated consumer protection higher. Only one of the small companies considered both as the most relevant solutions, whilst the other three attributed higher rankings to contractual harmonization (2) or tax agreements (1). Overall, small companies seem quite heterogeneous in their preferred solutions. Medium companies attributed the same relevance to the creation of an EU personal pension product and taxation agreements, which goes along the answers provided in relation to the most important barriers to their cross border activity. Large companies represent the largest portion of the sample (21) and gave a clear preference for the creation of an EU personal pension product that could most probably help them overcome the lack of economies of scale, which they reported as being the worst consequence of the different barriers they face within the EU.

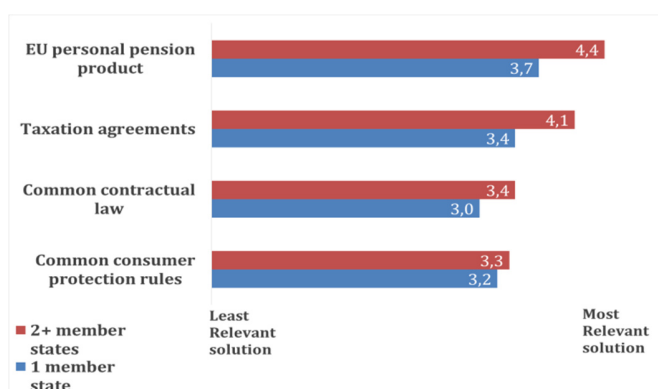
Chart 21: Ranking of solutions (per size of provider)



The analysis of the ranking of the solutions by companies which sell personal pensions in one member state and those which sell them cross border proves to be very interesting. Both groups ranked equally the creation of an EU personal pension product and taxation agreements as the most relevant solutions to be taken at EU level. Although the hierarchy of the barriers chosen was slightly different, the top two consequences chosen were the same: lack of economies of scale and high costs. This

may indicate that both groups tend to perceive that an EU product and taxation agreements could help create scale and decrease management, administration and distribution costs.

Chart 22: Ranking of solutions (per number of countries operated)



3.4. Conclusion

After describing the methodology used, the design of the survey and interpreting its main findings, it is important to finish this empirical exercise by assessing i) what these findings mean in the context of the initial research questions outlined in Section 1 and ii) whether they are consistent with the analysis outlined in Section 2, referring to stakeholders' feedback in several European Commission's public consultations, academics and industry's solutions proposed for an internal market for personal pensions and the European Commission's current initiative.

The findings of the survey answer the three questions on the barriers for cross border activity of personal pension providers, the consequences of these barriers to their businesses and the possible EU actions supported by providers to facilitate their cross border business. In general, providers feel that differences in taxation regimes, design features of personal pension products required and notification and approval procedures of personal pension products were the three main barriers to selling personal pension products cross border in the EU. These results are consistent with the responses to the 2007 Green Paper on Retail Financial Services in the Single

Market where references were made to the restriction to the range of products that can be provided in different member states. It also supports Meerter and Starink (2010, 2011) who mention that different tax regimes are a major barrier to the internal market in pensions impeding the creation of economies of scale.

Respondents' preference for the creation of an EU personal pension as the prime solution to facilitate their cross border activity strongly supports the academics and industry representatives' proposals and offers a general support to EIOPA's current work, which includes to explore the merits of the creation of an EU personal pension product. The choice for an EU personal pension product also support the responses from the financial industry to the European Commission consultation on Consumer protection in third-pillar retirement products which were generally in favor of the creation of an EU certification scheme for personal pension products.

However, it should be noted that it was not the purpose of the survey to explore the appropriate legislative framework to implement this EU personal pension product, and much discussion is expected at this level, since the results from public consultations show quite disparate positions on the use of a so-called 28th regime in this area.

Although contract law-related obstacles were rated as the fourth highest barrier by providers, they were the lowest rated option in EU action. One possible conclusion is that, although this finding supports the constraints evidenced in the final report of the expert group on insurance contract law, it is an obstacle that seems to be dealt with, which may justify that no action is needed at EU level.

Along with the creation of an EU personal pension product, common consumer protection rules are also being considered in the EIOPA's advice to the European Commission. The need to harmonize consumer protection rules was the third highest rated solution. The main obstacles identified by respondents in this area were related to differences in advice, communication and after sales procedures in member states. Although this supports the EIOPA's advice on the harmonization of consumer protection measures for all personal pension products in the EU it should be noted

that, according to the respondents who attributed a 5 rating to this option, harmonization of consumer protection rules is not a solution that will *per se* facilitate cross border activity of providers but should rather be perceived in liaison with the creation of an EU personal pension product.

4. Conclusion

4.1. Introduction

On the basis of a historical overview of EU intervention in the area of pensions, with all its challenges and accomplishments, this study focused on the most recent action from the European Commission in the area of personal pensions.

Why covering this topic? This study has intended to bring empirical evidence on why a single market for personal pensions does not yet exist and what could be the best actions taken at EU level that could promote a single market for personal pensions. The goal was to understand, from the perspective of the providers of personal pensions operating in the EU, the barriers they face to sell personal pension products across the EU, the consequences of those barriers for their businesses, and the possible measures that could be initiated by EU policy-makers to help create an internal market for personal pensions. It was believed that the answers to these three questions could help the European Commission and EIOPA's current work in this area.

What is the contribution of this study? The specific contribution of this study is the evidence collected by means of a survey, showing, from the perspective of market players, the relevant aspects of the fragmentation of the market for personal pensions in the EU, how this affects their business and how those barriers could be overcome. Respondents attributed particular relevance to the barriers referring to differences across member states in taxation regimes, product design rules and requirements in notification and approval procedures. Providers revealed that this fragmentation affects the efficiency of their business, especially by impeding the creation of economies of scale and increasing their management, administration and distribution costs. Finally, most respondents believe that the best solution that could be taken at EU level to promote the integration of the personal pensions market would be the creation of an EU personal pension product that, once approved in one member state, could be sold across the EU, competing with national personal pension products.

What are the implications of these findings? The findings of the survey generally support the relevance of the initiative taken by the European Commission in the creation of an internal market for personal pensions. In particular, the results show that the currently fragmented market in which personal pension providers are operating would benefit from future EU action that could facilitate their cross border activity in the EU. The findings of this empirical exercise could help the European Commission in its assessment of the most adequate measures to be considered in a future legislative initiative in this area. Nevertheless, it should be noted that all generic conclusions from the results of the survey should be taken as tentative, for the reasons referred to in the next sub-section. Also, further research is needed in order to reach the appropriate features of an EU personal pension product that could help overcome the current inefficiencies of a fragmented personal pension market. Finally, consumers should be given a say, expressing their concerns and desires on how an EU single market could serve them best.

4.2. Limitations of this study

The survey design. Although an extensive amount of literature was reviewed in order to understand the current state of the personal pensions market and the current developments in EU policy-making in this domain, there can be always the risk of not covering exactly the concerns and views of the respondents. For this reason, the first limitation of this study is the fact that respondents were given a number of pre-determined choices to choose from. The decision to build a survey using a 1-5 ranking of a number of pre-determined answers was to make it easier and faster for the respondents to participate in the survey. In order to overcome this limitation, a comment box was available next to each question in order to gather additional opinions from respondents who wished to provide more detail. Out of the 29 respondents, two respondents used this tool to justify their choices, which was quite useful in the analysis of the results.

Time. The second limitation of this study was time, with a twofold effect: i) limited time to collect responses and ii) limited time for follow-up emails and telephone calls.

The survey was circulated by e-mail to as many contacts as possible and responses were collected during two months. Were there less time constraints, more reminders could have been sent and an extended period to collect responses could have been useful to those who answered that they had entered into holiday period or those who mentioned they were unable to participate given their current work load. A few follow-up telephone interviews and exchange of emails were done in order to understand better the answers obtained. This proved to be very useful, as there were some particular interpretations of the questions that helped better understand the results obtained. However, if more time was available, more follow-up telephone calls could have been made, collecting additional insights from market players on how their business model is currently organized in relation to pensions which would have certainly enriched the analysis of the results.

Sample. Besides the lack of time to contact as many respondents as wished, it should be acknowledged that the sample of respondents is, per se, biased towards the asset management industry. This type of personal pension provider represents 79% of the sample, compared to insurance companies which represent 17% and pension funds representing only 4%. Consequently, the results obtained in the survey mostly represent the views of the asset management industry. As such, the extrapolation of the results as expressing the views of EU personal pensions' market players should be considered with caution.

4.3. Considerations for future research

As acknowledged in Section 1, the scope of this study was the perspective of personal pension providers operating in the EU, in relation to the barriers they perceive as being the most relevant for cross border activity, the consequences for their business and the most appropriate solutions that could be taken at EU level to foster an integrated personal pensions market. The results of the survey have shown that there is a general preference for the creation of an EU personal pension product. The following step would be to understand how to design it in a way that it actually helps circumvent the current inefficiencies experienced by personal pension providers in

their cross border business. Also, since consumers are the target market for such a product, their voice should be heard and their needs should be understood. These two ideas are developed in more detail below.

An EU personal pension product: effects on costs, competition and economies of scale. It would be valuable to investigate a step further the first most voted solution in the survey referring to the creation of an EU personal pension product. In particular, taking into account the evidence from EIOPA database, and the responses to the survey related to the inefficiencies generated by the barriers to operate cross border, it would be worthwhile to assess in which conditions the creation of an EU personal pension product could i) decrease management, administration and distribution costs, ii) improve competition among personal pension providers and iii) generate economies of scale.

The consumer perspective: the necessary features of an internal market on personal pensions. Besides having the perspective of personal pension providers on how this market should function, it would make sense to seek the views of the buy-side - EU consumers. It would be helpful to understand their opinion on the need for an integrated market: is the current domestic product offering appropriate in terms of investment options, costs and returns? Are double taxation and the lack of portability of pension entitlements issues? Would the existence of an EU personal pension product help to overcome these issues? Is there a preference in terms of legislative tool to implement such a product? Understanding consumers' sensitivity in relation to the barriers they face when buying personal pension products and their main concerns and preferences would help to better match the product offering to the consumer in the build-up of an integrated personal pensions market for the benefit of all stakeholders.

5. Policy Recommendations

5.1. Introduction

This final section puts forward three suggestions that would merit further attention and consideration from EU policy-makers, during the process of choosing the measures to build an EU-wide framework for the European personal pensions market.

It is believed that an early involvement of stakeholders and the use of appropriate channels to do so could help to avoid a similar situation to the ones that occurred in past EU interventions in pension policy. Haverland (2007) suggests that the tough and long negotiation process of the IORP Directive back in 2000 ended up in a directive with the lowest common denominator. The OSE report (2011) evidences how important the channels chosen by the European Commission to initiate a legislative proposal in pension policy are, referring specifically to the so-called Portability Directive, which took eight years to be finally approved. Considering these negotiation processes in EU pension policy, and keeping in mind the importance attributed to the subsidiarity principle in this area (which is thoroughly explored by Meerten *et al.*, 2011), these policy recommendations intend to contribute to the success of EU intervention needed for the development of a single market for personal pensions.

5.2. Recommendations

Recommendation 1: engaging stakeholders at an early stage of the decision-making process

In July 2012, the European Commission instructed EIOPA to deliver technical advice to develop an EU Single Market for personal pension schemes, by exploring two possible approaches, one to facilitate the cross border activity of providers and the other to create an alternative legislative framework for a personal pension product. The public consultation carried out by EIOPA to assess the merits of these two approaches showed that a considerable part of respondents were sceptical on the

background and motivations of this initiative, calling for empirical evidence on the barriers to cross border activity in the personal pensions market and action that could be envisaged at EU level.

Since this initiative relates to pension policy, the subsidiarity principle should be carefully considered during the process. There could be merits launching a public consultation by the European Commission. This would allow a wide range of participation of individuals, businesses, experts and governments to help the European Commission to assess at a preliminary stage i) what the existing problems are, and ii) which instruments could be used to address such problems.

In such a public consultation it would be important that the European Commission, asks participants to define the nature of the fragmentation of the personal pensions markets in the EU and to describe the sources of the issue, the magnitude of the problem (in terms of impact on EU providers, consumers, the economy, capital markets) and the possible tools respondents could choose to be used by EU policy makers on behalf of the internal market. Stakeholders could be also asked to assess the effects that these possible tools would have particularly on competition and consumer benefits, as well as any overlapping/undesired effects on member states' social policy.

The survey conducted in this study is a partial answer to this recommendation, by involving businesses, specifically, to identify the barriers to cross border activity, their impacts on their businesses and the EU actions that would be most suitable to overcome such barriers.

The conclusions from this empirical exercise, which collected responses from 29 businesses, show the need for action at EU level. This leads us to our second recommendation.

Recommendation 2: making the case for an EU personal pension product

The results from the survey indicate that personal pension providers have a clear preference for an EU personal pension product as a potential EU-wide solution to

overcome the most common barriers for cross border activity. In particular, an EU personal pension product would help solve the differences in product design and notification and approval procedures that are currently undermining the possibility of economies of scale and increasing management and distribution costs. Still, at least two questions remain open: i) how should an EU personal pension product be designed? ii) what is the most appropriate legislative tool to implement it?

In order to develop an appropriate design for an EU personal pension product and a viable legislative proposal, the European Commission could benefit from the interaction with academics, industry and consumer representatives, namely through the creation of expert groups.

With regard to the most appropriate legislative tool that could be used to implement such an EU product - a directive, a regulation or a regulation in the form of an optional regime (the so-called 28th regime) - each should be carefully considered taking into account its content, the barriers it would help overcome and, importantly, its support by stakeholders, particularly, member states. Since the second regime is the sole legislative option EIOPA is currently considering for the creation of a new EU personal pension product, it would be important to assess the merits of using such a legislative option. In particular, it would be useful to understand exactly what barriers a second regime would overcome, both from the perspective of the provider and the consumer and how it could capture the preference of both. As was explained in section 2, the second regime has not been able to gather so far support from consumer representatives or member states. So it would be important to clarify why a directive or a product regulation could not also be under EIOPA's scope of analysis as a possible legislative basis for an EU personal pension product.

Recommendation 3: leveraging the use of the OMC in the shape up of member states' views

Since any development in EU pension policy depends on the political willingness of member states to engage in any attempt to integrate, it is important to get their involvement and understanding of the need to act at EU level and of the potential

economic and societal benefits it could bring them. Pension policy-shaping in member states also needs to adapt to the changing socio-economic dynamics, namely in what concerns demographic change and the greater role played by complementary retirement savings securing pensions (European Commission, 2012).

The OMC could be used as a key channel for the European Commission to exercise influence on member states' perception on the potential common benefits of an internal personal pensions markets, by inviting academics and some member states which have already engaged in a more liberal approach to their personal pensions market to share the overall benefits transmitted to citizens, providers, capital markets and economic growth. This could help member states understand that an integrated market for personal pensions does not undermine (in fact, it supports the sustainability of) their redistributive welfare systems. The question to answer in this forum is "what is the overall benefit of an integrated personal pensions market to governments and society in general?"

5.3. Conclusion

After having identified the main views of personal pension providers in the construction of an EU single market for personal pensions, this last section tried to demonstrate how this feedback could be used to generate an adequate policy outcome. Overall, an early inclusion of stakeholders using the appropriate channels could contribute to the achievement of a policy outcome that delivers on the expectations and true needs of the European people, businesses and member states.

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Annex I

Questionnaire

This survey intends to collect your views on the fragmentation of the EU personal pensions market – causes, consequences and action needed.

It will take you 5 minutes to fill-in the 8 questions proposed.

The data collected from this survey will be used for research purposes.

Results will be published only as aggregate statistics, allowing no inference on any particular individual or company that participated in the survey.

1) Please identify your company

a) Asset manager b) Insurance company c) Pension fund

2) Please indicate your company's assets under management as of end 2013

a) below EUR 10 billion b) between EUR 10-50 billion c) above EUR 50 billion

3) What percentage (of assets under management) do your personal pension products sales in the EU represent? *Personal Pension Products could be broadly defined as individual savings products with a retirement objective (also referred to as "third-pillar" pensions).*

a) 0-5% b) 5-10% c) 10-15% d) 15-20% e) more

4) Which distribution channels do you use in the EU to sell your personal pension products?

a) direct - local establishment

b) indirect - independent agents / other financial intermediaries

c) indirect - linked agents

d) indirect - internet

5) In how many EU countries are you directly or indirectly selling personal pension products?

a) 1 b) 2 c) 3 or more

6) What are the main barriers to selling personal pension products cross-border in the EU? *Please rank each option from 1-5 (1 = least important barrier; 5 = most important barrier)*

a) type and design features of personal pension products required

b) notification and approval of personal pension products by local authorities

c) type of payout options required

d) content and format of personal pension contracts, where applicable

e) pension communication requirements to clients

f) need for advice

g) advertising and marketing requirements of personal pension products

h) after-sales services requirements (claims handling, complaints handling)

i) taxation regimes

If any additional barrier, please specify:

7) What are the consequences of these barriers for personal pension providers who wish to sell cross border within the EU? *Please rank each option from 1-5 (1 = least relevant consequence; 5 = most relevant consequence)*

a) low competition in the EU personal

b) pensions market

c) lack of economies of scale

d) high management, administration

e) and distribution costs

f) lack of financial innovation

If any additional consequence, please specify:

8) Which action should be taken at EU level to facilitate cross-border provision of personal pension products? *Please rank each option from 1-5 (1 = least helpful action; 5 = most helpful action)*

a) introduce (a number of standards for) an EU personal pension product that could be authorised by the supervisory entity in one member state and sold across the EU, competing with domestic personal pension products

b) harmonise personal pension contracts, where applicable

c) harmonise consumer protection rules for all personal pension products (information disclosure, distribution and selling practices, professional requirements)

d) call for taxation agreements between member states to eliminate double taxation

If any additional EU action, please specify:

Please leave your email address below.

This email will allow us to contact you in case of queries.

Both your email address and the name of your company will be kept confidential.

Thank you for your participation!