

OPSG

OCCUPATIONAL PENSIONS STAKEHOLDER GROUP

Advice on Pension Tracking Systems

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PENSION TRACKING SYSTEMS (PTS)

INTRODUCTION

EIOPA has received a ‘call for advice’ from the European Commission to provide “technical advice on the development of pension tracking systems” by the Member States. The Commission has announced in its action plan of September 24th 2020 “A Capital Markets Union for people and businesses”¹ from September 24th, 2020, to develop best practices for the set-up of national tracking systems, to encourage people to supplement public pensions with life-long saving and investment, including through more active participation in occupational pension schemes. This will enable them to benefit from more adequate retirement income and make it possible to finance the long-term growth of the real economy, as well as its green and digital transition.

EIOPA presented a public consultation paper on technical advice on the development of pension tracking systems, on July 13th, 2021. Feedback can be given until September 8th. The consultation paper was prepared with the help of a ‘Practitioners’ Network’ of academics and experts working with national pension tracking systems, that EIOPA set up last February. The quality of this consultation paper is very high and it raises many interesting questions. I would propose the OPSG at this stage not to go into the details of the technical advice contained in the consultation paper. The ongoing consultation will most likely refine this advice to an even higher level of quality. Instead, the OPSG may express a strategic opinion on:

1. the utility of creating national PTS’s,
2. the viability of different ways to practically achieve this in the Member States, in particular;
 - a. taking account of the ‘public good nature’ of a PTS, and
 - b. modes of financing
 - c. governance
3. creating a favourable legal setting, which might be done at the European and/or national level
4. European aspects of national PTS’s, and the perspectives for an eventual ETS
5. What action the European institutions, and in particular the Commission could take upon an eventual EIOPA technical advice.

¹ COM(2020) 590 final

1. THE UTILITY OF A NATIONAL PTS

In Member States where PTS's already exist, participants make frequent use of them, while at the same time methods are developed to refer participants to individual pension providers to take further action when needed. In general, current PTS's should be considered a success, and as relatively cost efficient operations. It is important to note that participants' interest is the right perspective to look at the utility of a PTS. At the same time experience in several Member States that already operate well developed PTS systems, shows that awareness-levels in general of the importance of pensions can be raised by encouraging people to regularly verify their own pension situation.

Given the large differences in pension systems in the different Member States, it seems logical that PTS's should in the first place be organized at the national level. Features may need to be different from Member State to Member State, within the confines of the best practices presented in the technical advice. An important element for the success of a PTS is the cooperation with the actual pension providers. The PTS provides information, but for taking action a participant will have to contact the pension provider concerned. This relationship has to be very well organized. Less clear from the consultation paper is the question if there may be arguments, apart from perhaps costs, for *not* introducing a PTS. If indeed no such arguments exist, it would follow that Member States should at the least be recommended to introduce a PTS.

Para 3.4 on future technological enablers of pension tracking systems mentions several technologies that in future may become available. It however does not address the question whether it could be worthwhile and/or legitimate to wait with the introduction of new PTS's and an ETS until such new technologies will become available. It might be useful to discuss this question in terms of the utility of a PTS and an ETS for participants. At first sight delay on this basis does not seem warranted.

Another matter however needs further attention. The Commission has published a 'Digital Finance Strategy for the EU'² on September 24th, 2020, which also encompasses data sharing in the EU financial sector, as well as an open finance framework for which a legislative proposal is announced for mid-2022. The Commission recently created an Expert Group on European Financial Data Space³, to help with these initiatives. Depending on this new open finance framework, this may turn out to

² COM(2020) 591 final

³ Mr Mladen Sančanin from Dutch pension services provider PGGM is one of the members of this expert group.

be a help in obliging pension providers to share data with a PTS or an ETS. If individual participants in a pension arrangement first have to agree to data sharing, however, this may inadvertently become an obstacle in finding 'lost pension claims'. A question might also be whether a PTS and an ETS would themselves also be subject to an obligation to share data with financial institutions, other than pension providers. If this is the case, it will become important to consider implications for financing of a PTS and an ETS. If costs are put on pension institutions to provide information for free to other financial institutions, this may not help to get the necessary cooperation and support for the creation of these tracking systems.

2. VIABILITY OF CREATING A PTS

EIOPA notes in its consultation paper in chapter 1.3 (para 46 and onwards) that a PTS is a 'public good' and that this has implications for proper governance. In chapter 4.4 (para 195 and onwards) EIOPA also mentions that this has consequences as well for funding. If the service of a PTS should be free for participants, and if indeed a PTS has to be independent and objective, which all seem reasonable, it follows that financing has to come from public budgets or from levies on pension providers or a combination of these. Although the creation of a PTS by private initiative and cooperation between pension providers is not entirely impossible (see for instance the example of Denmark), it nevertheless would be very complicated. Some form of compulsion both to provide and share the necessary data, as well as to achieve an equitable distribution of costs, is necessary. This can best be realized by public action. At least in the construction phase of PTSs, public funding, for instance in the form of subsidies, from Member State budgets may be the best option (and the EU budget for an ETS). As mentioned above, the creation of a PTS is a relatively efficient measure to enhance pension-awareness, which in itself is an aim that the EU and Member States should pursue. Allocating more budget to this, at least for the initial phases, is needed to get the development towards more PTSs and a good ETS up to speed.

On page 79 of the consultation paper EIOPA takes the view that the governance of a PTS should be underpinned by being non-profit, independent, credible and transparent. EIOPA suggests that a public-private partnership may provide the optimal form. Usually existing PTSs do involve an active role of pension providers in the governance of the system.

In the OPSG's view, these elements should be included in a recommendation to Member States.

3. FAVOURABLE LEGAL SETTING

EIOPA touches upon legal aspects relevant to the creation of a PTS or ETS in several places throughout the consultation paper.

Para 4.2 is dedicated to legislative requirements, and makes clear that national (legislative) measures are necessary. This in itself underlines that Member States indeed have an important role to play in the establishment of PTSs and an ETS.

Earlier in the consultation paper (the end of para 3.2.2 on data standardization) EIOPA recommends to introduce legislation that prescribes data standards and that empowers an independent body to define and manage data standardization with input from all stakeholders (page 62). And in para 3.3 on connectivity with the European tracking service EIOPA suggests a (European) legal basis for delivering data to the ETS linked to the principle of free movement of workers might be considered, because in some Member States there may be a legal restriction to transfer personal data to the ETS without a legal basis.

EIOPA could be asked to further clarify whether all necessary legislative measures can indeed be taken at the national level, or if some issues can be better dealt with in European legislation, e.g. in a directive. If the latter is the case, a second question could be whether it would be helpful to do more at the European level. Several issues that are of importance for a PTS, and even more an ETS, are closely linked to community law. Relevant examples are GDPR and legislation around the eIDAS regulation.

An interesting observation on the consultation paper is that it does not really discuss whether national competent authorities and/or EIOPA itself should play an ongoing role when PTSs and an ETS are established. Indeed at the national level the role of supervisors seems to be quite limited. It might be useful to draw an explicit conclusion on this aspect.

4. EUROPEAN ASPECTS OF NATIONAL PTS'S, AND THE PERSPECTIVES FOR AN EVENTUAL ETS

Para 3.3 of the consultation paper is dedicated to connectivity with an ETS.

In fact even before setting up an ETS there may be issues to address. A practical problem with some existing national PTSs seems to be that they are difficult or perhaps impossible to consult for residents of other Member States that nevertheless may have built up pension rights in the Member State of the PTS. The EIOPA consultation paper is not entirely clear whether community law already prescribes that a national PTS can be used from another Member State. This could usefully be clarified. In any case it would be helpful if all existing PTSs will be open to residents from other Member States.

A second issue would be that all national PTSs should be made ready to exchange data with an eventual ETS. This may entail some standardization and perhaps also European legislation. It would be a missed chance not to solve this issue up-front, before more national PTSs will be set-up.

5. WHAT ACTION COULD EUROPEAN INSTITUTIONS TAKE UPON AN EVENTUAL EIOPA TECHNICAL ADVICE

Logical possibilities for further steps by the European institutions (esp. the Commission) are:

- a. Taking note of an excellent EIOPA technical advice; leaving further steps to Member States and the pension sector;
- b. The Commission issuing a recommendation to Member States, coupled with ‘best practices’;
- c. The Commission to propose the Council to issue such a recommendation, which would allow the Council to discuss the precise text which may help build political support within Member States;
- d. The Commission to propose a directive with minimum legal requirements at the European level for Member States that choose to create a PTS;
- e. The Parliament could discuss the EIOPA technical advice on its own initiative and in the context of its own resolutions on the CMU action plan, address suggestions to the Commission;
- f. Smaller suggestions:
 - a. EIOPA or the Commission might consider to make further use of the ‘Practitioners’ Network’ for a longer period;
 - b. DG-FISMA should engage with both DG-EMPL (which sponsors the ETS project) and DG-Reform (which provided expertise to Croatia)