

**Comments Template for
Discussion paper on a possible EU-single market for personal pension
products**

**Deadline
16 August 2013
18:00 CET**

Name of Company:	EFAMA	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p><i>Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</i></p>	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in the column "question"; if you change numbering, your comments cannot be processed by our IT tool. ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a question, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <ul style="list-style-type: none"> ○ If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies. ○ If your comment refers to parts of a question, please indicate this in the comment itself. <p style="text-align: center;">Please send the completed template, <u>in Word Format</u>, to personalpensions@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p>		

Comments Template for Discussion paper on a possible EU-single market for personal pension products		Deadline 16 August 2013 18:00 CET
Question	Comment	
General Comment	<p>EFAMA has recently published a report to shed light on essential elements of a regulatory framework for personal pension products. Our responses to this consultation paper are very much inspired by EFAMA's work in this area.</p> <p>EFAMA welcomes the efforts of the European Institutions to develop an EU-single market for personal pension products, and wants to contribute to the debate with a constructive proposal, based on the expertise of the asset management industry in developing investment solutions tailored to the needs of the investors, including for pension purposes.</p> <p>The concept proposed in the EFAMA report – called “Officially Certified European Retirement Plan” (OCERP) – is a personal pension product which can be offered by insurance companies, banks, pension funds and asset managers. Unified standards for such product should allow individuals to choose between several investment options, foster well-informed choices, and ensure that providers maintain a robust governance framework and administrative systems. Products that meet these standards could be distributed throughout Europe with an EU passport.</p>	
Q1	<p>Do you find the list of common features of PPPs identified by EIOPA complete? Would you add any other features (e.g. periodic income)?</p> <p>We consider that the large majority of PPPs possesses the following common features:</p> <ol style="list-style-type: none"> 1. Individual membership 	

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	<ol style="list-style-type: none"> 2. Payment of contributions to an individual account 3. PPPs have an explicit retirement objective (in the sense that the goal of PPPs is to build up a ‘retirement pot’ with a view to supplementing financial resources available during retirement) 4. The early withdrawal of accumulated capital is often limited or penalised 5. Providers are private entities 6. Funding 7. Multiple investment options 8. Tax incentives 	
Q2	<p>Do you think that EIOPA should focus more on DC or DB PPPs?</p> <p>We believe that EIOPA should focus more on DC PPPs, for two main reasons:</p> <ul style="list-style-type: none"> • First, the trends towards DC schemes, away from DB schemes, is continuing • Second, the goals of creating a single market for PPPs and ensuring their portability across borders would be easier to achieve by regulating DC PPPs, which are less complex products than DB PPPs. <p>What elements should be regulated for both types of PPPs in order to create a single market for PPPs?</p> <p>The work launched by EIOPA on the creation of “a EU-single market for personal pension products” is very much related to the work undertaken by the European Commission in the area of “consumer protection in third-pillar retirement products”. In this context, we</p>	

<p style="text-align: center;">Comments Template for Discussion paper on a possible EU-single market for personal pension products</p>		<p style="text-align: right;">Deadline 16 August 2013 18:00 CET</p>
	<p>believe that an EU certification scheme should be used to provide a EU passport to third-pillar retirement products that would comply with a set of common EU standards for such products. This set of standards should be covered in a EU regulatory framework that regulates the EU labeled PPPs.</p> <p>An EU regulatory framework should not aim at harmonizing all types of existing PPPs. That would be an overly ambitious goal. Instead, the aim should be to create a new type of PPP (which we will call OCERP) that could be offered to EU citizens in addition to the PPPs that are currently available at national level.</p> <p>The OCERP would be allowed to be marketed across Europe, once certified in one member state. They would be certified by the national regulatory body which has the competence to authorize retirement products. To allow this certification process to take place, a specific EU legislative framework would be essential to:</p> <ul style="list-style-type: none"> • provide a EU passport to the OCERP, by laying down a common framework of rules for qualifying an OCERP; • facilitate cross-border activity for the provider, by regulating the conditions under which financial institutions could provide OCERPs across Europe. 	
Q3	<p>Do you think that future regulation of PPPs should also include additional prudential requirements in cases where the provider of certain PPPs is already subject to European prudential regulation?</p>	

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	<p>Two approaches could be envisaged to regulate the OCERP providers:</p> <ul style="list-style-type: none"> • Introduce a specific stand-alone EU prudential regime for the OCERP providers, along the lines of the IORP Directive, to ensure providers operate under the same rules. • Allow insurance companies, asset managers, banks and IORPs to provide OCERPs under the existing EU legislation applicable to these institutions.¹ <p>The first approach would imply that OCERP providers would need to manage OCERPs as a separate entity with a separate governance structure. This would discourage many banks and other financial institutions to become OCERP providers, because of the cost implications.</p> <p>The second approach would allow insurance companies, asset managers, banks and IORPs to operate as OCERP providers under the existing rules without forcing them to create a separate entity solely dedicated to OCERP provision. This would be the most cost-efficient solution.</p>	
Q4	<p>What advantages do you see in creating/improving a single market for PPPs?</p> <p>The creation of a single market for PPPs would bring significant benefits to the European economy, its citizens and the pension industry.</p> <p><i>Benefits for the European economy</i></p>	

¹ The existing legislation may need to be adapted, for instance to allow IORPs to operate in the third pillar as OCERP providers.

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Financing long-term investments patient capital

In an economic and regulatory environment that hinders governments' capacity and institutional investors' incentives to invest in long-term assets, the OCERP would contribute to reduce the long-term financing gap by channeling retail investors' retirement savings towards long-term investments.

Taking into account that retirement savings are usually associated to long lock-up periods (usually until the individual reaches the normal retirement age), it would make sense to incentivize a shift of retirement savings towards long-term investments, in particular, in the areas of transportation, energy, health, education and real estate. Additionally, the OCERP would also help finance small and medium enterprises (SMEs), social enterprises and startups. This would provide an additional source of financing to Europe's long-term investment needs, thereby contributing to higher growth and job creation.

Benefits for EU citizens

Achieving cost-effectiveness

OCERPs cross-border selling activity would have positive implications at national level. It would increase competition among purely national personal pension savings providers and OCERP providers, which would make existing domestic pension schemes more attractive and less costly.

Securing quality and transparency

The OCERP could be associated with high standards of transparency, consumer protection, cost-efficiency and ideally portability.

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Facilitating portability

Even if an OCERP is faced with some existing barriers such as taxation that would hinder its portability and transferability for mobile citizens, it would still represent a strong benefit for all EU citizens buying pension products in their own countries. Furthermore, the transferability of OCERP assets between providers within the same member state and the portability of OCERPs between different member states using the same provider shall be encouraged to the fullest extent possible.

Reconnecting Europe with its citizens

The creation of the OCERP should be considered as a positive response of European leaders to overcome the current fragmentation of the European pensions market and thus facilitate job mobility and enhance cost-efficiency and product choice in this market.

Benefits for the pension industry

Cross border activity

The creation of an OCERP would allow providers to sell the same product across Europe targeting both mobile and non-mobile citizens. Considerable economies of scale could be achieved if one provider could manage from one country one product being sold in several Member States.

Achieving standardization

OCERPs would allow providers to add to their product range a highly standardized pension scheme, allowing for reduced costs for every provider interested in distributing a personal retirement savings solution across Europe.

Empowering business

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	<p>The scenario of lack of harmonization of tax rules relating to OCERPs does not hinder the possibility that would be given to a provider to sell the same OCERP in different countries. It should indeed encourage many banks, insurers and asset managers to expand their product offering, building on their respective business models and taking advantage of the EU-wide passport of their OCERP and its potential scale across Europe. Also, identical rules across the EU for the OCERP and its provider will help creating a level playing field for all pension market participants thus fostering competition, innovation and cost-effectiveness.</p>	
Q5	<p>Do you think that these definitions fully reflect the EU personal pension landscape? If the answer is negative, what changes would you suggest in the wording of the definitions? Which of the definitions is better?</p> <p>We can agree with the proposed definitions. From the two definitions suggested, we believe the OECD touches on important points: 1/ individuals independently purchase and select material aspects of the arrangements; 2/ the employer may nonetheless make contributions to personal pension plans; 3/ PPPs can be mandatory or voluntary.</p> <p>We believe it would be useful to clarify if a “personal pension product” can also be referred to as a “third-pillar retirement product”, which is the terminology used by the Commission on its consultation on consumer protection in third pillar pensions. If that is the case, it would be useful to reach an agreement on the best common designation for these products. Otherwise, the difference between the two types of products should be clarified.</p>	
Q6	In some countries when a Personal Pension contract is chosen by an employer, the	

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	<p>pension remains under the regulatory regime for consumer financial services rather than falling wholly under the regime for workplace pensions. Do respondents believe that such pensions are personal pensions?</p> <p>We don't have a firm view on the question.</p>	
Q7	<p>How could a single market be developed for PPPs unregulated at EU level (e.g. cases where IORP Directive is voluntarily applied to PPPs)?</p> <p>We don't understand how a single market for PPPs could be developed without agreeing on a set of common rules for the type of PPPs that would be "passportable". The conditions under which financial institutions could provide OCERPs across Europe should also be regulated.</p> <p>Overall, EFAMA believes that the single market for PPP should not aim at harmonizing national legislations, given that pension design remain an exclusive competence of Member States. We believe that the best way to ensure a quality framework for PPPs and facilitate cross border business is to develop an EU labeled PPP.</p>	
Q8	<p>Do you think that EIOPA should consider developing a framework for transferability of accumulated capital for passported PPPs? What obstacles to transferability can you identify and how can they be overcome? Can you identify the benefits of a transferability framework in the context of PPPs?</p> <p>In our view, two levels of transferability can be considered:</p> <ul style="list-style-type: none"> • Level 1: transferability from one provider to another at a country level 	

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	<p>Providers should commit to accept the right of an OCERP holder to change provider at the national level. In principle, this would require liquidating the original OCERP and transferring the proceeds of sale of the assets towards the new one.</p> <p>Whilst there could be some administrative costs associated with transfers, the administrative costs should be regulated to stop providers from introducing prohibitively excessive charges.</p> <ul style="list-style-type: none"> • Level 2: transferability from one country to another Ideally, holders should be able to carry their OCERPs from one country to another. This would help to avoid the dispersion of retirement savings assets across several countries, thereby reducing administrative burden and costs. <p>This level of transferability will be complicated to achieve when Member States' tax arrangements are different. Yet, providers may be able to offer people the possibility to continue saving into their OCERPs and to handle the taxation issues in their back-office systems. This may be a powerful argument for people to stay with the same provider when they move from one country to another.</p>	
Q9	<p>What are the prudential obstacles for creating a cross-border market for PPPs for different types of providers (banks, insurers, UCITS)?</p> <p>To the extent that member states apply different prudential requirements to PPP products/providers, no single market exists. To overcome this barrier, common EU rules for an OCERP would help create an effective single market for personal pension products.</p> <p>In our view, the analysis of the database EIOPA published in April 2013 confirms that it</p>	

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should be possible to agree on a set of common features that would very much resemble those applicable to most member states' PPPs. We have noted, in particular, that:

1/ DC pension products increasingly allow individual members some degree of choice about how to invest their plan contributions and a fair degree of responsibility for ensuring the optimal asset allocation;

2/ on average there are two to five investment options holders can choose from. Only very few Member States, the number of options to choose from is significantly higher.

3/ many DC plans have a default option. Default option is mostly provided voluntarily and only in few cases this is done on legal basis. Life-cycling is still not used in many Member States;

4/ the type of asset allocation strategy seems to be a popular instrument for differentiating between investment options where asset types and related risks are distinguished.

5/ key principles such as the prudent person rule and asset diversification rules are used in most cases.

6/ personal pensions with multiple investment options can be provided by insurance companies in ten Member States, investment management companies in five Member States, and pension funds also in five Member States, while IORPs can act as providers in three Member States.

The evidence collected by EIOPA highlight the merits of creating an EU wide personal pension product. It also shows that the work would not start from a blank page given the degree of convergence between existing PPPs.

The creation of an OCERP should also be seen in a dynamic perspective. Applying common EU rules that would give a "European brand" to a PPP that would fulfill a

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	<p>number of standards, would contribute to greater convergence as some member states might wish to strengthen their national schemes by adopting some of the standards set for the OCERP. This was the case for UCITS, which brought greater harmonization to the retail investment fund industry.</p> <p>In conclusion, EFAMA believes that an EU single market for PPPs could be more easily attained by developing an OCERP and allowing insurance companies, asset managers, banks and IORPs to provide OCERPs.</p>	
Q10	<p>Do you think it is feasible to develop a cross-border framework for PPPs with guarantees (DB PPPs and DC PPPs with guarantees)?</p> <p>EFAMA believes that capital or investment guarantees could be offered on a voluntary basis by some OCERP providers as an element of some investment options. OCERPs with guarantees should not be made mandatory. This is because whilst any minimum capital/return guarantees limit the shortfall risk that may result from financial market volatility, they also limit individuals' upside potential returns. The cost in terms of foregone returns and, hence, lower retirement wealth accumulation, can be particularly significant if the guarantee is used throughout the entire or most of the pension accumulation phase. So there is an important trade-off that the individual should take into account between loss mitigation and its cost, when considering the choice of a guaranteed OCERP.</p>	
Q11	<p>Have you identified any other tax obstacles in addition to the four identified by EIOPA? Can these obstacles be eliminated in practice?</p> <p>We find EIOPA analysis very useful and we agree with the four cross border tax issues</p>	

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identified.

These obstacles could be eliminated if member states would indeed agree to harmonize the taxation of PPPs. It may not be realistic to expect all EU member states to agree to this goal. However, given the issues at stake, it is possible that a core group of member states would agree to adjust their domestic tax rules and existing tax treaties to facilitate the emergence of a single market for PPPs.

This being said, EFAMA strongly supports the ambition of the European Commission to eliminate the tax obstacles in the pensions area. The Commission acknowledged, in its white paper on pensions, the important role taxation plays in stimulating complementary retirement savings. In this context, the Commission has launched two initiatives on which it is currently working²:

- First, it will assess and optimize the efficiency and cost-effectiveness of tax and other incentives for private pension saving, by cooperating with member states following a best practice approach; this will include better targeting of incentives on individuals who would otherwise not build up adequate pensions.
- Second, it will investigate whether certain tax rules in the area of pensions present discriminatory tax obstacles to cross-border mobility and cross-border investments, and initiate infringement procedures, where necessary.

Finally, as we previously mentioned, the lack of tax harmonization shouldn't hold back the European authorities from proposing the creation of a single market for OCERPs, for two main reasons:

² Initiatives (9) and (18) from the White Paper.

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	<ul style="list-style-type: none"> • First, providers should be able to handle the taxation issues and offer people the possibility to continue saving into their OCERPs when they move between certain countries. • Second, the creation of an OCERP would benefit non-mobile EU citizens as it would introduce an additional PPP to choose from, thereby fostering competition in national markets and reducing costs. 	
Q12	According to your knowledge, how do MSs approach the principle of non-discrimination of foreign PPP providers in their national tax legislation as far as taxation of contributions, investments and benefits is concerned?	
Q13	<p>In your opinion, is the principle of non-discrimination in taxation of financial products, as developed by CJEU, sufficient on its own to remove the tax obstacle to the cross-border functioning of PPPs?</p> <p>Referring to the four tax obstacles identified by EIOPA, we agree that the first three obstacles, i.e. differences among member states in taxation of (i) contributions paid to foreign PPPs and benefits received from foreign PPPs and (ii) investment income paid to foreign PPPs, and (iii) obstacles to transfer of accumulated capital, seem to be eliminated to the extent that member states cannot discriminate against foreign providers. The income tax legislation in member states should indeed afford the same tax relief to foreign PPPs as it affords to its domestic PPPs.</p> <p>Still, the 3rd (risk of double taxation when domestic transfers are taxed) and 4th</p>	

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	(differences in member states' tax arrangements) obstacles identified by EIOPA, are more problematic from the point of view of the consumer, as direct taxation is within the competences of individual member states. These obstacles would limit the advantages that an OCERP would bring to mobile workers in Europe. Indeed, someone changing jobs from one country to another would not find attractive to carry his/her PPP with him/her if the transfer of accumulated capital would lead to double taxation.	
Q14	<p>Do you consider that transferability requires harmonisation of the tax treatment of pensions across MSs? In your view, are such changes feasible?</p> <p>It would be extremely useful if an analysis of the differences in member states' tax rules for PPPs could be made to assess whether the circumstances under which a transfer of accumulated capital from a PPP in one member state to a PPP in another member state would give rise to double taxation or non-taxation, are limited or not.</p> <p>In the meantime, we believe that the lack of harmonisation of the tax treatment of PPPs across Europe shouldn't hold back EIOPA from proposing the creation of a single market for PPPs. Indeed, the creation of an OCERP would benefit non-mobile EU citizens because it would introduce an additional PPP to choose from, fostering competition in national markets. The OCERP would also benefit mobile citizens whose move from one country to another wouldn't be subject to double taxation.</p>	
Q15	<p>What (tax) obstacles can you identify in cases where an individual who is a tax resident of state A and holds a PPP provided to state A on the basis of of cross border passport by provider with tax residence in state B, becomes a tax resident in state C?</p> <p>We believe that the country of residence of the PPP provider shouldn't be relevant. What</p>	

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	<p>really matters is that the provider should be able to ensure that PPP holders benefit from the tax deductibility of contributions provided in the PPP holders' countries of residence, and comply with the rules regarding the taxation of payment of benefits and investment income applied to PPPs in the PPP holders' countries of residence.</p> <p>When a PPP holder is moving from State A to State C, the PPP provider should also be able to help him/her decide whether or not to transfer his/her PPP from State A to State C. <u>If the transfer is not allowed</u> by State A, the PPP holder should be allowed to keep his/her PPP open in State A, even if s/he stops making new contributions. <u>If the transfer is allowed</u>, the provider should help the holder comply with his/her tax obligations at the moment of the transfers.</p>	
Q16	<p>Do you see the need of the creation of a single market for products 1st pillar bis? What would be the benefits of creating a single market for 1st pillar bis products? How could the challenges posed by existing social and labour law be overcome, in particular in the Member States which have no products 1st bis?</p> <p>Should there be a motivation to promote the single market for 1st pillar bis, EFAMA believes that instead of harmonizing existing 1st pillar bis products, a passporting regime for the product and providers (like the UCITS) could be a more realistic way forward.</p>	
Q17	<p>How could a single market be developed for PPPs unregulated at EU level? Should it be based on the IORP Directive or another directive?</p> <p>Please refer to Q7.</p>	
Q18	<p>Taking into account the fact that the contributions to the 1st pillar bis products, come</p>	

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	<p>from diverting part of the contributions of the traditional public 1st pillar PAYG system, would it be feasible to create a passporting regime for providers of 1st pillar bis PPPs? In particular do you think that EIOPA should consider the possibility to create a framework for cross-border management of 1st pillar bis schemes.</p> <p>If the answer is positive, do you think that EIOPA should consider the possibility to create a framework for cross-border management of 1st pillar bis schemes based on the principles of UCITS Management Company passport? (Art. 16 to 21 of the Directive 2009/65/EC).</p> <p>If the answer is positive, how would the UCITS Management Company passport need to be modified for 1st pillar bis managers to take into account specificities of 1st pillar bis?</p> <p>We encourage EIOPA to consider the possibility of creating an EU passport for 1st pillar bis providers. EFAMA would be happy to contribute further should EIOPA decide to move forward.</p>	
Q19	<p>Can you identify any other obstacles to passporting of PPPs? How can these obstacles be overcome?</p> <p>Differences in legal requirements applying to personal pension products, in particular regarding the civil contract law, would have to be complied with. Also, the determination of the competent authority, the treatment of the OCERP assets after the death of the holder and the application of the law related to creditors' rights, may require some good will on the part of member states to remove these obstacles.</p>	
Q20	<p>Would passporting alone be sufficient framework for cross-border provision of PPPs or should EIOPA work on 2nd regime as well? Which approach do you consider more appropriate to develop a single market in the field of PPPs?</p>	

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	<p><u>In relation to the product rules</u>, the European Commission should decide which legislative form harmonized rules for OCERPs should take. That can be achieved with a fully harmonized directive, a regulation or with a so-called 2nd regime. A pragmatic choice should be made as each of the possible solutions has its own legal and technical challenges. EFAMA considers that a directive/regulation that would regulate the product (OCERP) would help boosting investors' confidence in the quality of the OCERP and its legal foundation. EFAMA is therefore of the opinion that EIOPA should explore this approach, drawing on the experience accumulated with the UCITS Directive. Should there not be enough support among member states to agree on a directive to be implemented in national law, we would hope that the 2nd regime would offer a sufficiently simple and manageable framework to create a single market for PPPs.</p> <p><u>In relation to the regulatory requirements for the OCERP providers</u>, two approaches could be envisaged: either to introduce a specific stand-alone EU prudential regime for the OCERP providers, along the lines of the IORP Directive, to ensure providers operate under the same rules; or to allow insurance companies, asset managers, banks and IORPs to provide OCERPs under the existing EU legislation applicable to these institutions.</p>	
Q21	<p>How should the 2nd regime be designed so that it becomes standard that can compete with other PPPs and attract a critical mass of demand from providers and individuals?</p> <p>Please refer to Q23.</p>	
Q22	<p>How could the 2nd regime accommodate the tax differences among MSs? Do you see other national differences that the 2nd regime should address? If yes, how could this be done?</p>	

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	<p>A distinction shall be made between the legislative framework that regulates the OCERP and the taxation rules that apply to it. The goal should be to agree on a set of common rules that apply to a EU-labelled PPP (OCERP), being in the form of a directive, regulation or a 2nd regime.</p> <p>Regarding taxation, it would be « nice to have » an harmonised framework for OCERPs across countries that would foster transferability, although this will take time. What we « must have » is the same treatment between domestic personal pension products and OCERPs within each member state.</p> <p>This means that whatever legislative framework is chosen, OCERPs shall benefit from the available tax benefits that are applicable to other personal pension products available at national level.</p>					
Q23	<p>How would you design the main elements of the 2nd regime, in particular:</p> <ul style="list-style-type: none"> - rules applicable to providers - accumulation phase (pure DC, DC with guarantees, DB or hybrid?) - pay-out phase including benefits (e.g. should the benefits include only annuities, or also programmed withdrawals and lump sum payments?) - product design (e.g. investment rules) - consumer protection aspects. <p>EFAMA believes that a number of standards should be covered in a directive/regulation or 2nd regime regulating an OCERP:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: left;">Standards</th> <th style="width: 50%; text-align: left;">Rationale</th> </tr> </thead> <tbody> <tr> <td style="height: 20px;"> </td> <td> </td> </tr> </tbody> </table>	Standards	Rationale			
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Investment Options

- | | |
|---|---|
| 1. Adequate choice | - Meeting individuals' risk profile and circumstances
- Facilitating individual choice |
| 2. Appropriate default option | - Helping individuals unwilling/unable to take financial decisions, taking age into account |
| 3. Clear risk-reward profile | - Helping individuals to select an investment option
- Providing the basis for categorizing investment options |
| 4. Ability to switch between options | - Offering the flexibility and possibility of switching to a lower risk-reward profile over the lifespan of the OCERP |
| 5. Flexibility in underlying products | - Using existing investment vehicles to facilitate economies of scale |
| 6. Prudent person rule for diversification | - Ensuring investor protection
- Leaving space for innovation |
| 7. Ability to offer risk coverage | - Reducing individual exposure to investment risk
- Offering protection against biometric risks |
| 8. Access to payout solutions | - Linking the accumulation and payout phases
- Providing a retirement income solution |

Communication

- | | |
|--|--|
| 9. Clear and consistent pre-enrolment information | - Helping individuals make an informed choice
- Facilitating comparability between investment options |
| 10. Accessible annual statements | - Providing useful information on a consistent basis
- Helping to manage expectations of OCERP |

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- | | |
|---|---|
| | holders |
| 11. Full transparency on all costs | - Informing OCERP holders
- Ensuring fair and transparent competition |
| Governance | |
| 12. Robust internal and product governance | - Clarifying responsibilities
- Protecting holders' interests and assets |
| Administration | |
| 13. Effective and efficient administration | - Maintaining comprehensive record-keeping systems
- Offering high-quality services |
| Distribution | |
| 14. Consistent regulation of advice | - Giving advice in the best interests of the consumer
- Applying uniform rules for all personal pension products |
| 15. Level playing field between different kinds of providers | - Fostering competition between providers
- Increasing consumer choice |
| 16. Flexibility of transferability between providers | - Allowing individuals to change provider
- Encouraging people/job mobility |
| 17. EU Passport | - Creating a single market for personal pension products
- Facilitating cross-border distribution |

With regard to consumer protection and sales and advice, EFAMA believes that the current legislative proposals at EU level should be taken into account when considering how to improve the quality of all PPPs. We refer, namely, to the PRIPs initiative which includes product transparency and consumer protection measures for PPPs. With regard to sales practices and advice, we believe that the MiFID and IMD Directives are the appropriate legislative instruments to improve consumer protection in the field of PPPs.

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Q24	<p>Should the 2nd regime comprise product rules only or product and providers rules? Should the 2nd regime prefer only certain types of risk sharing arrangements, e.g. DC? If the answer is positive, what would be the implications for the design of the 2nd regime?</p> <p>Ensuring that uniform conditions apply to both the OCERP and its provider would prevent diverging national / EU requirements for market players. This would ultimately mean more certainty for the investor and for the supervisors.</p> <p>EU labeled PPPs – OCERPs – would be allowed to be marketed across Europe, once certified by the national regulatory body which has the competence to authorize retirement products. To allow this certification process to take place, a specific EU legislative framework would be essential to lay down common rules for:</p> <ul style="list-style-type: none"> • The <u>investment options</u> and <u>communication</u> of the OCERP • the <u>governance</u>, <u>administration</u> and <u>distribution</u> standards of financial institutions acting as OCERP providers. <p>Most probably in accordance with the expected degree of commitment from member states, the European Commission should decide which legislative form harmonized rules for OCERPs should take. This can be achieved with a fully harmonized directive, a regulation or with a so-called 2nd regime. A pragmatic choice should be made as each of the possible solutions has its own legal and technical challenges.</p> <p>As mentioned in Q2, EFAMA believes that EIOPA should focus on DC PPPs.</p>	
Q25	<p>If a 2nd regime for PPPs were to include prudential rules, do you think that it is possible to define a common way to calculate provisions for different types of providers?</p>	

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	<p>Do you think the capital needed for such activities could be the same for the different type of providers?</p> <p>The calculation of technical provisions would apply to insurers. Any prudential measures referring to capital requirements would only make sense should there be guaranteed PPPs being offered.</p>	
Q26	<p>What information requirements are needed to protect PPP holders? What information should be presented in order to help them make sensible decisions and when and how should this information be presented? What are the differences to be considered with respect to occupational pensions and to the advice given by EIOPA to COM for the revision of the IORP Directive?</p> <p>EFAMA believes EU consumers should have the same protection standards regardless of where they purchase their PPP. EFAMA believes information requirements should ensure that a PPP holder is informed throughout the different phases (pre-enrolment, accumulation, pre-retirement and payout phase).</p> <p>Pre-contractual information Adequate pre-contractual information should be provided to the potential PPP holders in a way that enables them to understand the scheme's features, to compare between different retirement products and thus, making an informed choice. Such disclosure requirements should be framed along the lines proposed by EIOPA:</p> <ol style="list-style-type: none"> 1. the identification of the PPP; 2. a brief description of the objectives and investment policies; 3. information on performance (either in terms of past performance and/or of performance scenarios); 	

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	<p>4. costs/charges; 5. a risk/reward profile and/or the time horizon adopted for the investment policy (see explanatory text); 6. contribution commitments; 7. practical information, allowing Member States to add country-specific information; 8. cross-references to other relevant documents.</p> <p>On-going information</p> <ul style="list-style-type: none"> - Annual Statements Holders of a PPP should receive information on an annual basis. The elements that should be included in the statements could be inspired by EIOPA’s advice on the review of the IORP Directive, and cover: i) an accrued balance that indicates the total amount of pension savings that members have accumulated in their schemes, ii) a summary of inflows and outflows, iii) a summary of the charges levied and iv) the performance achieved in the previous year. - Pre-retirement information Information concerning the different benefit payment options should be made available to the PPP holder. - Payout phase In case a recurrent payment solution is chosen, regular information should be provided to beneficiaries. 	
Q27	In the pre-contractual phase, what “must” PPP holders know about the personal pension product before purchasing and what “should” they know? What further	

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	<p>information should be available and easy to find?</p> <p>EFAMA is aligned with the requirements settled in the PRIPs proposal with regard to the information disclosure of a key information document (KID). As such, a KID of a personal pension scheme 'must' cover the following essential elements: the identity of the product and its manufacturer, the nature and the main features of the product, including whether the investors might lose capital, its risk and reward profile, costs, and past performance as appropriate. Other information 'should' be included namely information about possible future outcomes.</p>	
Q28	<p>If a layering of information is introduced, what information should be included in the different layers outlined above (“must know”)? What information should be included in the subsequent layers (“should know” and “nice to know”)?</p> <p>In the layer 'must know', the following elements should be covered: the identity of the product and its manufacturer, the nature and the main features of the product, including whether the investor might lose capital, its risk and reward profile, costs, and past performance as appropriate. The layer 'should know', should include information about possible future outcomes. The layer 'nice to know' should include cross-references, i.e., reference to the relevant legal documents and to an online website where more information could be found.</p> <p>What is the best way to make it easy for PPP holders to find their way through the different layers?</p> <p>EFAMA welcomes EIOPA’s work on “Good Practices on information provision for DC schemes”. Following some of the suggestions from this report, we believe the</p>	

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	information provided should be ordered by relevance, the most important information ('must know') should be highlighted and readability could be ensured through font size and number of words.	
Q29	<p>What key questions identified in the area of occupational pensions (Will my pension be sufficient for my demands and needs? If not, how much will the shortfall be and what can I do to improve the situation?) might be relevant for personal pensions?</p> <p>The questions should be different when applied to DC or DB schemes rather than when applied to occupational or personal pension schemes.</p> <p>This is because, as EIOPA mentions in its Advice to the Commission, pre-contractual information "[a KIID-like document] is particularly useful for DC schemes, where members bear the investment risk and are asked to make choices at individual level; it is not necessary where employers/IORPs carry the investment risks and members are not asked to make choices specifically regarding their pension scheme".</p>	
Q30	<p>Will a KII/KID like document be appropriate for personal pensions as has been advised by EIOPA on the review of the IORP Directive? What would be the behavioural purpose?</p> <p>EFAMA strongly agrees that improving transparency in the investment market for retail investors, including in the market for personal pension products, is a vital strategy to rebuild retail investors' confidence on a sound basis. EFAMA has welcomed the Commission's PRIPs initiative which includes in its scope consumer protection measures in relation to the purchase of personal pension products. In this context, we agree that the KID is an essential tool to strengthen the transparency of the pre-enrolment</p>	

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	<p>information that should be presented in order to help individuals to make sensible decisions about PPPs.</p> <p>This is also an essential element of investor protection, especially when individuals bear the investment risk.</p> <p>A common EU standard for KIDs is also important to make comparisons between PPPs authorized in different countries easier, and therefore facilitating their cross-border distribution.</p>	
Q31	<p>Could a good reference for risk-reward profiles be defined for personal pensions? To what extent do you find the risk reward used in UCITs Directive appropriate for PPPs? What are other examples to consider?</p> <p>Please refer to Q32.</p>	
Q32	<p>For PPPs, could the investment horizon (as in “data target” funds) provide a better guidance for potential members, against the risk-reward ranking that is used for UCITs?</p> <p>EFAMA agrees that the risk ranking should vary with time horizons and, therefore, that the methodology supporting the synthetic risk and reward indicator (SRI) used for UCITS might not be the most appropriate for pension products.</p>	
Q33	<p>Q33. What information should be provided in respect of costs? Should it be consistent between ex-ante and actually levied costs? Should it include investment transactions costs? What is the best way to present this information?</p>	

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	<p>EFAMA strongly believes that the costs and associated charges of the PPP should be fully disclosed to support an individual to make sensible investment decisions and compare different PPPs.</p> <p>Importantly, the information to be provided in respect of costs should have a distinction between the <u>costs of the product</u> and the <u>costs of distributing the product</u>. The costs of a product should be part of an information document i.e. PRIIP KID; and should reflect the entry charges/ongoing charges/exit charges. The distribution costs should be disclosed in a separate document and should be driven by MiFID and/or IMD. In this regard, an alignment between the provisions in MiFID and IMD is important.</p>	
Q34	<p>Do you consider the presentation of illustrative pension projections a useful tool to understand the risks and performance of the product and state how and when pension projections should be provided if you think they would be useful?</p> <p>We believe that the priority in the short term should be to develop a risk-reward profile for PPPs, for which we encourage the ESAs to work together on a methodology that takes account of the specificities of PPPs.</p>	
Q35	<p>Which tools and type of information would best ensure consumers an optimal source of easily available and useful information with a view to providing an overview of personal pension entitlements?</p> <p>A trend to be encouraged is providing information through digital means.</p>	
Q36	<p>What are the mediums through which pre-contractual information should be presented (paper, other durable medium)? In which cases should the different mediums be used?</p>	

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	EFAMA supports the use of digital information. Nevertheless, the decision should be left to the PPP provider and members should always keep the right to receive documents on paper at their request.	
Q37	<p>To what extent should the format of information be standardized? What features and or choices that can be made determine the need for a more flexible presentation of pre-contractual information?</p> <p>EFAMA believes the format of information should be standardardised in a way that allows comparison of PPPs.</p>	
Q38	What should be the requirements with respect to promotion material/marketing communications/advertising of personal pension products?	
Q39	What regulation can be a source of inspiration for personal pensions?	
Q40	<p>What information should be actively provided in the ongoing phase?</p> <p>Members of a PPP should receive information on an annual basis. The elements that should be included in the statements could be inspired by EIOPA's advice on the review of the IORP Directive, and cover: (i) an accrued balance that indicates the total amount of pension savings that members have accumulated in their OCERPs, (ii) the performance achieved in the previous year, and (iii) a summary of the fees/charges levied.</p>	

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Q41	<p>If a layering of information is introduced, what information should be included in the first layer (“must know”)? And in the subsequent layers (“should know” and “nice to know”)?</p> <p>We believe the following elements should be covered: (i) an accrued balance that indicates the total amount of pension savings that members have accumulated in their OCERPs, (ii) the performance achieved in the previous year, and (iii) a summary of the fees/charges levied.</p> <p>What is the best way to make it easy for PPP holders to find their way through the different layers?</p> <p>EFAMA believes that just like for pre-contractual information (Q28), the different layers in the on-going information should be ordered by relevance, the most important information (‘must know’) should be highlighted and readability could be ensured through font size and number of words.</p>	
Q42	<p>Do you consider the presentation of illustrative pension projections a useful tool to understand the risks and performance of the product? How and when pension projections should be provided if you think they would be useful.</p> <p>Please refer to Q34.</p>	
Q43	<p>What information should be provided on switching and before termination?</p> <p>A PPP holder should be able to change his investment option at any time during the investment period. This change should be especially encouraged as the member ages</p>	

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	<p>through an active communication plan between the provider and the holder. The former should send a communication form, on a periodic basis, by offering the possibility of switching to a lower risk-reward profile PPP / investment option within a PPP, thus reducing expected investment risk as one gets older. Related costs should be duly disclosed.</p> <p>Before termination of the accumulation period, the holder shall receive information on the payout options being offered.</p>	
Q44	<p>Should/could information cover the other pillars (i.e. overview of the first, second and third pillar pension)? Can this be achieved? If so, how?</p> <p>On-going information should only refer to the PPP subscribed by the holder. Otherwise it may end up being a document with an overload of information and difficult to harmonise given the national specific requirements for pension schemes belonging to the other pillars. The aim of having an overall view of pension entitlements should be reached through the initiative related to « tracking services ».</p>	
Q45	<p>What do you think of tracking services? What are good examples of tracking services?</p> <p>With regard to tracking services, EFAMA believes that there should be transparency towards the individual on the rights he/she has accumulated under his pension scheme, and this communication should be easily understandable as well as be promptly available. S/he should also understand the financial value of those rights, in order to be able to assess whether his/her level of savings is sufficient to provide adequate retirement income. This should be true for all systems, whether they are social security schemes or private schemes, occupational or individual, voluntary or mandatory under national law.</p>	

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Q46	<p>To what extent should the format of information be standardized? What features determine the need for a more flexible presentation of on-going information?</p> <p>EFAMA believes that OCERPs should be fully harmonized with regard to information provision.</p>	
Q47	<p>What are the mediums through which ongoing information should be presented?</p> <p>Preference should be given to information provision through digital means (information available on-line and sent by e-mail). Yet, PPP holders should keep their right to receive information on paper at their request.</p>	
Q48	<p>What is the appropriate frequency for presenting on-going information (e.g. annually)?</p> <p>Members of a PPP should receive on-going information on an annual basis.</p>	
Q49	<p>Which circumstances can require specific information provision (e.g. life events, contractual, taxation or regulatory changes, etc.)?</p>	
Q50	<p>Is there any kind of information (or additional information) that should be provided on request?</p>	
Q51	<p>Can on-going information requirements be connected with the implementation of tracking services? How?</p>	
Q52	<p>Should there be additional disclosure requirements for PPP holders that are approaching retirement? If so, what information should be provided? Include (e.g.</p>	

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	<p>regarding benefit payment options, taxation implications)?</p> <p>PPP holders approaching retirement should be provided with dedicated pre-retirement information, related to the different benefit payment options that can be made available to the PPP holder.</p>	
Q53	<p>If a layering of information is introduced, what information should be included in the first layer ('must know')? And in the subsequent layers ('should know' and 'nice to know')? What is the best way to make it easy for PPP holders to find their way through the different layers?</p>	
Q54	<p>Should there be additional disclosure requirements for the pay-out phase? If so, what information should be provided?</p> <p>In case a recurrent payment solution is chosen, beneficiaries should be provided with regular information concerning their retirement income.</p>	
Q55	<p>If a layering of information is introduced, what information should be included in the first layer ("must know")? And in the subsequent layers ("should know" and "nice to know")? What is the best way to make it easy for PPP holders to find their way through the different layers?</p> <p>The type and periodicity of the information should differ according to the payout solution chosen (being annuities, lump-sums, phased drawdown plans or combined solutions).</p>	
Q56	<p>What level of protection is needed in the distribution process? What is needed in order</p>	

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	<p>to prevent conflicts of interest from adversely affecting the interests of PPP holders?</p> <p>Given that the choice of a PPP is one of the most important financial decisions a consumer makes, adequate advice should be provided at the point of sale, avoiding conflicts of interests. The goal is that advice should be honest and unbiased as a general principle, given that the provider always has to act in the best interest of the PPP holder.</p> <p>The rules on advice for PPPs should be harmonized at EU level and should be aligned with the appropriateness and suitability tests established in the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC) and the rules set in the Insurance Mediation Directive (IMD) (Directive 2002/92/EC).</p> <p>As these Directives are being reviewed, EFAMA believes this is the right moment to ensure both Directives converge on the same rules for all PPPs.</p>	
Q57	<p>Are there existing examples of EU regulation that cover this area already(for example the MiFID and IMD2 conflict of interest and rules on selling practices)? What would be the reasons to deviate from the level envisaged in IMD2 or MiFID? Are there requirements elsewhere that would provide appropriate protection for PPP holders?</p> <p>MiFID provisions identify and aim at mitigating conflict of interests. Conflict of interest should be identifiable, disclosed in a general manner and mitigated with proper procedures. it is important to have the same provisions in MiFID II and IMD II.</p>	
Q58	<p>How should selling practices (including advice) for personal pension products be regulated?</p>	

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	Both MiFID II and IMD II should have the same provisions related to the selling practices of all PPPs.	
Q59	<p>Is the concept of MiFID ‘suitability’ also fit for personal pensions? If not, how can it be made fit for personal pensions?</p> <p>The rules on advice for personal pension products should be harmonized at EU level and should be aligned with the appropriateness and suitability tests established in the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC) and the rules set in the Insurance Mediation Directive (IMD) (Directive 2002/92/EC). As these Directives are being reviewed, EFAMA believes it is good time to ensure both Directives converge on the same rules for all personal pension products.</p>	
Q60	<p>What conflict of interest rules should apply (e.g. organisational/administrative requirements, together with disclosure and remuneration requirements)?</p> <p>Please refer to Q57.</p>	
Q61	<p>What information requirements should apply with respect to the service rendered: what information needs to be given to the PPP holders in case of advice (e.g. firm status disclosure, assessment of demands and needs of the PPP holder)?</p> <p>The MiFID II text which has been adopted by the European Parliament still needs to go through the trilogues. EFAMA believes that the information requirements to PPP holders for pension products should be inspired by this text. In particular, all information, including marketing communications, addressed by distributors to clients or potential</p>	

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	clients should be fair, clear and not misleading and marketing communications shall be clearly identifiable as such.	
Q62	<p>Are, and if yes, what requirements are needed with regard to complaints handling?</p> <p>MiFID I and implementing measures contain provisions to handle complaints. “Member States shall require investment firms to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken for its resolution.”</p> <p>Additionally, according to the current discussions on PRIIPs, the KID should have a section called “how can I complain?” referring to the information requirements on how and to whom a client can complain.</p>	
Q63	<p>Are there existing examples of EU regulation that cover this area already? Would IMD1 – as well as the upcoming IMD2 – provide a good source of possible inspiration for distribution rules for personal pensions? What about MiFID I and II?</p> <p>Please refer to Q62. IMD II is currently under discussion but not in an advanced stage.</p>	
Q64	<p>What professional requirements would be appropriate? Is there a need for high level principles or more detailed regulation?</p> <p>EFAMA believes that MIFID I implementing measures provide general organizational requirements that would be appropriate for the distribution process of PPPs.</p>	

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Q65	<p>What should be the scope of these requirements? Should they apply on a continuous basis with a requirement of updating?</p> <p>Please refer to Q64.</p>	
Q66	<p>Are there existing examples of EU regulation that cover this area already? For example the existing knowledge and ability requirements in Article 4, IMD1 and in the IMD2 proposal, defined as a result-oriented obligation where that knowledge and ability must be appropriate “to complete their tasks and perform their duties adequately, demonstrating appropriate professional experience relevant to the complexity of the products they are mediating”. Would this be a good source of inspiration for personal pensions? What about MiFID I and II?</p> <p>Please refer to Q64.</p>	
Q67	<p>What would be the reasons to deviate from the level envisaged in IMD2? Should factors such as taxation of pension’ products play a role in determining the level of knowledge required?</p> <p>EFAMA believes there is no reason to deviate from the level envisaged in IMD II. Nevertheless, provisions in IMD II and MiFID II should be aligned. This being said, specificities of PPP and PPP holder should be taken into consideration. Taxation should be dealt with at the distribution level and therefore appropriate tax knowledge should be required or advice to consult a private tax expert.</p>	
Q68	<p>What could be the role of product regulation in the context of PPPs?</p>	

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	<p>Product regulation should not aim at harmonizing all types of existing PPPs. That would be an overly ambitious goal. Instead, the aim should be to create a new type of pension product that could be offered to EU citizens in addition to the products that are currently available at national level.</p> <p>Personal pension products that meet a number of EU regulatory standards would be allowed to be marketed across Europe, once certified in one member state. The OCERP would be certified by the national regulatory body which has the competence to authorize retirement products. To allow this certification process to take place, a product-specific EU legislative framework would be essential to:</p> <ul style="list-style-type: none"> • provide a EU passport to the OCERP, by laying down a common framework of rules for a personal pension product to qualify as an OCERP; • facilitate cross-border activity for the providers, by regulating the governance, administration and distribution conditions under which financial institutions can provide PPPs across Europe. <p>We believe that the creation of a “European brand” in the area of personal pension products would contribute to greater convergence as some Member States might wish to improve the quality of their national products by adopting some of the standards set for the “European brand”. This is what happened after the adoption of the UCITS Directive, which became the text of reference for the regulation of investment funds across Europe, even for funds that are not intended to be marketed cross-border.</p>	
Q69	<p>Would you consider it useful if principles are established for the steps and considerations the industry should take into account before launching a new product or modifying existing products? If so, what would in your view be the main considerations that should be taken into account?</p>	

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	<p>Providers interested in marketing OCERPs would need to comply with the set of uniform standards defined in an EU legislative framework for the OCERP and would need to get the approval for cross border activity as OCERP providers from its national regulatory body that has the authority to authorize personal pension products. Once certified in one member state, an OCERP benefits from an EU passport and its provider is allowed to market it throughout the European Union.</p> <p>Could these initiatives help develop “critical mass” and economies of scale, and/or the development of auto-enrolment mechanisms?</p> <p>Yes, one of the key goals of an EU single market for personal pension products is to create economies of scale as, once certified, the same PPP could be marketed across the EU.</p> <p>EFAMA believes that auto-enrolment programmes are one of the most effective ways to ensure people save for retirement. Furthermore, if contributions from the auto-enrolment programmes would be channeled into OCERPs, this would help triggering a strong demand for these products, thus developing “critical mass” and economies of scale. This would generate a virtuous circle of recognition and use of the OCERP label that could culminate with a widespread use and transfer capabilities of an OCERP throughout the EU.</p>	
Q70	<p>Would you consider it useful if certified products are introduced in the context of personal pensions? Should they be introduced at a European or a national level? What initiatives at European level do you consider to be useful?</p> <p>EFAMA has been, for many years, a strong supporter of a European certified PPP. EFAMA</p>	

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	<p>believes that the goal should not be to redefine standards for all existing PPPs at national level, but to create a “<i>European brand</i>” of personal pension products that could be distributed on a cross-border basis. EFAMA has named this product the “<i>Officially Certified European Retirement Plan</i>” (OCERP) in reference to the name proposed in a report published by EFAMA in 2010 on the landscape of European long-term savings.</p> <p>In this context, we believe that the work launched by the European Commission in the area of “consumer protection in third-pillar retirement products” is very much related to the work undertaken by EIOPA at the request of the European Commission on the creation of a EU-single market for PPPs. Indeed, we believe that an EU certification scheme would provide an EU passport to the PPP, which would allow the PPP to be marketed across Europe.</p> <p>Following this approach, the standards that a PPP should comply with to be eligible to the EU certification scheme/passport should cover the basic standards that the product and its provider should comply with, drawing on the principles of consumer protection and good governance.</p> <p>EFAMA’s new report on the OCERP proposes a set of standards for the EU certification of a European PPP, as well as the different regulatory approaches to introduce those standards in an EU legislative framework.</p>	
Q71	<p>What role could be played by product authorization and or product banning, in order to protect holders against certain PPPs that are more likely to lead to poor pension outcomes?</p> <p>EU-PPPs (OCERPs) must be approved by the national regulatory body that has the</p>	

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	<p>authority to authorize PPPs. This national body can authorize/ban the OCERP status to the PPPs that comply/disregard the OCERP standards regulated by EU legislation.</p> <p>Importantly, EFAMA believes that a good governance framework as part of the OCERP standards is essential to ensure that an OCERP is managed in the best interest of its holders.</p>	