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Consultation Paper

on a Report

on

Good Practices on individual transfers of supplementary occupational pension rights

EIOPA – Westhafen Tower, Westhafenplatz 1 - 60327 Frankfurt – Germany - Tel. + 49 69-951119-20;
Fax. + 49 69-951119-19; email: info@eiopa.europa.eu site: https://eiopa.europa.eu/

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Responding to this paper

EIOPA welcomes comments on the Consultation Paper on a Report on Good Practices on individual transfers of supplementary occupational pension rights.

Comments are most helpful if they:

- contain a clear rationale and page reference; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA in the provided Template for Comments, by email CP-15-001@eiopa.europa.eu, by 10 April 2015.

Contributions not provided in the template for comments, or sent to a different email address, or after the deadline will not be processed.

Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents[1].

Contributions will be made available at the end of the public consultation period.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied.

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[1] Public Access to Documents

Executive Summary

This Report summarises the findings of EIOPA regarding Good Practices on transferability of supplementary pension rights in answer to a Call for Advice from the European Commission[2]. It seeks to promote transparency and inform future discussions on this topic.

The Good Practices outlined in this Report depict particular existing rules and practices that facilitate (cross-border) transfers of vested supplementary pension rights.

EIOPA remains neutral as regards the topic of transferability of pension rights itself i.e. does not provide any advice or comments as regards whether a transfer may be preferable to the simple preservation of dormant rights. Any choice between a transfer or the preservation of dormant rights should be made taking all relevant specificities of the case into account, including the nature of the transferring and receiving schemes, applicable national laws, the personal circumstances of the pension rights holder, etc.

EIOPA identified eight main impediments to (cross-border) transfers of supplementary pension rights and the following Good Practices towards overcoming them:

- **Requirements for transferring and receiving schemes**
  - Good Practice 1: Voluntary transfer agreements
  - Good Practice 2: Objective criteria for reasons to suspend a transfer incl. financial sustainability check of schemes
  - Good Practice 3: Same requirements for receiving schemes for domestic and cross-border transfers
  - Good Practice 4: Timeframes for in- and out- transfers
- **Information disclosure and advice**
  - Good Practice 5: Content of information to scheme member
  - Good Practice 6: Systematic delivery of information
  - Good Practice 7: Online tool/portal with (additional) relevant information concerning scheme member's transfer
  - Good Practice 8: Access to advice
- **Costs and charges**
  - Good Practice 9: Charges, if any, to reflect the actual work necessary
- **Process**
  - Good Practice 10: Direct communication between the schemes on transfer execution
  - Good Practice 11: Reasonable time limits for the execution of transfers
  - Good Practice 12: Member involvement reduced to request and decision on transfer

[2] Available at https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/otherdocuments/140520_DG_Letter_to_EIOPA_on__call_for_advice_portability.doc.pdf.

- **Identification of the receiving scheme especially for cross-border transfers**
  - Good Practice 13: Identification of receiving scheme especially for cross-border transfers
- **Calculation of the transfer value**
- **Taxation**
- **Capital pay-out**
  - Good Practice 14: Safeguarding the right to transfer over right to unilateral capital pay-out

1. Introduction

In 2005 the Commission published a proposal for a Directive on improving the portability of supplementary pension rights which i.e. included a right to transfer. In the subsequent legislative process, the topic of transferability was discussed at length (please seen Annex II for further details). The eventually adopted Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights generally contains no provisions on transferability; nevertheless, states in recital (2): "This Directive does not provide for the transfer of vested pension rights. However, in order to facilitate worker mobility between Member States, Member States should endeavour, as far as possible, and in particular when introducing new supplementary pension schemes, to improve the transferability of vested pension rights."

The Commission asked EIOPA for further input and advice on the topic of transfers of supplementary occupational pension rights[3].

The purpose of this Report is to respond to the Call for Advice from the European Commission and to contribute to greater transparency regarding national legal rules and market practices for transfers of supplementary pension rights. The objective is not to give a full comparison of all countries in all aspects but to identify the main obstacles to transfers and Good Practices to overcome these. These apply to both domestic transfers within a country as well as to cross-border transfers.

Furthermore, this Report could be used as a source for stakeholders wishing to improve the conditions for both domestic and cross-border transfers within their schemes. The Report may serve as a point of reference to Member States when transposing the Directive 2014/50/EU ('Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights')[4], and should they wish - in their own decision - to improve transferability of vested pension rights as encouraged by Recital 24 of this Directive. For this reason, the outlined Good Practices have to be considered individually and together with the specific situation in the individual Member States.

With reference to the principles of proportionality and subsidiarity, the Good Practice observations in this report are intended to be neither exhaustive nor universal. Individual Good Practice observations may not be readily applicable in certain Member States, e.g. due to the nature of the individual legal framework or the costs and benefits, or may not be readily applicable to certain schemes, e.g. very small schemes. The Good Practice observations in this report should be regarded as principles-based, with Member States and market participants encouraged to apply them to the extent that they benefit their individual circumstances.

All Good Practices may be applied to both DB as well as DC schemes.

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[3] The Call for Advice is available at https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/otherdocuments/140520_DG_Letter_to_EIOPA_on__call_for_advice_portability.doc.pdf.

[4] Available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0050 Available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0050 Available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0050

For the preparation of this Report, EIOPA benefitted from input from its Member and Observer national authorities on national legal rules and market practices for individual transfers in the course of a job change[5]. The fact-finding exercise revealed the following key outcomes: firstly, in all Member States, the same rules for cross-border and domestic transfers apply. Secondly, there are large differences between transfer regimes applicable in the individual Member States across the EEA. As a result, scheme managers often face difficulties to assess the eligibility of receiving scheme(s) for cross-border transfers. Thirdly, there are a number of different initiatives in various Members States aiming to facilitate transfers (both legislative and voluntary). Finally, there is a lack of quantitative data on transfers in some Member States; the available information on the volume and value of transfers based on the information reported is outlined in Annex I.

Terminology

For the purpose of this Report, the following terms are defined as follows:

- '**Good Practices'** are considered as both rules with respect to facilitating transfers and provisions in relation to transfers as well as market practices themselves.
- '**Supplementary occupational pension schemes'** (in the following, 'pension schemes') are understood as any occupational retirement pension schemes established in accordance with national law and practice and linked to an employment relationship, intending to provide a supplementary pension for employed persons[6].
- '**Transfers**' are transfers of assets/cash/ vested rights between pension schemes, for example in the event of a job change of the scheme member.
- '**Transferability**' is understood as the ability of the scheme member to transfer vested pension rights from one pension scheme to another.

Please see section 2.1 for a visual overview of the different stages of a transfer.

Scope of the Report

The pension arrangements considered in this Report comprise occupational pension schemes under the direct supervision of EIOPA Members, i.e. IORPs as well as other occupational pension plans provided by insurance undertakings[7]. Transfers into personal pension arrangements (3rd pillar) have been also considered.

This Report concerns only individual transfers of vested supplementary pension rights of an individual member; collective transfers of the whole or parts of a supplementary pension schemes are out of scope of this Report.

In addition to obstacles to transferability, which were discussed in this Report, there are two further issues that may cause scheme members' detriment. Firstly, from the scheme member's perspective, it may disadvantageous having several vested rights of rather small value, which are not indexed (DC schemes) and dispersed among

[5] As of 29 January 2015, information was received from the following Member States: AT, BE, BG, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IE, IS, IT, LI, LT, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK and UK. Information is missing from CY, GR and LV .

[6] See Directive 2014/50/EU, Art.3 (b) and Recital 11.

[7] So-called book reserve and PAYG schemes are out of scope of this report.

several schemes (often referred to as “small pension pots”). Some Member States have addressed or are considering addressing this issue by automatic transfers of pension entitlements (so-called “pot follows member” approach). Once again, the decision between a transfer or the preservation of dormant rights has to be made taking all relevant specificities of the individual case into account, including the nature of the transferring and receiving schemes, applicable national laws, the personal circumstances of the pension rights holder, etc. As the above-described “pot follows member” approach takes away the active decision whether to transfer or not from the scheme member – an issue that was seen as a prerequisite for any Good Practice in this report – EIOPA did not include this approach among the Good Practices but will follow with interest how it will prove itself in practice.

Secondly, having several “pension pots” with different providers/schemes bears the danger that the scheme member may lose track of some of his/her pension entitlements. To prevent this, in some Member States, there are online platforms offering scheme members after logging-in a personalised overview of the different entitlements s/he may have accumulated in different schemes[8]. These portals are generally referred to as “pension tracking service”. The European Commission has been currently investigating the possibility of such a pan-European solution.

Legal basis

The legal basis for preparing this Report is Art. 8(1)h[9], 9(1)[10] and 34(1)[11] of Regulation 1094/2010/EU (‘EIOPA Regulation’).

In line with the usual EIOPA practice when issuing Good Practices Reports it is highlighted that the Good Practices identified in the Report are:

- Not legally binding on any party;
- Not subject to the “comply or explain” mechanism provided for under Article 16 of the EIOPA Regulation.

Due to the fact, that the transferability of supplementary pension rights has several contact points with other issues, it was unavoidable to also address questions which relate to social and labour law as well as to taxation. It is recognised, that the latter is not part of the competence of EIOPA and that with regard to institutions for occupational retirement provision, “the Authority shall act without prejudice to national social and labour law”[12]. These restrictions are satisfied by the fact that the Good Practices outlined in the Report are not legally-binding on any party.

[8] For example, in NL, there is one platform providing the scheme member with an overview of all entitlements accumulated in all 2nd pillar occupational schemes. In BE, a platform providing information about entitlements accumulated in the 2nd pillar shall be accessible for scheme members in 2016.

[9] Art. 8 (1) EIOPA Regulation : ”The Authority shall have the following tasks:”
(h): “to foster the protection of policyholders, pension scheme members and beneficiaries”

[10] Art 9 (1) EIOPA Regulation: “The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market (...)”.

[11] Art. 34 (1) EIOPA Regulation: “The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.”

[12] Art. 1 (4) EIOPA Regulation.

Structure of the Report

The Report is structured as follows:

Firstly, section 2 presents some key facts concerning transfers of vested pension rights ('transfers').[13]

Secondly, in section 3, potential impediments to the transferability of pension rights are discussed. These comprise in particular the following areas: requirements for receiving and transferring schemes, information disclosure and advice, costs and charges, process, calculation of the transfer value, taxation, identification of the receiving scheme and capital pay-out. Where appropriate, Good Practices towards overcoming these obstacles are flagged.

Next, section 4 includes an outlook about planned or recently initiated action towards facilitating transferability in different Member States.

Finally, section 5 provides conclusions.

In addition, there are three comprehensive overviews included as Annexes to this Report: firstly, an overview of quantitative information on the number and value of transfers figures in Annex I. As described above, there is a lack of available data in some Member States, therefore the information provided may not be exhaustive or cover all countries. Secondly, a summary of the evolution of the EU policy with regard to transfers is included in Annex II followed by a Literature review on transferability of supplementary pension rights in Annex III.

2. Key facts about transfers of supplementary pension rights

2.1. The process of a transfer

There is no agreed use of the term “portability”. For the purpose of this Report, transfers are considered as one phase of the more general concept of ‘portability’ of supplementary pension rights. Namely, the concept of portability can broadly be split into three respective phases:

1. Acquisition;
2. Preservation, and
3. Transfer.

Acquisition covers the question regarding waiting[14] and vesting[15] periods as well as any requirement regarding (minimum-) age. If the employee stays with the employer (i.e. within the scheme) until the end of both periods, the employee acquires ‘vested supplementary pension rights’.

Preservation covers the question regarding the treatment and adjustment of the value of the vested (dormant) pension rights. If the vested rights are left within the scheme (i.e. not transferred to another scheme) they are called ‘dormant supplementary pension rights’.

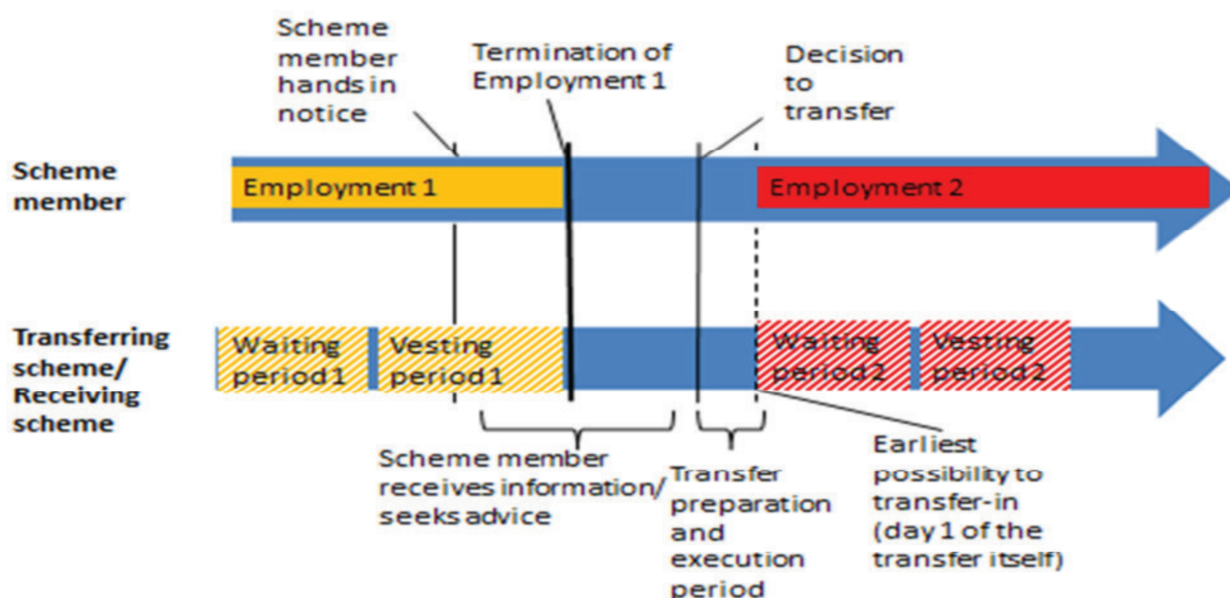
Transferability covers moving (i.e. transferring) accumulated pension rights from one scheme to another scheme.

The transfer process can be roughly visualised as follows[16]:

[14] As per Art.3 (d) of Directive 2014/50/EU, 'waiting period' means the period of employment, required under national law or by the rules of a supplementary pension scheme or by the employer, before a worker becomes eligible for membership of a scheme.

[15] As per Art.3 (e) Directive 2014/50/EU; 'vesting period' means the period of active membership of a scheme, required under national law or the rules of a supplementary pension scheme, in order to trigger entitlement to the accumulated supplementary pension rights available rights.

[16] The aim of the chart is visualise the main steps during a typical transfer process. It assumes a period of unemployment between Employment 1 and Employment 2.



The improvement of transferability is consistent with international standards including the OECD's Guidelines for the Protection of Rights of Members and Beneficiaries in Occupational Pension Plans, which states that "individuals who are changing jobs should be able, upon request, to move the value of their vested account balance from their former employer's pension plan either to the plan of their current employer (where permitted) or to a similar, tax-protected environment provided by an alternative financial instrument or institution." Currently there is no explicit legal rule on the European level which grants members of supplementary pension schemes the right to transfer their pension rights[17].

Following the request in the Call for Advice from the European Commission, EIOPA aimed to gather quantitative information on the transfers of assets within the countries and across borders from its Members. During the mapping exercise, it became apparent that a large number of EIOPA Members did not have such data available. An overview of the information submitted is outlined in Annex I.

2.2. Regulation and voluntary agreements regarding transfers

There are different transfer regimes in the EEA Member States. The reasons for this lie in particular in the differences in the EEA pensions' landscape incl. the relative importance of occupational pensions (2nd pillar). This is reflected in two ways: firstly, in terms of the coverage (i.e. how many people are enrolled) and secondly in the amount of retirement benefits in relation to the income provided from other pillars. In addition, the differences in the labour market structure are also important (e.g. job turnover, dismissal law) as transfers are most relevant to members if they change jobs more often.

In general, the results of the mapping exercise show significant variation in both the regulation of transfers and the practice of voluntary agreements among market

[17] Such a right was envisaged in the original draft of the Portability Directive, cf Annex II. Whether such a right could be derived from the freedom of movement of workers (Art. 45 et. sequ. TFEU) is unclear. Hitherto the ECJ applied this freedom only to vesting periods (Case C-379/09 - *Marutius Casteels v. British Airways plc*).

participants with regard to transfers across the EEA. In 21[18] Member States, pension scheme members have a statutory right to out-transfer[19] their accrued supplementary pension rights or funds within the Member State ('domestic transfer') with an equivalent right to a transfer to another EEA country ('cross border transfer') existing in 10 Member States.

Where no statutory right exists, domestic transfers may be possible as the result of specific agreements (e.g. collective labour agreements or contractual provisions[20] but often cross border transfers are not possible – this is the case in a number of jurisdictions[21].

In most countries, there are however conditions attached to the right to transfer. Most frequently these relate to i) the timing when the transfer can occur (15[22] MS) ii) the type of receiving scheme to which transfers can be made (17[23]), iii) conditions with regard to the sum transferred (5 MS[24]) and iv) conditions with regard to the provision of information or advice to members (6 MS[25]). Only two[26] Member States where transfers are provided for under national law, reported that there are no conditions attached to this statutory right.

Typically, these conditions provide a framework for the transfer of funds/accrued rights between schemes and are not intended to cause undue restriction of an individual's ability to transfer.

Where cross-border transfers are possible, the conditions attached to these are typically similar to or the same as those attached to domestic transfers, although Member States may additionally require that the receiving scheme operates on a similar basis to schemes in their country[27]. Furthermore the right to transfer does generally not vary with the kind of termination of the employment relationship (e.g. voluntary of involuntary separation) or with the origin of the contributions (paid by the employer/employee/both).

Most Member States which provide for domestic and/or cross border transfers have some level of statutory information disclosure or provision requirement in respect of members. In 16[28] countries, there are requirements for the transferring scheme and in 9[29] jurisdictions there are requirements for the receiving scheme with regard to providing information to members in the event of a transfer of rights[30]. In the case of requirements for transferring schemes, in several cases these include advising the member on their rights or options with regard to transfers, including any conditions attached, as well as how transfer values are calculated and quotations. For receiving schemes, typically these involve advising the member what value or pension right

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[18] AT, BE, BG, CZ, DE, ES, FR, HR, HU, IE, IT, LT, LU, NL, NO, PL, PT, RO, SE, SI and UK.

[19] There is not necessarily a corresponding right to in-transfer at the scheme of the new employer (receiving scheme), cf AT.

[20] E.g. in DK.

[21] BG, CZ, ES, NO, SE and SI.

[22] AT, BE, CZ, DE, ES, IE, IT, NL, LT, LU, PL, PT, and UK.

[23] AT, BE, BG, CZ, DE, ES, FR, IE, IT, LI, LT, LU, PL, PT, SE, SI and UK.

[24] AT, BE, DE, ES, MT,NL and UK

[25] AT, BE, CZ, IT, NL and PL

[26] NO and RO.

[27] See section 3.1. for further details.

[28] BE, CZ, DE, ES, FR, HR, IE, IT, LI, MT, NL, PL, PT, RO, SE and UK.

[29] BG, CZ, DE, DK, ES, HU, NL, SE and UK.

[30] N.B. in CZ, DE, ES, NL, SE and UK requirements sit with both transferring and receiving schemes

their transfer 'buys' in the new scheme, as well as information about the new scheme common to all new members.

Outside of legislation and the statutory framework in each Member State, as discussed above, there is little common, voluntary practice such as industry codes or ad-hoc agreements above what is required in regulation. This may be because the legal frameworks for transfers are already well enough defined as to not require additional codes of practice or agreements. However, some instances of common practice are in evidence. For example, in one Member State[31], within the framework of the national insurance association, an agreement on transfers for occupational pensions has been made – this includes rules on how to calculate transfer values – while the association has also provided a common IT infrastructure for providers to process transfers between participants. Similarly, in another jurisdiction[32] evidence suggests most market participants use a single IT platform for processing transfers between defined contribution scheme and the industry has produced a code of practice on transfer incentive exercises. In a third Member State[33], rules established by national legislation are endorsed by an agreed common standard amongst market participants whilst in a fourth jurisdiction[34] some schemes have agreed on a transfer convention.

[31] DK
[32] UK
[33] RO
[34] DE

3. Potential impediments to the transferability of pension rights and Good Practices towards overcoming them

3.1. Requirements for transferring and receiving schemes

It is generally not allowed to transfer the accrued pension rights upon ending active membership to any scheme/bank/investment fund the member wishes to, as almost all Member States provide for conditions/restrictions regarding the receiving scheme where a member has the statutory right to transfer. **As a consequence of the requirements for transferring and receiving schemes, many transfers cannot be carried out**.

The reasons for these conditions are varied. The main motivation is to assure that the accrued pension rights continue to be used for old age security. Since only specific institutions provide for retirement benefits (esp. annuities), the kind of possible receiving institutions/schemes is restricted.

In this section, the overarching aspects are outlined first, followed by a more detailed discussion of the most frequent conditions imposed by Member States.

Overarching aspects

The way in which regulation is designed can affect the conditions for receiving schemes. In three Member States[35], the conditions regarding the receiving schemes are regulated by (collective) agreements e.g. for different industry sectors, and not by law. This gives more flexibility on the one hand. On the other hand, this diversity could lead to additional impediments for transfers between the different transfer regimes.

In two jurisdictions[36], this is addressed by collective agreements covering a large number of scheme providers/sponsors.

In one Member State[37], members are entitled to transfer their individual position among different pension plans, both occupational and personal. Scheme members may transfer the amount accrued in their individual account to another pension fund at any time, after a two years-minimum period of membership. Employer's contributions may also be directed to the new pension plan under the conditions set by the relevant collective agreements. Pension funds must execute the requested transfer within six months starting from the application date.

In one Member State[38], industry-wide pension funds cover over 60% of the labour population, with participation in most of these funds mandatory for both employers and employees. This means that switching employers would not necessitate a transfer if the member keeps working in the same industrial sector, and therefore remains a member of the industry-wide pension fund.

[35] DK, NO and SE.

[36] DK and SE

[37] IT

[38] NL

Good Practice 1: Voluntary transfer agreements

In the absence of a general statutory rule on transfers, EIOPA considers it a Good Practice if the scheme providers/sponsors agree on a regime for transfers.

Such an agreement should cover as many scheme providers/sponsors as possible.

In one Member State[39] the conditions regarding the receiving scheme are regulated by statutes of the pension fund (IORP) which have to be approved by the NCA.

In two jurisdictions[40] a transfer is only possible if the rules of the scheme provide for a transfer. In other Member States, a cross-border transfer requires an agreement between the pension provider and the member[41].

In a further jurisdiction[42], the conditions for receiving schemes are regulated by law but this law does not provide for a list of conditions which must be met. Instead, the law provides a list of rather open conditions regarding circumstances when a transfer may not occur[43].

To safeguard however the interests of the scheme member and his/her right to transfer, it appears beneficial to formulate clear and objective criteria to be met first before a transfer can be suspended. One example of such practice are the checks on the funding status of DB schemes which are carried out in some Member States[44]. Namely, transfers could have an effect on the funding position of the transferring DB scheme, especially if the transfer amounts are relatively high or many members transfer within a short period of time (e.g. restructuring / mass layoff). Receiving schemes can become underfunded if not sufficient assets are transferred to cover the associated rights e.g. as a result of different actuarial methods used by the schemes involved (see also section 3.5. Calculation of transfer value).

Underfunded schemes may not be able to pay benefits to remaining scheme members. For this reason, schemes may impose restrictions or postpone transfers reflecting the funding status.

For example, in one jurisdiction[45], the transfer is not permitted if the funding ratio of either the transferring or the receiving DB scheme is below 100% at the date of the transfer request. If the funding position recovers the transfer is permitted. In the other jurisdictions[46], trustees of DB schemes are required to consider the impact of transfers on the funding position and can reduce transfer values in extreme cases to account for this.

As a result of the consideration above, EIOPA suggests the following Good Practice:

[39] PT

[40] ES and SE

[41] LU

[42] HR

[43] E.g. the transfer can be suspended if it is in the interest of the public or the fund members.

[44] NL and UK

[45] NL

[46] IE and UK

Good Practice 2: Objective criteria for reasons to suspend a transfer including financial sustainability checks of schemes

EIOPA considers it a Good Practice if any reasons foreseen in the transfer regime to suspend a transfer are clearly formulated and accompanied by objective criteria - including those regarding the financial sustainability of the transfer(s) for the schemes involved - indicating when these are met.

In some countries, some aspects of the qualifications of the receiving scheme are regulated in the national tax code[47]. This could mean that a transfer which does not comply with these rules may be regarded as valid but the member may lose tax advantages that were accumulated whilst saving in the scheme. In one Member State[48], for example, a transfer to an overseas scheme which is not approved by the national tax authority as a Qualifying Recognised Overseas Pension Scheme (QROPS) is not forbidden by law but may be refused by the domestic scheme, or the transfer sum will be subject to taxation at the rate of 40%.

Generally, Member States do not differentiate between the transfer requirements for DB[49]/DC[50] or hybrid[51] schemes, but provide the same transfer requirements for all transferring schemes.

Furthermore, Member States do not differentiate between conditions for domestic and cross-border receiving schemes. This approach is in line with the single market philosophy. In practice, applying these conditions may however be more difficult in a cross-border context.

Good Practice 3: Same requirements for receiving schemes for domestic and cross-border transfers

EIOPA considers it a Good Practice that the same requirements for receiving schemes apply for domestic as well as cross-border transfers.

In the following, some specific conditions regarding the transferring and receiving schemes are discussed in greater detail.

Specific conditions regarding

47 e.g. DK regarding a transfer from 2nd to 3rd pillar

48 UK

49 Defined benefit (DB): In a DB scheme, benefits are defined in advance, independent of the contribution rate, asset returns, so the main risks are borne by the employer and/or the pension provider.

50 Defined contribution (DC): In a DC scheme, benefits depend on contributions paid and asset returns so the main risks are borne by the member.

51 A hybrid scheme is a mixture of elements of a DB and a DC scheme.

A) Legal Status

In one Member State[52], if the transferring scheme is a group insurance scheme, the receiving scheme must also be an insurance scheme (either 2nd or 3rd pillar).

In another jurisdiction[53], an IORP can transfer the pension rights only to another IORP, although there is more flexibility when the transferring IORP is a 'retirement savings scheme'[54].

In a third Member State[55] scheme members generally have an individual right to transfer to the scheme of a new employer if there is an agreement between the old and the new employer and the employee. Furthermore, in the absence of such an agreement, the employee has an individual right to demand a transfer within one year following the termination of an employment relationship with an employer, and only if the transferring scheme is provided by an IORP or insurance company and if a certain amount is not exceeded.

For cross-border transfer cases the identification of the legal status of the receiving scheme becomes particularly important. So even if a foreign scheme qualifies as a receiving scheme, problems could arise to verify this qualification; see section 3.6. for further details.

B) Transfer between 2nd and 3rd pillar

Depending on the national set-up, there could be large differences between the 2nd and 3rd pillar. Therefore, in several Member States, transfers from the 2nd to the 3rd pension pillar are not permitted[56].

Nevertheless, in some Member States[57] transfers from 2nd to 3rd pillar are allowed; in some cases subject to special regulation. For example, in one jurisdiction[58] the pension rights can be transferred to a 3rd pillar life insurance contract but there must not be a right to cash surrender. In another Member State[59] transfers from the 2nd to the 3rd pension pillar (to Individual Retirement Account) are allowed: when an employee ends employment in a particular employer who runs a scheme in which s/he is the member; in the case of a liquidation of a scheme within particular employer; or to the beneficiary's Individual Retirement Account in the event of the participant's death.

C) Timeframes

Certain timeframes may apply to request the transfer-out of the transferring scheme. In addition, the transfer-in may be allowed only at a certain point in time.

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[52] FR
[53] PT
[54] Such schemes are DC pension schemes whose benefits are strictly regulated in law (not attached to a specific service provider) and may take the form of IORP, insurance contract or investment fund (all should include "retirement savings scheme" in its commercial name). The right to such scheme pensions can only be transferred to another retirement saving scheme.
[55] DE
[56] BE, DE, FI, LT, LU, NL, RO, SE, SI
[57] AT, ES, FR, HR, IT, MT, PL, UK
[58] AT
[59] PL

More concretely, with regard **to transfers-out**, it is understood that in most countries there is a limitation on the timeframe during which a transfer-out can be requested. This could have negative implications on the member, for example:

- In the context of a job change the member may focus on other topics than his supplementary pension rights and miss the deadline to transfer his rights.

In some Member States a transfer to the scheme of the new employer requires that the member is already enrolled in the new scheme. But if the new scheme provides for a waiting period, the actual enrolment may take place few years after the job change[60]. If the timeframe for the transfer is shorter than the waiting period the employee cannot transfer his supplementary pension rights to the scheme of the new employer. If the new employer does not offer an occupational pension and the employee changes to another employer which offers such a scheme only after working for several years, the opportunity to transfer-out from the scheme from the original employer may be easily over. On the contrary, in several Member States[61] it is allowed to transfer any time after the termination of the employment relationship up to retirement.

Furthermore, concerning the **transfers-in**, most Member States allow for transfers only to the scheme of a new employer. If the new employer does not offer an occupational pension scheme, one Member State[62] provides for a default option insofar as the member can transfer his current pension rights to a former scheme where he already has existing, dormant pension rights.

Some Member States[63] provide that pension rights can only be transferred to the scheme of a new employer and only when the employee is already enrolled in the new scheme. The latter can pose an obstacle if the new scheme provides for a waiting period because the member is not enrolled and thus is not allowed to transfer during this period. According to the 2014/50/EU Directive, this period could take up to 3 years[64]. In one jurisdiction[65], employees have the legal right to transfer their pension rights to the pension institution of the new employer if the employee becomes a member in the pension scheme of the new employer. Most employers provide for a so called "welcome structure contract" to manage the transferred reserves. The welcome structure contracts often allow members to individually choose their (death) coverage. If the new employer does not provide for a pension scheme, it is always possible to transfer the pension reserves to a specific pension institution which shares its benefits and limits the costs in accordance with the applicable law.

Situations where the above conditions for transfers-in and out are combined (e.g. time limitation during which a transfer out can be requested and the requirement to transfer-in to the scheme of the new employer only), may lead to scheme member detriment (e.g. in case of an unemployment period, the scheme member would not yet know the scheme of his new employer and may therefore not be in a position to request the out-transfer within the set period).

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[60] The enrolment takes place once the waiting period has been completed. Following the enrolment, the scheme member starts building up vested supplementary pension rights. According to the 2014/50/EU Directive, the combined duration of the waiting and vesting period may take up to 3 years. For illustration, please see section 2.1. of the report for a chart visualising the process of a transfer

[61] AT, BE ,PL and SE (in the case of latter, for DC schemes)

[62] AT

[63] AT and RO

[64] For illustration, please see section 2.1. of the report for a chart visualising the process of a transfer.

[65] BE

To circumvent this, EIOPA identified the following Good Practices with regard to the timeframes for both in- and out-transfers:

Good Practice 4: Timeframes for in- and out-transfers

EIOPA considers it a Good Practice if the transferring scheme allows for a sufficiently long period to request an out-transfer, ideally until retirement or other benefits are due.

Furthermore, EIOPA considers it a Good Practice if the scheme member is allowed to request an in-transfer of his supplementary pension rights at any time during his membership in the new scheme or the new pension institution.

For further details regarding the timeframes for the execution of the transfer – once requested – please see section 3. 4. Process.

D) Benefit structure of the receiving scheme

Generally, Member States do not require that the receiving scheme must offer the same benefit structure as the transferring scheme. But there is often an implicit condition in this regard, insofar as the type of receiving provider is restricted by regulation and the law prescribes a certain benefit structure for providers in general[66].

In one jurisdiction[67], all schemes are DB schemes, DC schemes are prohibited. Hence the receiving scheme must also be a DB scheme. In a third Member State[68], a transfer from a DB scheme can only take place to another DB scheme. In three other jurisdictions[69], the receiving scheme must offer the same benefit structure as the transferring scheme. Finally, quite on the contrary, yet another jurisdiction[70] explicitly allows transfers of DB benefits to a DC scheme and transfers of DC funds to a DB scheme.

3.2. Information disclosure and advice

Where members are required to make an active decision over transferring vested pension rights, it is important that they are able to make an informed decision – therefore, it is essential that sufficient information is given to members concerning the implications of transferring as they may not be aware of the transfer options. In this context, previous EIOPA guidance[71] concerning the communication to scheme members as regards easy access to information, use of appropriate language and layering of information is particularly relevant. In this context, EIOPA was pledging for a "new approach to information disclosure": providing only the information that is

[66] E.g. in AT, IORPs must offer an annuity and survivor benefits
[67] DE
[68] NO
[69] FR, DK and LT (in case of the latter, depending on the applicable collective agreement)
[70] NL
[71] For further details see in particular EIOPA (2013) Good EIOPA, Good practices on information provision for DC schemes; available at https://eiopa.europa.eu/Publications/Reports/Report_Good_Practices_Info_for_DC_schemes.pdf.

required by law may not be effective. Instead, EIOPA recommended basing the information disclosed on the latest insights from behavioural economics: people are not "homo economicus", they have limited time and motivation to be involved in retirement planning, and they often use rules of thumb to quickly process information. For this reason, a "layering approach" seems most appropriate: in a first layer of information members should be able to find answers to their 'key' questions. In subsequent layers of information members should be able to retrieve answers to further questions. The content can be more complex for engaged members.

Additionally, legal information should be retrievable and be written in comprehensible language.

Furthermore, since the information provides only the basis for the scheme member to decide whether to transfer; the scheme member may benefit also from advice on how to assess this information in his specific case. This section therefore distinguishes between these two aspects.

A) Information disclosure

In the following, further details regarding the content, parties responsible and the occasion for the provision of information relevant to request a transfer are outlined.

It is worth noting in this context that EIOPA provided advice to the European Commission on information disclosure requirements as part of the review of the IORP Directive in 2012[72]. The advice stated that information in occupational pension schemes should be correct, understandable and not misleading. The advice suggested that, for defined contribution schemes, it would be useful to introduce a requirement of a pre-enrolment information document – the Key Information Document (KID). In particular, such a KID could contain information about the objectives and investment policies, performance, costs and charges, contribution arrangements, a risk/reward profile and/or the time horizon adopted for the investment policy.

With respect to costs and charges, in particular, EIOPA supported provision of full disclosure of all costs, whether investment or transaction costs, to give members and beneficiaries a full picture of the returns on their pension products. A layered approach was suggested where members would receive simple and comparable information on the key elements and would have easy access if they wished to other more detailed material.

European legislation allows different provisions on information disclosure in the event of a transfer depending on the legal status of the scheme provider (insurance companies or IORPs) although the IORPS-specific provisions could be also applied to insurance companies[73]. Some Member States implemented the European legislation in this way[74].

It should also be noted that EIOPA has been consulted by the Commission to provide technical advice to develop an EU Single Market for personal pension schemes to

[72] EIOPA-BOS-12/015, 15 February 2012, EIOPA's Advice to the European Commission on the review of the IORP Directive 2003/41/EC: https://eiopa.europa.eu/Publications/Consultations/EIOPA-BOS-12-015_EIOPA_s_Advice_to_the_European_Commission_on_the_review_of_the_IORP_Directive.pdf

[73] Art. 4. of IORP Directive; available at http://eur-lex.europa.eu/legal-content/en/ALL/;ELX_SESSIONID=nLRhJ4KP3gX2NThsDqGRYF97mYSvHcGthfB5tmnM7GdQs98CbBVl!-955968323?uri=CELEX:32003L0041.

[74] AT, SE and NO

support the development of personal pension products (PPP) in Europe[75]. An EU-wide framework for PPP's can contribute to meeting the challenges of an aging economy, the sustainability of public finances, an adequate retirement income and long-term investment. In this respect, the mandate contains, inter alia, a request for advice on cross-border and transfer issue between PPPs and information requirements in terms of content and presentation.

According to the results of the mapping exercise conducted, no Member State has specific information provisions for cross-border transfers and the same national rules as for domestic transfers apply.

At national level, most Member States have legislative or regulatory requirements over the information to be provided to members regarding transfers, but there are examples of collective agreements being the main source[76] or an important source[77]. In most Member States, it is the task of the transferring scheme to provide members with this information[78]. However, two Member States[79] noted the role of the sponsoring employer in providing information regarding general features of the scheme, including information on transferring vested rights.

The information relevant for the transfer can comprise the following elements: transfer value, transfer options, procedure, time frames and tax implications of a transfer. However, it can be argued that the economic consequences of the transfer are more important for the decision whether to transfer compared to procedural or administrative requirements.

In some Member States[80] this information is accompanied by a form for requesting the transfer.

In addition to the information regarding their accrued rights, transfer value and transfer process, in some Member States[81], the sponsor of the transferring scheme is also obliged by law to provide the scheme member with information regarding the cessation of a specific risk coverage (e.g. in the case of death) when leaving the employment and/or ending the accrual in the scheme.

If for example a scheme member has a special risk coverage in case of invalidity, the part of the contributions used for the coverage of this risk will generally not be transferred to the new scheme (as in any other cases of risk insurance). It is of particular relevance for the scheme member to be informed about this as s/he may otherwise not be aware about the loss of this specific risk coverage. However, if informed sufficiently in advance, s/he may either take steps to maintain/arrange for sufficient coverage or reconsider the decision to transfer.

This leads EIOPA to propose the following Good Practice:

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[75] Available at https://eiopa.europa.eu/Publications/Requests%20for%20advice/Personal_pension_EIOPA_Anexx_-_CfA_EIOPA.pdf. Already in July 2012, the Commission requested EIOPA to provide technical advice to develop an EU Single Market for personal pension schemes and in February 2014, EIOPA delivered the preliminary report 'Towards an EU-single market for personal pensions: An EIOPA preliminary report to COM' available at https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-14-029_Towards_an_EU_single_market_for_Personal_Pensions-_An_EIOPA_Preliminary_Report_to_COM.pdf.

[76] E.g. in ES

[77] DK

[78] In some countries, the sponsor is obliged to inform the scheme (or its manager) of the cessation of the employment relationship first in order for the scheme to provide this information (e.g. in BE and NL and AT).

[79] AT and BE

[80] UK and on a voluntary basis, AT and BE

[81] E.g. BE

Good Practice 5: Content of information to scheme member

EIOPA considers it Good Practice to inform the scheme member about all aspects concerning the transfer needed to reach a decision whether to transfer (e.g. transfer value, transfer options, procedure, timeframes (if applicable), impact of the transfer on benefits and other specific risk coverage (if applicable - incl. whether any specific risk coverage may be lost as a result of the transfer) as well as the tax implications of a transfer. Since the economic consequences of a transfer are arguably most important for the member, all reductions and costs associated with a transfer should be clearly stated.

This information can be given on different occasions; the most common practice is upon termination of the employment relationship; however, in some Member States relevant information is provided on a regular basis[82].

As explained above, when changing jobs, the member may be preoccupied with issues other than his supplementary pension rights, and might omit to inform himself about transfer possibilities. As a result, in the worst case, he might even miss the deadline to transfer his rights. To prevent this from happening, most Member States require the automatic delivery of information relevant for the transfer when the employment relationship is terminated. This practice is also supported by EIOPA.

Good Practice 6: Systematic delivery of information

EIOPA considers it Good Practice for members to be systematically (i.e. without request) provided with the relevant information upon the termination of the employment relationship.

In addition, members can also receive further information if they request this[83]. This information can be given via e-mail, phone, physical meeting or in an online platform/portal. An online tool exists in several Member States[84]. In one Member State[85], members can in practice easily receive further information on request, but it is not imposed by law.

This practice of layered information provision follows the approach suggested in the EIOPA Report on Good Practices on information provision for DC schemes[86] described also above. Therefore EIOPA would like to suggest the following Good Practice:

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[82] In BE, FR and LI (part of the) relevant information is provided in the annual statements. Furthermore, In FR there is no IORP's pension specific rules, but life insurance related rules apply.

[83] E.g. in AT, NL

[84] AT, DK, NL, and UK

[85] BE

[86] Available at https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/Report_Good_Practices_Info_for_DC_schemes.pdf .

Good Practice 7: Online tool/portal with (additional) relevant information concerning scheme member's transfer

EIOPA considers it as Good Practice to provide the scheme member with access to an online tool/portal with (additional) relevant information concerning his/her transfer.

B) Advice

Not all scheme members are sufficiently financially literate to understand and assess the information in their specific cases, therefore some of them may also benefit from personalized advice (for example, over the implications of transferring, comparison of benefits between the transferring and receiving schemes, etc.).

Advice may be provided by the transferring scheme[87] or by the receiving scheme[88], workers' representatives or employers, through regulated advice (e.g. via an independent financial adviser) or even by the supervisory authority or Ministry of Labour and Social Policy[89] (sometimes these institutions provide a legal advice in complicated cases on request of the member, employer or provider).

Where advice is provided by the scheme (usually by answering general questions), its cost is typically included in the general management fee[90]. Where the advice is provided by the scheme sponsor or workers' representatives, some Member States[91] indicated that this advice is free of charge. However, for very comprehensive advice in case of complex transfers (e.g. in some cross-border cases) additional costs may be charged[92].

However, where independent advice is provided the member will pay for this advice - typically this is directly paid for by the individual, although one Member State[93] noted that the employer may in some cases bear this cost and in another jurisdiction[94] the trade unions pay for the cost of financial advice to members.

Good Practice 8: Access to advice

EIOPA considers it as Good Practice for the scheme to offer to the scheme member the opportunity to hire or receive advice.

[87] e.g. in ES, NL, PL, UK
[88] e.g. in NL and in PT for transfers between 'retirement savings schemes'
[89] In PL
[90] AT, BE, CZ, SE, UK
[91] AT, BE, SE and NL
[92] practice e.g. in AT
[93] DK
[94] SE

3.3. Costs and charges[95]

Although stakeholders may not always be aware, there are economic costs associated with each transfer (e.g. administrative). This section focuses on the calculation of the amount that is charged which will impact the level of the final amount transferred.

Some Member States forbid charging the member for the transfer[96]. In other Member States, the scheme member is freed from paying for transfers to schemes administered by the same manager[97], or for transfers that occur after a minimum timeframe since enrolment[98].

On the other hand, the scheme member will be charged for carrying out the process of a transfer in the majority of Member States. As regards who bears the costs of processing a transfer; it is usually either the member[99] or the employer[100].

Some Member States regulate by law the way in which fees or parts of fees are calculated. One possibility is to link the amount charged to a percentage of the transferred amount; this amount, where applied in current practice, ranges between 0.5% - 5% of the transferred value[101]. Another possibility is to charge a fixed amount for a transfer[102]. Furthermore, in some Member States both previous options are combined[103].

In another jurisdiction[104], the law sets that IORPs could not apply costs that may prevent the exercise of the individual right of pension transferability.

The above analysis shows that there are large differences among the Member States in the amount that is charged for a transfer. Some Member States have taken measures to limit disproportionate costs e.g. by introducing caps on the maximum amount that can be charged. This seems reasonable especially since the work associated with processing a transfer seems less related to the transferred amount than to the complexity of the transfer. This leads EIOPA to propose the following Good Practice:

Good Practices 9: Charges, if any, to reflect the actual work necessary

In cases where the scheme member is charged for the transfer, EIOPA considers it as Good Practice to calculate the charges according to the actual work necessary to carry out the transfer and not to the transfer amount.

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95 As per the EIOPA Annual Work Programme 2014, EIOPA intended to "collect evidence on costs and charges for occupational pension schemes" with the view to "Identify the categories of costs and charges (both direct and indirect), agree on definitions and work towards uniform ways of quantifying them for defined benefit and defined contributions schemes for the benefit of transparency for members and beneficiaries.". This will be a separate deliverable from this report.

96 BE, CZ (in some cases), ES, FR (for contracts older than 10 years), NL, PL and PT (in some cases).

97 HR, PT (in some cases), and SE

98 PT and SE

99 e.g. in HR, LT, DK, RO, BG, SI

100 e.g. in NO

101 e.g. in FR (5% of mathematical provision of the contract), LT (0.5%, but only applicable to one transfer/year), PT (0.5%) and RO (5%)

102 BG, AT, CZ, SI. For example, according to the Bulgarian legislation the maximum amount of the transfer fee is 20 BGN (approx. 10 EUR). For SI transfer costs are flat (currently 15 EUR), must be paid by member together with application of transfer and cannot be subtracted from the transfer value

103 AT: up to 1% of the transferred amount but with a maximum cap of € 353,40, which is indexed every year; PT there's a market practice to fix a cap of € 25 as absolute maximum chargeable.

104 IT

3.4. Process

In addition to potential impediments to conditions for transfers as discussed above, there are potential practical obstacles to the timely and efficient processing of transfers. These may include requirements for the member when requesting a transfer, processing requirements for the transferring or receiving scheme or technical impediments such as inefficient systems or payment methods.

Whilst these elements may not always have the effect of restricting the individual's right to a transfer, if these impediments are pronounced, there is the potential for a disincentive effect on members seeking to transfer their pension rights or on schemes allowing them where no absolute right exists. Inadequate or burdensome processing of transfers may also increase the cost associated with transferring, and therefore have an indirect effect on the affordability of transfers.

Administrative problems, such as the complexity of transfer forms or other requirements on members, and the time taken to complete a transfer, may also discourage members from acting to initiate a transfer in the first instance.

In this context, Good Practice with respect to transfer processing can be understood as any process which reduces the practical burden associated with completing a transfer, either from the perspective of the member (e.g. in making the initial transfer request) or from the transferring or receiving schemes (e.g. efficient processes, automation, etc.), which are likely to lead to quicker, easier (more efficient) and hence less expensive transfers.

Where the procedural requirements to accurately process transfers are significant, this may create burden on the transferring or receiving scheme in respect of completing a transfer. One Member State[105] noted that market participants referred to the weight of information required to process a transfer – namely historic contributions, accumulated income and value of eventual intended payments to members – in order to apply the relevant fiscal regime. Another jurisdiction[106] pointed out that complying with process requirements could be burdensome for the transferring scheme, although not for the receiving scheme.

Transfers may be unduly complex or take longer to complete if there is insufficient communication and cooperation between the transferring and receiving scheme – this may lead to inefficiencies which prove burdensome or discourage transfers. Several Member States[107] noted that receiving schemes are typically actively involved in the transfer process instead of being passive and merely receiving notifications and funds. One Member State[108] reported that the transferring scheme is actively contacting the receiving scheme to clarify open issues or details. In other jurisdictions[109] the member can request the transfer directly from the receiving scheme and does not need to communicate also with the transferring scheme.

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[105] PT

[106] PL

[107] CZ, HR and NL

[108] AT

[109] UK and PT (in some cases)

Good Practice 10: Direct communication between the schemes on transfer execution

EIOPA considers it Good Practice if the schemes communicate directly with each other on the practicalities of a transfer execution, instead of via the member. Furthermore it is considered Good Practice if the member has to communicate only with one of the two schemes.

The burden associated with processing transfers may lead schemes or providers to restrict in-transfers, creating a barrier to individuals freely transferring their benefits or exercising their right to transfer. One Member State[110] responded that the level of costs and process associated with transfers has led some providers to impose minimum limits on transferred-in amounts, meaning individuals with small pension pots may find it difficult to find a willing receiving scheme. A contrary argument can be found[111], where providers are allowed to surrender a pension pot if the pension benefit is very small, because of the (in relative sense) excessive costs of administering such small pension pots. If a provider wants to use this possibility, he will first have to enable the member concerned to transfer the (small) pot to a different provider, who generally cannot refuse the transfer-in.

The time taken to complete transfers can also be regarded as an impediment to their efficient and effective processing. In some Member States these can take several weeks or months to process – although it should be noted that the process of disinvesting assets and realising a cash transfer value is not always straightforward. Some Member States have responded to this by setting legal deadlines for transfers to be completed[112].

Good Practice 11: Reasonable time limits for the execution of transfers

EIOPA considers it Good Practice to define time limits for the processing and execution of transfers.

These time limits should be reasonable and appropriate for the process and tasks required however without unnecessary delays.

Since the actual processing of the transfer involves many administrative issues (e.g. submitting the bank account number details of the receiving scheme), it seems efficient that these issues are handled directly by the schemes; this is also the case in several Member States[113], and motivated EIOPA to propose the following Good Practice:

[110] UK

[111] NL

[112] e.g. 10 working days in PT and 30 days in PL

[113] AT, NL and in PT (in some cases)

Good Practice 12: Member involvement reduced to request and decision on transfer

If and once the scheme member decided to transfer, EIOPA considers it Good Practice if his/her further active involvement in the process of a transfer is limited to requesting the transfer.

Specifically in the case of cross-border transfers, satisfying additional requirements under national law may prove complex if there are insufficient procedural aids – one Member State[114] noted strong market demand for a central database where the transferring provider can see all eligible receiving providers in order to fulfil its requirement to check the eligibility of the receiving scheme. In general, the above jurisdiction reported that the burden associated with processing cross-border transfers is heavy and felt to be disproportionate by market participants. In another Member State[115], to mitigate such burden, the tax authority provides market participants a list of Qualifying Recognised Overseas Pension Schemes (QROPS) to which transfers, including cross-border transfers, can be made.

3.5. Identification of the receiving scheme especially for cross-border transfers

Since it is not allowed to transfer to any institution the member may wish, the transferring scheme has to check whether the receiving scheme is eligible to receive a transfer (see section 3.1. regarding the requirements for receiving schemes). This is rather straight-forward for most domestic transfers as in most countries registers provided by the NCAs of licenced pensions providers exist that can be easily accessed and understood by the transferring scheme(s).

The identification of the receiving scheme with legal certainty may be difficult for cross-border cases. The reason is that transferring schemes may not be familiar with the pensions landscape in other countries. Although they may possibly access the online registers of pension schemes providers in other EEA Member States (if publicly available[116]), these tend to be in local foreign language and may not contain sufficient details for the transferring scheme to conclude whether the receiving scheme would fulfil the requirements. For example, in some countries[117] the receiving scheme has to offer certain benefit structure (e.g. obligatory survivor benefits and annuities and no lump sum payments).

There is a number of different initiatives to overcome these impediments. For example, in one Member State[118], the prohibition of lump sum payments is part of the national Social and Labour Law requirements, and cross-border IORPs can add this prohibition to their local scheme rules for the purpose of the national scheme participants. Furthermore, the pension scheme providers in this jurisdiction developed a questionnaire in the English language that is sent to the foreign receiving scheme.

[114] AT

[115] UK

[116] e.g. PT and AT

[117] AT, NL

[118] NL

In another Member State[119] for a cross border transfer to take place the receiving scheme must be registered at the national tax authorities as a so called Qualifying Recognised Overseas Pension Scheme (QROPS). To become a QROPS the foreign scheme must fulfil certain conditions (e.g. to be regulated as a pension institution, the scheme must be open to persons resident in the country in which it is established and the scheme must be authorised by the tax authorities of the home state of the QROPS). In this Member State also for domestic transfers the receiving scheme must be registered at the national tax authorities (HRMC-registered).

Based on the above described experience with the identification of receiving scheme(s), EIOPA would like to propose the following Good Practice:

Good Practice 13: Identification of receiving scheme especially for cross-border transfers

EIOPA considers it Good Practice if there is a mechanism (e.g. a register) or other practice (e.g. questionnaires) to help the transferring scheme to identify with legal certainty whether the receiving scheme is eligible to receive a transfer, especially for cross-border transfers.

3.6. Calculation of transfer value

Where transfers are permissible, in the majority of Member States there are legislative rules for the calculation of transfer values. In the majority of these Member States, these rules form part of the national Social and Labour Law, which means that a cross-border IORP would also be required to use this calculation method for members to which this Social and Labour Law applies.

However, a number of Member States indicated that no legislative rules on the calculation of the transfer value exist[120]. In these cases, the method of calculation is either covered by individual agreements among the pension schemes or by a collective agreement among the industry[121]. Anyway actuarial standards and practice play an important role. These standards often give some discretion to actuaries which can lead to different methods at the schemes.

As regards the concrete calculation method, different rules tend to apply depending on whether the scheme member is transferring from and into a DC or DB scheme.

In the case of **defined contribution transfers (i.e. between DC schemes)**, the transfer value typically represents the cash value of the member's holdings in the scheme, i.e. by converting the member's holdings into cash.

For transfers where **at least one of the schemes involved is a DB scheme**, certain actuarial assumptions are followed (e.g. with regard to the discount rate) in order to establish the monetary value of the vested rights or vice versa. These assumptions can be either spelled out in the national legislation[122] or specified in the scheme

[119] UK

[120] e.g. CZ, DK

[121] e.g. in DK

[122] e.g. AT, BE, IE, ES, MT, NL and UK

rules[123]. In addition, the Actuarial Association of Europe (AAE; formerly called Groupe Consultatif) recommended a number of principles to the followed for the calculation of the transfer value from DB plans. [124]

The method for calculating the transfer value to be paid from the transferring scheme may be considered as a potential impediment if the calculated sum to be transferred is less than the vested rights. This deduction can constitute major costs to the member from an economic point of view.

Where cross-border transfers are allowed, the calculation usually follows the same approach as for domestic transfers.

EIOPA stresses the importance of member information about the transfer value.

3.7. Tax

Taxation and in particular the differences among the tax regimes and tax treatment of transfers/capital pay-out are considered by Member States responding to the mapping exercise to be one of the major impediments in particular to cross-border transfers.

With regard to the taxation of **domestic transfers** (in- and out-), the absolute majority of Member States responded that such transfers would typically not be subject to tax.

On the other hand, should the transfer not meet certain conditions, a tax may be charged. More concretely, in one Member State[125], domestic as well as cross-border transfers may be taxed if the specific transfer changes the nature of the product[126]. Similarly, in another jurisdiction[127] transfers must be to another registered pension scheme set up to provide retirement benefits, or - if pensions are already in payment

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[123] LU

[124] These principles encompass in particular the following:
1. The Transfer Value should be the fair value of the benefits to which the member would be entitled as a deferred pensioner on leaving service.
2. Allowance should be made for any entitlement to
a) Revaluation in the period to retirement
b) Indexation in the period post retirement
c) Benefits for dependants on death before or after retirement
3. The Transfer Value should be based on the vested benefits.
4. The mortality tables used should be standard tables which are generally accepted in the member state, unless scheme specific tables can be statistically justified on the basis of adequate scheme experience data.
5. The discount rate should reflect market rates of return expected from classes of asset appropriate to the liabilities, having regard to duration, and revaluation and indexation provisions. Relevant asset classes would include government and corporate fixed-interest bonds, government and corporate index-linked bonds, equities and property.
For further details see Groupe Consultatif, Addendum to Position paper on the draft EU Portability Directive (2013), p.5, accessed on 8 December 2014 and available at http://actuary.eu/documents/130129%20AAE%20Position%20Portability%20+%20addendum%20final.pdf.

[125] DK

[126] There is a distinction between four different types:
- annuity / life annuity: An annuity is usually for life, but can also be paid at least ten years. There are tax benefits for all contributions.
- an installment: There are only tax benefits up to approx. 50.000 DKK a year. It can be converted into an annuity / pension for life at a later date.
- Endowment: An endowment is paid out as a lump sum and cannot be made five years prior to your retirement age and 15 years after retirement. It can be converted into a pension annuity or annuity / pension for life. It is no longer possible to create an endowment.
- age insurance / retirement savings: The age insurance is paid out as a lump sum. It cannot be made five years prior to your retirement age and within 15 years from the earliest time. The scheme is called a ""retirement savings"" if it is established in a bank

[127] UK

- on a 'like for like' basis so the type of pension paid after the transfer is the same as was being paid before the transfer. If the transfer does not meet these conditions, the transfer payment may be regarded as an unauthorised payment and both the transferring scheme and the member will have to pay tax on the transfer[128].

Concerning **cross-border transfers** (in – and out), the majority of Member States similarly indicated that such transfers would be typically tax-free[129]. In one Member State[130], cross-border transfers from a domestic pension institution to a pension institution abroad is tax-free when the transfer occurs to a pension institution located in the EEA (depending on the applicable double taxation agreements, this member State can tax the participant concerned when the pension institution abroad pays out the benefit). If the transfer occurs to a pension institution located outside the EEA, the transfer is considered as a payment of the benefits and is taxed as such in the country (depending of the applicable double taxation agreements).

In another jurisdiction[131], cross-border transfers must be made to a QROPS set up to provide retirement benefits or – similarly as for domestic transfers - if pensions are already in payment - on a 'like for like' basis. If the transfer does not meet these conditions, a tax will be charged. In a further Member State[132], cross-border in-transfers are treated as premiums and thus not taxed. On the other hand, in case that the cross-border out-transfer is effectuated to a pension scheme which is registered with the tax authority, the transferred value will not be taxed. Otherwise the cross-border out-transfers are treated as surrender value and tax will be charged.

To address the issues of double taxation, in a number of Member States, double-taxation agreements exist (many based on OECD Model Tax Convention on Income and on Capital[133]). These are concluded primarily with EEA countries but often also with countries outside the EEA[134] (BE, PT, LI, NL, SE).

EIOPA stresses the importance of member information about the tax treatment/implications of the transfer.

3.8. Capital pay-out

The analysis undertaken by EIOPA leads to the conclusion that a capital pay-out may not only be considered as an alternative to transfers; what is more, under certain circumstances, it may even figure as an impediment to transfers. Namely, in some countries, the pension providers can unilaterally carry out the capital pay out if the amount is below a certain threshold without consulting the member beforehand[135]. In this context, the possibility of a unilateral pay out (without any involvement of the member) may be seen as an impediment to the right to transfer.

In the majority of cases, a capital pay-out to members is not permitted – members can either retain any vested rights in their scheme or transfer to a new scheme.

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[128] UK and NL

[129] AT, CZ, DE, ES, LI, RO

[130] BE

[131] UK

[132] SI

[133] http://www.oecd.org/tax/treaties/47213736.pdf http://www.oecd.org/tax/treaties/47213736.pdf http://www.oecd.org/tax/treaties/47213736.pdf .The OECD Model Tax Convention is available in various versions – Member States may presently follow different versions (e.g. the 2000-2005 version rather than the latest, from 2010).

[134] BE, PT, LI, NL, SE

[135] e.g. AT

Capital pay-out is reported as being permitted in a number of Member States[136]. Where capital pay-out is permitted, some countries[137] specify a maximum value for this[138]. One of the conditions under which a capital pay-out is also allowed is the invalidity of the scheme member[139] respectively the full or partial incapacity to work[140]. One Member State allows a capital pay-out before retirement only in order to allow the scheme member to buy or renew real estate properties located in the EEA. This possibility must be foreseen by the pension plan rules and is not linked to a transfer. The above-mentioned restrictions on capital pay out before the decumulation phase are reflective of the purpose of IORPs – namely, to provide an income for the scheme member through their retirement. Therefore, full capital pay out before decumulation bears the risk that capital will not last through the member's retirement, a concern evidenced in the limited conditions in which Member States allow this practice.

Finally, one Member State[141] allows pension providers to carry out a capital pay out only if the accrued benefit is below a certain threshold and if the member has been provided the prior opportunity to transfer the accumulated benefits to another pension provider.

Following the transposition of the 2014/50/EU Directive, this practice shall however cease to exist. Namely, this Directive requires for any capital pay out of small pension pots the consent of the member (art. 5 section 3 of the Directive). So there should be no unilateral capital pay-out anymore which jeopardies the possibility of the member to transfer her/his supplementary pension rights.

Good Practice 14: Safeguarding the right to transfer over right to unilateral capital pay-out

In line with the requirement put forward in the 2014/50/EU Directive which is to be transposed into national legislation by 21 May 2018, EIOPA considers it a Good Practice if the scheme member's right to transfer is prioritised over the right of the scheme to unilateral capital pay-out.

[136] AT, DK Depending on the specificities of the agreement) , ES, HR, LU and SI, with CZ and PT allowing capital pay-out in respect only of certain types of scheme.

[137] AT, HR and SI

[138] in AT, this is at EUR 11,400; in HR capital pay-out can be paid out up to 30% of the amount in a member's account up to EUR 1,500; and in SI capital pay-out is allowed for assets financed by the employee (i.e. employee contributions) which can occur at any time and for assets financed by employer lump sum can be paid out only at retirement and if the lump sum does not exceed certain threshold (currently 5.000 EUR).

[139] RO

[140] LT

[141] NL

4. Recent Developments

A number of Member States referred to future or on-going plans to improve transferability:

- In **AT**, the legislator relaxed the rules in 2012 to allow for transfers between IORPs to insurance companies under certain circumstances[142].
- In **DK** the Danish Government established a working group mandated to come up with a model for transfers of small, dormant pensions in risk of being consumed by costs, which will ensure that such pensions under specified terms will be transferred to one or more alternative schemes including the person's existing scheme in order to ensure the persons future support.
- In **NL** there is a legislative proposal to improve pension information, also to help members with the decision whether or not to transfer their rights. Moreover, the government announced to come up with legislation on the transferability of pension rights.
- In **PT**, there are plans to expand the "Retirement Savings Schemes transfers portal" to other types of schemes in the near future. It is expected that future regulation of transfers in PTs and general law on IORPS in the event of Directive's 2014/50/EC transposition will improve transferability further.
- In **RO**, a draft law is under consideration regarding the transfer of European employees' pension rights.
- In **SE**, the transfer rules are the result of collective agreements but for individual occupational pensions the government has urged the insurance industry to come to an agreement for a transparent transfer information standard.
- In the **UK**, the Pensions Act 2014 introduced a framework to provide for a system of automatic transfers of small pension pots so that an individual's pension will follow them to their new pension scheme when they change jobs. This will help individuals to consolidate their pension saving and to benefit from having their pensions in fewer places. Furthermore, it should lower administrative burden on schemes caused by maintaining small pension pots.[143]

The above examples demonstrate that Member States have been actively considering measures to (further) foster transferability of supplementary pension rights. Further efforts can be expected to follow in association with the transposition of the Directive 2014/50/EU ('Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights') by Member States; the deadline for the latter is 21 May 2018.

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[142] Without the requirement to change the job if the employer actually sets up two schemes (IORP and insurance company), but restricted to employees above the age of 55 and between IORPS and insurance companies).

[143] Pensions Act 2014: http://www.legislation.gov.uk/ukpga/2014/19/part/6/crossheading/transfer-of-pension-benefits/enacted. For background information see Department for works and pensions, Automatic transfers: consolidating pension savings (2013) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191697/automatic-transfers-consolidating-pension-savings.pdf; Johnson, Aggregation is the key, Centre for Policy Studies (2013) (available at: http://www.cps.org.uk/files/reports/original/130910154027-Aggregationisthekey.pdf).

5. Conclusions

As referred to above, EIOPA identified eight main impediments to transfers of supplementary occupational pension rights. To assist with overcoming these, EIOPA recognised Good Practices existing in several Member States both in the form of national (legal) rules as well as market practice. All Good Practices identified in this Report are considered by EIOPA as helpful tools in facilitating transfers of supplementary pension rights.

In this context, EIOPA would like to depict in particular **three key overarching areas which – if addressed – could make a significant difference towards facilitating transferability of supplementary pension rights**. In the following, specific Good Practices concerning each of these three areas are summarised.

- Firstly, in EIOPA's view, the transferability of supplementary pension rights is expected to be fostered by an enhanced **voluntary cooperation between the pension schemes** in those countries that do not grant members a statutory right to transfer. In this regard, EIOPA considers as Good Practice to establish voluntary agreements covering as many providers as possible (Good Practice 1). Furthermore, to facilitate cross-border transfers, mechanisms (e.g. in the form of registers) or other practice (e.g. questionnaires) may be helpful to assist transferring schemes with the identification of eligible receiving scheme(s) (Good Practice 13).
- Secondly, in EIOPA's view, it is essential to ensure that **the scheme member can reach an informed decision**. In this regard, both the content of the information provided to the scheme member (Good Practice 5) as well as its timing (Good Practice 6) are key. Layering of information and the use of appropriate tools (e.g. online platforms) to provide (additional) relevant information (Good Practice 7) may also prove helpful. Furthermore, it is considered as Good Practice to facilitate the scheme member's access to advice (Good Practice 8).
- Finally, transferability could be improved if the **transfer process itself becomes more efficient**, e.g. when schemes communicate directly without involving the scheme members on the practicalities of the transfer execution (Good Practice 10) and maintain reasonable time limits for the execution of transfers (Good Practice 11). As a result, the active involvement of a scheme member in the transfer process should be limited to a minimum, maybe even to the mere request of the transfer (Good Practice 12).

EIOPA is confident that this report will prove to be of benefit in view of the transposition of Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights generally contains no provisions on transferability, and will serve as a reference during future debates on this topic.

6. Annexes

Annex I: Descriptive statistics on transfers in the EU in the last years

Annex I: transfers in the EU in the last years

		AT			BE			BG	CZ					DE
1	First please specify the type(s) of (transferring) IORP/scheme in relation to which you are answering this section, including EIOPA pensions database code (e.g. DC, DB, other - please specify).	DC, DB and Hybrid: Genarally the Austrian Law on transferability does not distinguish between these categories.			This section applies to **employees** (bound by an employment contract). DB - DC - CB Pensions database codes BE-1.1, BE 1.2, BE 1.3, BE 1.4, BE 1.5, BE 1.6, BE 2.1, BE 2.2, BE 2.3, BE 2.4, BE 2.5, BE 2.6	This section applies to **self-employed persons** with a so-called LPCI pension (self-employed persons can build up a second pilar pension - the contributions are paid by the self-employed persons as individuals - Pensions database codes BE-1.7, BE 1.8, BE 1.9, BE 2.7). The same rules apply nothwithstanding the pension institution managing the scheme (IORP or insurance company).	This section applies to **self-employed executives** (when the company organises a second pilar pension to their benefit - Pensions database codes BE 1.10, BE 1.11, BE 1.12, BE 1.13, BE 2.9, BE 2.10, BE 2.11, BE 2.12). DB - DC - CB	DC	CZ -1 "Transformovaný penzijní fond Transformed pension fund"	CZ -2 Institution for occupational pensions	CZ -3 "Doplňkové penzijní spoření Supplementary pension savings"	CZ -4 "Důchodové spoření Retirement savings"	CZ -5 "Soukromé životní pojištění na důchod Private life assurance on pension"	DE-1.1, DE-1.2, DE-2.1, DE-2.2, DE-5.1, DE-5.2 DB, DB-contibution based
2	Please specify, if available, how many members made use of the ability to transfer their pension rights in your Member State in each of the last 3 years.	**2011**	**2012**	**2013**	This information is not available	This information is not available	This information is not available							no information available
	i. domestic in-transfers	1,027	524	678	Individual transfers to the pension institution of the new sponsor or to the welcome structure is common in Belgium in order to benefit from a death coverage.			0	n/a (not possible)	n/a	Not available	Not available	n/a	
	ii. domestic out-transfers	505	520	654	Idem (i)			0	Not available	n/a	Not available	Not available	n/a	
	iii. cross-border in-transfers	<10	<10	<10	Individual cross-border transfers are not very common.			Not possible	n/a	n/a	n/a	n/a	n/a	
	iv. cross-border out-transfers	<10	<10	<10	Idem (iii)			Not possible	n/a	n/a	n/a	n/a	n/a	
	v. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)	n/a	n/a	n/a	n/a	n/a		Not possible	n/a	n/a	n/a	n/a	n/a	
3	Please specify, if available, the value of assets that were transferred between IORPs/schemes in your Member State in each of the last 3 years.				We have in and out transfers available for IORPs and insurance companies, however these are the aggregate of collective and individual transfers, and for all types of schemes (i.e. for employees, self-employed persons and self-employed executives).	This information is included in the data in the previous sheet (II. Market practice).	This information is included in the data in the previous sheet (II. Market practice).							no information available
	i. domestic transfers	40,518,928	44,814,505	45,110,315	for **IORPs** (2010): IN 42 mio, OUT 139 mio (2011): IN 225 mio, OUT 192 mio (2012): IN 693 mio, OUT 245 mio for **group insurance** (2010): IN 516 mio, OUT 575 mio (2011): IN 324 mio, OUT 342 mio (2012): IN 363 mio, OUT 633 mio			0	Out-transfers 2013 - 490 623 000 CZK)	n/a	In-transfers 2013 - 214 508 000 CZK, Out-transfers 2013 - 5 566 000 CZK	0	n/a	
	ii. cross-border transfers	87,000	142,718	96,368	incl. in data above			Not possible	n/a	n/a	n/a	n/a	n/a	
	iii. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)	n/a	n/a	n/a	n/a	n/a	n/a	Not possible	n/a	n/a	n/a	n/a	n/a	
4	What proportion of members (if available in %-terms; additionally if available the absolute figures used for the calculation would be appreciated), when leaving an IORP/scheme, choose to transfer their vested pension assets as opposed to leaving them with their former scheme?				This information is not available	This information is not available	This information is not available	0						no information available
	i. when changing job within the country	n/a	n/a	n/a					Not available	n/a	Not available	Not available	Not available	
	ii. when moving abroad	n/a	n/a	n/a					Not available	n/a	Not available	Not available	Not available	
	iii. when coming from abroad	n/a	n/a	n/a					Not available	n/a	Not available	Not available	Not available	

Annex I: transfers in the EU in the last years

		DK	ES			FI	FR	HR	HU	LI	LT		LU
1	First please specify the type(s) of (transferring) IORP/scheme in relation to which you are answering this section, including EIOPA pensions database code (e.g. DC, DB, other - please specify).		DC	DB	Mixed (DC and DB)	DB and DC schemes run by company pension funds and industry-wide pension funds	no answer/data not available	DC IORPS	There is only one IORP in Hungary authorised in 2011. Therefore we don't have any practical experience in this theme.	LI-2 (Transfer does not depend on the type of scheme; e.g. DC, DB, Hybrid, other)	DC and DB contribution-based (LT-1, LT-2, LT-3 according EIOPA pensions database). As there are no IORPs established in Lithuania, we are not able to provide information on market practise.	DC (LT-4, LT-5, LT-6 according EIOPA pensions database)	LU-1.1 / LU-1.2 / LU-1.3
2	Please specify, if available, how many members made use of the ability to transfer their pension rights in your Member State in each of the last 3 years.	The DFSA do not have this information. The Danish Insurance association has provided us with information on domestic transfers within the "Jobskifteaftale" which are all transfers between occupational schems, and domestic transfers outside the agreement. They have no information on cross border transfers.	Not available	Not available	Not available	These schemes are mostly closed and the number of them is decreasing.		n/a		There are no figures available that provide information on the amount of domestic or cross-border transfer (please see also comment below).			
	i. domestic in-transfers	2011: transfers within the agreement:49.777/ transfers outside the agreement: 62.005				-				not available		We have data only in case of LT-4 and LT-5: 2.95 % in 2011, 2.56% in 2012, 4.24% in 2013.	n/a
	ii. domestic out-transfers					-				not available		The same data as provided in the answer to 2(i).	n/a
	iii. cross-border in-transfers					-				not available		Not applicable	n/a
	iv. cross-border out-transfers					-				not available		Not applicable	n/a
	v. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)					-				not available		Not applicable	n/a
3	Please specify, if available, the value of assets that were transferred between IORPs/schemes in your Member State in each of the last 3 years.	Neither the DFSA or The Danish Insurance Association have this information.						n/a		We only do have a total value of assets that was either transferred or payed out. We do not have detailed information if there was a domestic or a cross-border transfer.		Not available	The CSSF has only aggregated information on transfers from and to IORPs and no detailed information.
	i. domestic transfers		Value of assets transferred to DC occupational pension plan: 2011 = 136.806.045,66 euros, 2012 = 108.587.746,67 euros, 2013 = 259.294.660,6 euros)	Value of assets transferred to DB occupational pension plan: 2011 = 274.374.140,18 euros, 2012 = 3.807.625,8 euros, 2013 = 31.613.392,8 euros)	Value of assets transferred to MIXED occupational pension plan: 2011 = 7.210.830.800,75 euros, 2012 = 642.724.985,63 euros, 2013 = 1.090.141.467,1 euros)	-				not available			information is not available
	ii. cross-border transfers					-				not available			information is not available
	iii. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)		Not available	Not available	Not available	-				not available			n/a
4	What proportion of members (if available in %-terms; additionally if available the absolute figures used for the calculation would be appreciated), when leaving an IORP/scheme, choose to transfer their vested pension assets as opposed to leaving them with their former scheme?		Not available	Not available	Not available			n/a				Not applicable in cases of LT-4 and LT-5 (a participant's participation in a particular pension fund is not related to the employer).	
	i. when changing job within the country					-				not available			information is not available
	ii. when moving abroad					-				not available			information is not available
	iii. when coming from abroad					-				not available			information is not available

Annex I: transfers in the EU in the last years

		MT	NL	NO	PL		PT	
1	First please specify the type(s) of (transferring) IORP/scheme in relation to which you are answering this section, including EIOPA pensions database code (e.g. DC, DB, other - please specify).	MT-1.1 refers to Defined Contribution Occupational Retirement Scheme	All types of schemes	DB	- occupational pension scheme in the form of occupational pension fund ('PL-1' code from the database of pension plans and products; this is Polish IORP); - occupational pension scheme in the form of agreement concluded with life assurance company ('PL-2' code from the database); - occupational pension scheme in the form of agreement concluded with open-end investment fund ('PL-3' code); - occupational pension scheme in the form of foreign management ('PL-4' code; an IORP form EEA country other than Poland is the provider; however we have not had any cases of cross border activity both as a Host and as a Home Member State).	PL-1 - PL-4 are all forms of occupational pension schemes stipulated in Polish law. All are pure DC schemes. Legal provisions regarding them are the same (no neccessity for adding new tabs).	All 6 types (identified in answers to Part I.) = PT-1, PT-2, PT-3, PT-5.2, PT-5.1 (both"Retirement-Savings" Schemes) and PT-4	In accordance with the Portuguese NSA (*Instituto de Seguros de Portugal, ISP*) specific Questionnaire to the market for the answering of this Part II. This *ISP's Questionnaire* received responses from 25 scheme managers and insurers (almost the totality of this national universe), corresponding to 51 different products, with the following distribution: 14 PT-1, 12 PT-2, 7 PT-3, 1 PT-5.2, 10 PT-5.1 and 19 PT-4.
2	Please specify, if available, how many members made use of the ability to transfer their pension rights in your Member State in each of the last 3 years.	The first occupational scheme in Malta was authorised in May 2014. Therefore we cannot on market practice at this stage.	No details available (transfers occur regularly and process is fully prescribed, hence no need to supervise this on an individual basis)	According to the Defined Benefit Pension Act the regulations in the pension sceme might provide for transfer (inclusion of service time and the accumulated benefit from membership in other private pension scheme). In practice these rules are no longer applied.				
	i. domestic in-transfers			n/a	we do not have such data		**2011**: 273 **2012**: 311 **2013**: 225 **Total**: 809	In the form of insurance contract (PT-5.1 and PT 4): **2011**: 271 **2012**: 270 **2013**: 201
	ii. domestic out-transfers			n/a	2011 - 10389; 2012 - 1793; 2013 - 1472		**2011**: 3.706 **2012**: 3.812 **2013**: 3.770 **Tot**: 11.288	In the form of insurance contract (PT-5.1 and PT 4): **2011**: 3.172 **2012**: 3.056 **2013**: 2.373
	iii. cross-border in-transfers			None	NA (not applicable); see also answers I2ii and I2iii		n/a	
	iv. cross-border out-transfers			None	as above		**2011**: 4 **2012**: 2 **2013**: 6 **Tot**: 12	
	v. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)		Not permitted	n/a	2011- 8604; 2012 - 9133; 2013 - 7810		**2011**: 2.445 **2012**: 2.457 **2013**: 3.742 **Tot**: 8.644	
3	Please specify, if available, the value of assets that were transferred between IORPs/schemes in your Member State in each of the last 3 years.		No details available	n/a				
	i. domestic transfers		2011 - EUR 884027 2012 - EUR 173593 2013 - EUR 915941 (*1.000 EUR)		2011 - 74651968 EUR; 2012 - 7546079 EUR; 2013 - 13324838 EUR	average exchange rate of National Bank of Poland as of 31 December of each year	**2011**: €17.625.362 **2012**: €22.791.991 **2013**: €28.777.070 **Tot**: €69.194.423	In the form of "RSS" insurance contract: **2011**: €11.311.738 **2012**: €16.166.422 **2013**: €14.542.426, **Tot**: €42.020.586
	ii. cross-border transfers				n/a		**2011**: €6.000 **2012**: €56.914 **2013**: €17.896 **Tot**: €80.811	
	iii. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)		Not permitted		2011- 35596684 EUR; 2012 - 45024503 EUR; 2013 - 45421552 EUR	average exchange rate of National Bank of Poland as of 31 December of each year	n/a	The numbers that resulted from the answers to *ISP's Question. to the PT market* are non compatible with the numbers indicated in response to i) supra. Thus we don't indicate them. Probably some respondents included in their response to iii) the modificacion of plans from DB to DC.
4	What proportion of members (if available in %-terms; additionally if available the absolute figures used for the calculation would be appreciated), when leaving an IORP/scheme, choose to transfer their vested pension assets as opposed to leaving them with their former scheme?		No details available	n/a				
	i. when changing job within the country				we do not have such data		In the case of **closed pension funds (PT-1** EIOPA database), for 458 participants we have percentages from 100% [33 partic.] to 3,4% [292 partic.]. In **open pension funds, PT-2 and PT-3** [413 partic.], we have percentages from 100% [23 partic.] to 16% [8 partic.]. In the case of **insurance contracts** (PT-5.1 and PT-4) we have 0% for a universe of 2310 participants.	
	ii. when moving abroad				n/a		n/a	
	iii. when coming from abroad				n/a		n/a	

Annex I: transfers in the EU in the last years

		RO		SE		SI	SK
1	First please specify the type(s) of (transferring) IORP/scheme in relation to which you are answering this section, including EIOPA pensions database code (e.g. DC, DB, other - please specify).	DC, RO-2 (Voluntary pension funds)		Defined Benefit (DB) - transfers refer to whole /part of/ schemes	Defined Contribution (DC) - transfers refer to individuals	In Slovenia, we have the same rules for all following pension providers/plans: SI-1 (Pokojninska družba - Pokojninski načrt po ZPIZ-2), SI-2 (Zavarovalnica - Pokojninski načrt po ZPIZ-1) and SI-3 (Vzajemni pokojninski sklad - Pokojninski načrt po ZPIZ-1. All those pension plans are DC plans with investment guarantee.	IORP´s pure DC scheme
2	Please specify, if available, how many members made use of the ability to transfer their pension rights in your Member State in each of the last 3 years.			No statistics, but there has been som fusions among IORPs and also some tranfers of special schemes among insurance companies	No statistics available. See answer to 3.	We do not collect such information.	
	i. domestic in-transfers	**2011:** 3901 pers.; **2012:** 625 pers.; **2013**: 1161 pers.; **2014 (January-July)**: 462 pers.					
	ii. domestic out-transfers	**2011:** 436 pers.; **2012:** 611 pers.; **2013**: 853 pers.; **2014 (January-July)**: 455 pers.					
	iii. cross-border in-transfers	**2012: 7** pers.; **2013**: 12 pers.; **2014 (January-July)**: 6 pers.					
	iv. cross-border out-transfers	**2014 (January-July)**: 1 pers.					
	v. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)	0					no our members have not this possibility
3	Please specify, if available, the value of assets that were transferred between IORPs/schemes in your Member State in each of the last 3 years.			No statistics available, but there has been som fusions among IORPs and also some tranfers of special schemes among insurance companies	According to a government committee, the actual transfer volume of DC occupational pensions amount to a total of 1,5 billion EUR in the years 2008-2010 which account for less than 4 % of tranferable pension capital.	Not available	
	i. domestic transfers	**2011:** 1.88 mil.euro; **2012:** 0.81 mil.euro; **2013**: 1.66 mil.euro; **2014 (January-July)**: 0.85 mil.euro.					
	ii. cross-border transfers	**2012:** 0.20 mil.euro; **2013**: 7.85 mil.euro; **2014 (January-July)**: 0.26 mil.euro.					
	iii. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)						
4	What proportion of members (if available in %-terms; additionally if available the absolute figures used for the calculation would be appreciated), when leaving an IORP/scheme, choose to transfer their vested pension assets as opposed to leaving them with their former scheme?			0. Not possible for individual employees to transfer pension rights	See answer to 3. But this figure includes those who choose to transfer their pension capital due to poor investment result, general distrust with pension provider etc.	Not available	
	i. when changing job within the country	Not available.					
	ii. when moving abroad	Not available.					
	iii. when coming from abroad	100	*Comment of administrators: 100% of members who changed their country (moving abroad from another country to Romania) and also their employer (left the unit belonging to European Commission and started working at a Romanian employer) decided to transfer their pension accounts into a voluntary pension fund. This come as a consequence of the Staff Regulations of Officials of the European Commission, which impose that every person (who leaves their pension fund) should transfer the money to an insurance company which: - Will not repay the money - Pay the participant a pension after the age of 60 years - Will have provisions included for reversion or survivors' pensions*				

Annex I: transfers in the EU in the last years

		UK	
1	First please specify the type(s) of (transferring) IORP/scheme in relation to which you are answering this section, including EIOPA pensions database code (e.g. DC, DB, other - please specify).	Occupational pension scheme (UK-1)	
2	Please specify, if available, how many members made use of the ability to transfer their pension rights in your Member State in each of the last 3 years.		
	i. domestic in-transfers	The Pensions Regulator does not collect this level of quantitative information regarding transfers.	
	ii. domestic out-transfers	As above	
	iii. cross-border in-transfers	As above	
	iv. cross-border out-transfers	As above	
	v. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)	As above	
3	Please specify, if available, the value of assets that were transferred between IORPs/schemes in your Member State in each of the last 3 years.		The average size of pension fund transfers from DC trust-based schemes with 12 or more members in the UK is £30,000 - http://www.thepensionsregulator.gov.uk/doc-library/dc-trust-a-presentation-of-scheme-return-data-2014.aspx
	i. domestic transfers	The Pensions Regulator does not collect this level of quantitative information regarding transfers.	
	ii. cross-border transfers	As above	
	iii. from occupational to personal scheme, if possible/permitted (i.e. from second to third pillar)	As above	
4	What proportion of members (if available in %-terms; additionally if available the absolute figures used for the calculation would be appreciated), when leaving an IORP/scheme, choose to transfer their vested pension assets as opposed to leaving them with their former scheme?		
	i. when changing job within the country	The Pensions Regulator does not collect this level of quantitative information regarding transfers.	
	ii. when moving abroad	As above	
	iii. when coming from abroad	As above	

Annex II: History of EU policy with regard to transfers

EU Policy Review

Portability of supplementary pension rights is a major issue in EU Social-Policy. The objective of this chapter is to trace the developments and to carve out the main arguments regarding transferability. The EU also commissioned some research projects / expert groups on portability and the pertaining reports are also presented in this chapter as far as they are available online.

With the **Action Programme from 1989 relating to the Implementation of the Community Charter of Fundamental Social Rights for Workers**[144], the Commission first drew attention to the lack of community provisions protecting migrant workers against the loss of supplementary social security rights.

In its subsequent Communication on "Supplementary Social Security Schemes: The Role of Occupational Pension Schemes in the social protection of workers and their implications for Freedom of movement"[145], the Commission stressed equal treatment of domestic mobility and cross-border mobility.

Women are likely to be most affected by portability obstacles since they often interrupt their careers for family reasons and return to work for a different employer. Transfers are preferable when the treatment of dormant pension rights is not favourable or because many micro-entitlements are inefficient due to high administrative costs.

Nevertheless, the members should have the choice between leaving the entitlements in the previous scheme or transfer it to the new scheme. In order to able to decide on this, the members should receive respective information about both options on a regular basis without having to request and so reveal their intention to quit.

Transfers are regarded as an option mainly for funded schemes, but not for other schemes (PAYG or book-reserve-schemes). There is also no transfer option if the new employer does not provide an occupational pension scheme or if the schemes are too diverse. The transfer values should be calculated on a fair and actuarial basis and should not be less favourable than those used for determining the funding status of the scheme.

But often the expected price- or average earnings increase is not taken into account when calculating the transfer value. Taxation may also pose a barrier to transfers. In an EET-System the tax authorities are not able to charge taxes on benefits if they are transferred abroad and as consequence also paid out abroad. Furthermore they cannot ensure that the transfer value will indeed be used for retirement benefits. As a consequence Member States taxes the transfer value. Soon after this Communication, the Council recommended that Member States should eliminate impediments to mobility of employees ensuing from supplementary pension schemes.[146]

In 1992 the Commission established an **Experts' Network on supplementary pension schemes**. The Network should analyse the development of statutory and supplementary pensions. In 1994 the Network delivered a report on supplementary pensions in the EU.[147] The Report covers nearly all aspects of supplementary

[144] COM (89) 568 final.

[145] SEC (91) 1332 final.

[146] Recommendation 92/442/EEC of 27 July 1992.

[147] Report by the European Commission's Network of Experts on Supplementary Pensions, Supplementary Pensions in the European Union – Development, Trends and outstanding Issues (1994).

pensions. Chapter 8 deals with freedom of movement and pension rights. Here the authors discuss the policy developments hitherto and give a good overview of the portability regimes in the Member States. Regarding further EU-policy initiatives the authors' point to the fact that supplementary pension schemes are largely based on voluntary initiatives. So every action must be careful not to discourage these voluntary initiatives.

In 1996 the Commission asked the "**High Level Group on the Free Movement of Persons**" to deliver an opinion on the measures to be taken in order to eliminate the impediments to freedom of movement in the context of supplementary pensions. The panel delivered its report on 18 March 1997.[148] The Group stressed that any legislative proposal must be very cautious because the schemes are often based on agreements between social partners. The portability of supplementary pension rights should be equal for domestic and cross-border cases. The group suggested no community action regarding transferability because Member States have refrained from laying down statutory rules on this topic hitherto.

In 1997 the Commission published its **Green Paper on Supplementary Pensions in the Single Market**[149] which deals besides other aspects of supplementary pensions also with problems regarding free movement. The commission identified impediments to transferability which either stems from legislation or from scheme design. Transferability fits only with funded schemes. Furthermore transfer values are calculated in a penalizing way (no consideration for expected future price or pay rises) constituting a severe impediments to labour mobility. Also, transfers are often subject to a tax charge which is even more problematic.

The host state does not give any tax relief. As a possible approach the commission refuses to differentiate between voluntary and compulsory schemes because this would lead to different effects for the Member States. The Commission argues pro transferability for those schemes which the nature of the scheme permits (funded schemes) and for a fair actuarial valuation of the transfer amount. In order to resolve technical problems the Commission considered the creation of a Community Pension Forum.[150] Regarding taxation the Commission proposed to encourage Member States to include specific provisions in their bilateral double taxation treaties.

In 1998 the EC enacted **Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within community**. This Directive should contribute to the removal of impediments to freedom of movement. It contains no provisions on transferability since it just focuses on the equal treatment of dormant pension rights when moving abroad compared to a pure domestic job change.

In 1999 the Commission published the **results of the Green Paper – Consultation**.[151] Regarding transferability trade unions and pension funds were in favour of community action. But transfers were considered to work only between funded schemes. Particularly the calculation of the transfer value was seen as a problem since it penalizes cross-border transfers and hence there is a case for the definition of a lowest common denominator. As a conclusion the Commission promises to progress with its work and prepare further research as a basis for possible legislation.

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[148] Report of the High Level Panel on the free movement of persons chaired by Mrs Veil (1998)

[149] COM (97) 283.

[150] This Forum was established by Commission Decision of 9 July 2001 on the setting-up of a committee in the area of supplementary pensions.

[151] COM(1999(134 final.

In 2001 the Commission communicated its strategy how to deal **with tax impediments to the cross border provision of occupational pensions**.[152] Since there were, at this time, some ECJ-Judgments regarding the taxation of supplementary pension schemes the Commission decided to monitor national tax regimes in matters of their compatibility with the Fundamental Freedoms of the EC-Treaty.

Also **in 2001 the Pension Forum published it's report**.[153] Regarding transferability the Forum stated i.e.: "While good preservation of vested rights can be seen as a substitute for transferability, it should be noted that a transfer of pension rights might often be the more practical solution. Even if international agreements can be reached that would make transfers possible in principle (e.g. bilaterally between Member States or institutions or at the level of the European Union), it would still be necessary to define standards/ principles e.g. for the calculation of transfer values which may vary for different environment. Parameters to be taken into account include the inflation rate and rate of returns as well as mortality rates, disability rates and other biometrical risks. The Euro should facilitate the definition of common assumptions on inflation and interest rates for international transfers. Assumptions about the future indexation of vested rights will also be important for determining the transfer value. Imposing a minimum indexation requirement for preserved rights could put a great strain on supplementary schemes.

A 'fair transfer value' would also have to take into account what assets are held by the fund to back up pension promises. The differences between pension schemes may be an impediment to transfers. The "pension funds directive" could facilitate the recognition of foreign institutions covered by the directive and hence transfers to these institutions."

As objectives to any measure, the Forum states: *"Transferability should be an option for the mobile employee, not an obligation. Nevertheless there is a need for setting up the legal framework that offers employees the right to opt for a transfer of vested rights from one scheme to another - on a national and on an EU-wide level. It is essential to offer good information to the employees so that they can decide how they can minimise the risk of losing pension rights. A lack of information would make it difficult for an individual to decide.*

The Forum considers three courses of action: minimum requirements (harmonisation) concerning the right to a transfer and transfer standards; coordination of tax rules; framework agreements between supplementary pension schemes to facilitate transfers. … Agreements between supplementary pension schemes could be concluded to facilitate transfers between participating schemes. Such initiatives should be supported by the European Commission. Without coordination in the field of taxation, cross-border transfers will not become an option for many migrant workers. A better cooperation among tax and supervisory authorities involved in transfers should be promoted."

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[152] COM(2001) 214 final.

[153] A Draft of this report is available at http://www.ine.otoe.gr/UplDocs/diethneis%20sxeseis/2001/EC%20Working%20groups.doc. A Draft of this report is available at http://www.ine.otoe.gr/UplDocs/diethneis%20sxeseis/2001/EC%20Working%20groups.doc....http://www.ine.otoe.gr/UplDocs/diethneis%20sxeseis/2001/EC%20Working%20groups.doc.

After the Communication of the results of the Green Paper the goal of portability for supplementary pensions was confirmed several times and on different occasions[154] before the Commission started the **first stage of a formal consultation on the portability of supplementary pensions rights with the Social Partners in 2002**.[155] After describing the background and the actions taken so far regarding portability the Commission invited to answer several questions concerning possible community action on this topic.

The **answers to the first stage of the consultation on the portability of supplementary pension rights** and the next steps were presented in the Communication from the Commission regarding the second stage consultation of social partners to improve the portability of occupational pension rights. Regarding the pros and cons of transferability the Commission states: "Transferring one's pension rights has the advantage of administrative simplicity, both for the mobile employee and for employers: there is no need to manage a large number of small entitlements. However, the employee will normally not be better off than by leaving the vested rights in the previous scheme: the transfer amount is at best the actuarial equivalent of the pension promise vested by the employee.

Thus the absence of an inflation guarantee will be reflected in a significantly smaller capital than in the case where the preserved pension entitlement is index-linked to prices or even earnings (see previous box for an illustration of the effect of inflation proofing)." The Commission postulates for job changers a possibility to choose between transfer and preserving their rights in the scheme of origin. But it seems legitimate if the transferred sum must be used for pension purposes only and that the receiving provider must fulfil certain requirements regarding prudent management.

Specific problems were identified regarding the calculation of the transfer value between DB schemes due to different actuarial methods and assumptions (life expectancy and technical rates of interest). The Commission considers an agreement on common actuarial assumptions across the EU unlikely. But it might be helpful to apply the same actuarial assumptions for scheme leavers and new entrants both, at the level of an individual scheme and between two schemes involved in a particular transfer.

The Commission concludes in stressing the desirability of fair actuarial conditions for the calculation of the transfer value. Regarding taxes the Commission reports that tax authorities may reclaim the income tax not paid in the pension scheme contributions. If then a transfer is only authorized into another retirement scheme (as opposed to other forms of saving), the eventual pension benefit may still be subject to income tax. As a result the Commission invites the social partners to deliver further input.

In 2005 the Commission published a **proposal for a Directive on improving the portability of supplementary pension rights which i.e. included a right to transfer**.[156] Article 6 of the proposed directive states:

"Transferability"

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[154] E.g. par. 15 of the Presidency Conclusions of the Stockholm European Council (23-24 March 2001); Communication from the Commission to the Council of 8 February 2002 „Commission's Action Plan for skills and mobility (COM (2002) 72); Social Policy Agenda 2000 – 2005 (COM (2001) 116 final); par. 30 of the Presidency Conclusions if the Laeken Council (14-15 December 2001).

[155] SEC (2002) 597.

[156] COM(2005) 507 final.

1. Unless a capital payment is made in accordance with Article 5(2), the Member States shall take the necessary action to ensure that if an outgoing worker is not covered by the same supplementary pension scheme in his new job, he may obtain on request and within 18 months after the termination of his employment the transfer within the same Member State or to another Member State of all his vested pension rights.

2. Member States, in accordance with their national practice, shall ensure that where actuarial estimates and those relating to the interest rate determine the value of the vested rights to be transferred, these shall not penalise the outgoing worker.

3. Under the supplementary pension scheme to which the rights are transferred, the rights shall not be subject to conditions governing acquisition and shall be preserved at least to the same extent as dormant rights in accordance with Article 5(1).

4. Where administrative costs need to be paid during a transfer, the Member States shall take the necessary action to prevent them from being disproportionate to the length of time the outgoing worker has been a scheme member."

The Proposal provides a right to transfer, also (1) when pension rights have not yet been vested, all the contributions paid by or on behalf of, the outgoing worker have to be reimbursed or transferred (Art. 4) and (2) when the vested rights are below a certain threshold (Art. 5) there should be a possibility to transfer or the possibility to a capital pay-out.

The proposal also demands for information on request of the members about the conditions of transfer (Art. 7).

As an explanation to the provisions on transfer the proposal states: "In order to avoid excessive administrative costs stemming from the management of a high number of low-value dormant rights, the proposal provides for the option not to preserve these pension rights but to use a transfer or a payment of a capital sum representing the vested rights when these do not exceed a threshold established by the Member State concerned.

Under the proposal for a Directive, the outgoing worker should have the choice between maintaining his rights within the supplementary scheme of his former employment relationship and the transfer of his vested rights, unless his new job is covered by the same supplementary pension scheme or unless the scheme makes a capital payment because of the low value of the rights vested. An outgoing worker opting for a transfer of his rights should not be penalised by calculations of the value of the rights transferred made by the two schemes involved in the transfer, or by excessive administrative charges."

In an annex to the proposal (**Commission staff working document – Annex to the proposal**) the Commission gave further policy considerations. Regarding the problem of transferability the Commission states: "Transferability refers to the possibility of transferring a capital value representing the vested pension entitlements from one pension scheme to another scheme or to a similar financial institution. Besides the tax treatment, an issue discussed in the Annex, specific conditions related to the transfer itself or to the receiving scheme, can limit the transferability of a worker's pension capital. Also the methods for calculating transfer values may lead to reduced pension benefits for the mobile worker." As possible solutions the Commission discusses the following options:

a) Do nothing

Here the Member State would have the choice to regulate whether a worker would have the possibility at the moment of leaving the employer to take the vested rights to a new pension scheme (linked to the new employer).

b) Every early leaver should have the choice between transfer and leaving dormant rights in the scheme of origin

Member States would have to ensure that all workers leaving their employer have the possibility to take their vested supplementary pension rights with them. Member States would also have to ensure that this transfer takes place under conditions which do not reduce substantially the entitlements (for instance due to unfavourable calculation of the transfer value or high administrative costs).

c) The same conditions should apply to transfers across borders as to transfers within the Member States.

This option implies that where transferring rights within the Member State is possible between certain schemes, this should also be possible across borders and under the same conditions. Where nationally no transfer is foreseen, there is no obligation to provide for the possibility to transfer cross-border.

Following impacts of the different options are identified by the Commission:

a) Do nothing

While transfers are possible within many Member States, they do not appear to be the main instrument for securing portability of vested pension rights in general. However, transfers can be particularly useful to avoid the management of a large number of (smaller) dormant pension entitlements. Cross-border transfers, while usually possible in principle, face additional problems linked to tax rules and recognition of foreign pension providers. Some countries do not allow cross-border transfers in order to prevent tax evasion. A survey carried out by a GCAE survey of June 2001 found that a legal right to a transfer existed in 13 of the 21 surveyed countries.

In five other countries transfer payments were a common practice, but on a discretionary basis; finally, in three countries the transfer of pension rights was not possible at all. Cross-border transfers to a pension scheme in another European country were possible in only eleven countries, in some cases subject to the approval of the regulator or tax authority. In certain countries, the tax charge could be so high that it prevented, in practice, any cross-border transfer. The survey also raised the problem of differing methods and assumptions used to calculate transfer payments from one Member States to another.

As mentioned above, transfers between defined-contribution schemes (where the transfer value can be simply the market value of the assets held on behalf of an individual scheme member) do not pose any major problems, the only impediments being the administrative costs linked to the transfer and taxation.

Transfers between defined-benefit schemes may, by contrast, entail serious pension losses for the early leaver due to different actuarial methods and assumptions used by the pension institutions involved in a transfer. Legal guidance or actuarial standards for calculating transfer values exist in a number of countries, and some also require the costs of a transfer to be borne by the employer.

A particular position is taken up by the schemes of the "book reserve type". For instance in Germany, the recently adopted "Retirement Income Act" foresees that the employee has a legal right to a capital transfer to the new employer. This right applies however only to benefits under externally funded plans. If the new employer's plan is

book reserved (Direktzusagen) or financed through Unterstützungskassen, a transfer is only possible if the previous and the new employer agree to it.

The book reserved schemes are thus excluded from the statutory right to transfer, in particular with a view to the negative consequences transfers could have on the financial sustainability of the undertaking/pension scheme. There is however a process towards capitalisation with a view to the financial sustainability and as a consequence of changed taxation rules and the application of international accountancy standards (US-GAAP, IAS/IFRS). A major part of the current pension promises for Directzusagen (probably around 40%) have already been covered by capital investments. Moreover around 50% of the DAX-30 undertakings and many German sister undertakings of multinationals have set up Contractual Trust Arrangements (CTA)

b) Every early leaver should have the choice between transfer and leaving dormant rights in the scheme of origin.

Benefits

Impact on social protection rights of mobile workers

Transferring of rights will enable the mobile worker to regroup the vested rights in one scheme and keep thus a clear picture of the total vested rights. Whether the social protection rights of mobile workers will be well preserved will depend on the conditions applying to the transfer in terms of calculation of the transfer value and the application of charges or fees to the transfer.

Impact on mobility

The effect on mobility will be positive in case the early leaver does not face a significant capital loss as a result of the transfer or due to the applied charges and fees. The prospect of being able of keeping all vested rights together in one scheme might also facilitate the mobility of workers.

Costs

Costs to providers

The costs of this measure will depend largely on the calculation of transfer values and to the type of pension schemes. In general, and this applies to all types of schemes, the administration of small entitlements is expensive and regrouping the entitlements by means of a transfer could therefore greatly reduce these administrative costs (see also above under "The measures proposed in the draft Directive on preservation of dormant rights"). Germany indicated that since a right to transfer might however have important consequences for the financial sustainability of schemes in case the (total) amount represented by the transfers is particularly high, it limited the right to transfer up to € 62400 in 2005. Pay-as-you go or book reserve schemes will have to free the vested rights in the form of a transfer value before the age of retirement of the employee.

Consequences for the coverage of supplementary pension provision.

The consequences for the coverage of pay-as-you-go and book reserve schemes might be negative in case transfers in and out are unbalanced. As for the funded schemes, there might be negative consequences, but it has to be noted that in some Member States (Netherlands) the transfer obligation in combination with a requirement for defined benefit schemes to be fully funded on the transfer date does exist and did not lead to a tendency to abandon supplementary pension provision or to a shift from defined benefit schemes towards defined contribution schemes.

<u>c) The same conditions should apply to transfers across borders as to transfers within the Member States</u>

Benefits

Impact on social protection rights of mobile workers

The social protection rights of mobile workers will not significantly improve. The mobile worker moving to another Member State will just have the guarantee that where transfer is possible internally, it should also be possible across borders. The conditions applying to the transfer in terms of calculation of the transfer value and the application of charges or fees to the transfer will be the same as for mobile workers within the Member State (This might eventually include the tax treatment of transfers). This is however not a safeguard against losses due to transfer conditions.

Impact on mobility

The cross border mobility of workers might be favoured with regard to those Member States where currently only transfer within the Member State is possible. However, where transfers within the Member State are not possible or allowed, it will in most cases not be possible to transfer across borders.

Costs

Costs to providers

The costs for the providers will not increase substantially with a view of the relatively small number of workers moving to another Member State. In terms of administrative costs the effect might be positive where this measure would result in establishing a right to transfer cross-border. Regrouping of entitlements will then also be possible in case of cross-border transfers.

Consequences for the coverage of supplementary pension provision.

There is no evidence on the basis of the Member States' replies that the measure will affect the willingness of providers to continue or to open supplementary pension schemes."

The impact regarding the selected measure is described by the Commission in the following way:

"To achieve a maximum effect on the improvement of the social protection of mobile workers and the enhancement of mobility, workers should have the choice between preserving the vested rights in the scheme of origin or transferring these to another scheme or similar financial instrument or institution. The draft proposal will require Member States to ensure that early leavers can obtain upon request and within a reasonable period of time after the cessation of employment a transfer of all vested rights, including to another Member State.

In order to take into account the specific situation of schemes where the pension promise is backed by book reserves and for schemes operating on a pay-as-you-go basis, these types of schemes can for the moment be excluded from this requirement for reasons of financial sustainability. The Commission will re-examine the situation after a determined period with a view to proposing measures to ensure the transferability of rights for early leavers covered by book reserve schemes and schemes operating on a pay-as-you-go basis. This (temporary) exemption will allow these schemes to constitute the necessary financial buffer in order to accommodate the transferring out of the pension rights of the mobile workers. This would be additional to the clear trend towards capitalisation of (part of) the pension promises of book reserve schemes as a consequence of changed taxation rules and the application of international accountancy standards (US-GAAP, IAS/IFRS).

The right of transfer and its beneficial effects on the social protection of mobile workers will only become effective if the transfer value represents the "fair value" of the vested rights. No specific calculation method is proposed in order to take into account the wide diversity of schemes and respecting the freedom of Member States/schemes or social partners to define detailed rules themselves or to decide for instance that guidance can be given by the national professional associations for actuaries. The proposal lays down a general principal according to which it should be ensured that the actuarial and interest assumptions used for the calculation of the transfer value are fair and reasonable and not biased against early leavers. The latter also means that it should be ensured that where administrative charges are applied, these are proportionate and do not result in a significant reduction of the net transfer value.

Impact of the measures proposed on transferability

Benefits

Impact on social protection rights of mobile workers

Workers will be able to regroup their entitlements in one scheme. The proposal will moreover ensure that the actuarial and interest assumptions used for the calculation of the transfer value are fair and reasonable and not biased against early leavers.

Impact on mobility

The possibility to choose between maintaining the entitlements in the former scheme or to transfer them gives more flexibility for the worker and can enhance his/her mobility.

Costs

Costs to providers

The net administrative costs will be limited for the following reasons:

- the low degree of professional and geographical mobility in the EU
- the transferred entitlements will no longer have to be administered by the scheme
- part of the costs can be borne by the mobile worker (in a proportionate way).

No costs would occur at this stage for unfunded schemes (book reserve and pay-as-you-go schemes) not (yet) designed for providing a transfer since these can be excluded from the application of the requirement to transfer for reasons of financial sustainability. The proposal foresees a re-examination of the exemption of these schemes taken into account:

- in some Member States a transfer from and to unfunded (book reserve) schemes is already
- possible (AT)
- unfunded schemes have to anticipate expenditure anyway and use increasingly capitalised
- reserves
- the low turnover will in general not lead to very significant amounts to be transferred.

Consequences for the coverage of supplementary pension provision.

There is no evidence of an impact on the willingness of providers to continue or start supplementary pension provision.

In an **amended proposal for a Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension**[157] from 2007 Art. 6 on transferability was removed. The Commission explains: "The European Parliament considers that the introduction of a compulsory transfer option at this time would place too great a burden on some supplementary pension schemes and would, furthermore, cause considerable technical difficulties. Having taken careful note of the European Parliament's decision and the views expressed by experts within the Council working group, the Commission acknowledges this change of priorities and accepts the removal of article 6 (transfer provisions)." The amendment provides for a new recital (9a) which stipulates: "This Directive does not stipulate provisions for the transfer of vested pension rights, however, in order to encourage occupational mobility Member States should endeavour as far as possible and in particular when introducing new supplementary pension schemes, to improve the transferability of vested pension rights."

In 2007 the Commission commissioned two research studies: **Coppin and Vandenbrande (2007)**[158] analyses job and occupational mobility in general based on empirical data. **Hewitt Associates (2007)**[159] give a detailed quantitative overview on the supplementary pensions provisions in eight Member States (Belgium, France, Germany, Ireland, Italy, Netherlands, Poland, Spain, and UK). Each country profile also includes a section on transferability covering the following aspects: Availability of transfer-in-rights, type of benefit provided for a transfer payment and availability of transfer-out-rights.

Although the transferability requirement was dropped in the amended proposal the Commission posed the question regarding the transferability once again in it's **Green Paper towards adequate, sustainable and safe European pension systems from 2010**.[160] A **summary of the answers**[161] to this question was presented in March 2011: "

The vast majority of responses strongly supported the principles of free movement and felt it was important to avoid anything which could inhibit this. Some noted that reforms of pension systems and changes in labour markets meant that action was more necessary than ever. The European Parliament, as noted in the summary of question 6, stressed that labour market mobility in the EU will be crucial for job creation and economic growth and went on to say it considered that citizens' confidence will be improved when impediments to internal and cross-border mobility are removed. Beyond this wide agreement on the principle, views differed on the scale of the problem caused by supplementary pension rules, what the solutions might be and who should be responsible for taking any action.

The European Parliament considers that the introduction of a compulsory transfer option at this time would place too great a burden on some supplementary pension schemes and would, furthermore, cause considerable technical difficulties. Having taken careful note of the European Parliament's decision and the views expressed by experts within the Council working group, the Commission acknowledges this change of priorities and accepts the removal of article 6 (transfer provisions). …

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[157] COM(2007) 603 final.

[158] *Coppin/Vandenbrande*, Voluntary and forced job mobility in Europe (2007).

[159] Hewitt Associates, Quantitative Overview on Supplementary Pension Provision (2007).

[160] COM(2010) 365 final.

[161] http://ec.europa.eu/social/main.jsp?catId=700&langId=en&consultId=3&visib=0&furtherConsult=yes.
http://ec.europa.eu/social/main.jsp?catId=700&langId=en&consultId=3&visib=0&furtherConsult=yes.

The majority of respondents felt transfers were not a viable option and strongly opposed them. Some responses noted that, at first sight, transfers appeared to be an intellectually neat solution as it meant that when a person moved jobs their pension went with them and their former employer and pension scheme would be free of any further responsibility and administrative burden. But they went on to note that on closer inspection and in particular in practical terms, transfers were too difficult to be a serious option. Major technical difficulties in terms of providing fair transfer values, associated administrative and cost burdens, the impact of different rules, social and labour law and tax treatment and the inherent risk of abuse of pension systems all weighed heavily on the majority of respondents who opposed transfers.

Other concerns included the possible impact of transfers on pension schemes, as significant withdrawals could put at risk the scale necessary to provide good value pensions. One or two felt that, regardless of other considerations, the political realities meant transfers were a dead end so other more hopeful options should be the focus and transfers should not be pursued. Nonetheless a minority of respondents did support looking again at transfers, perhaps using best practice exchange to try to overcome the formidable technical challenges. One response supported transfers subject to some specific conditions and felt such transfers could be promoted via the OMC and non-binding guidance and start via small-scale agreements between certain sectors and Member States, with researchers considered a good sector to start with.

The European Parliament noted the trend towards more defined-contribution pension schemes and fewer defined-benefit schemes, which has the effect of putting more of the investment risk onto pension savers. It also noted the diversity and complexity of the various capital-based occupational pension systems and expressed the view that any transfers ought only to be permitted into another pension fund. Furthermore, the European Parliament called for an in-depth study on tax issues related to the capital-based occupational pension systems and life insurance capital systems. …

A couple of responses, whilst supporting an approach based on acquisition and preservation, were against action on this at EU level, preferring this to be taken forward solely at national level (in one case citing the need for social partners to have the freedom to negotiate pension scheme rules). Only a few respondents expressed outright opposition to the acquisition and preservation approach. One issue cited was that some companies used pensions to reward staff loyalty and that minimum standards on acquisition would interfere with this and could discourage some employers from providing pensions in the first place. Another issue raised was that the large variety of supplementary pensions in Europe and their varying importance within national systems meant that minimum standards were not appropriate and could lead to higher costs and hence to pension scheme closures."

In its subsequent **White Paper[162] from 2012** (An Agenda for Adequate, Safe and Sustainable Pensions) the Commission generally dropped the portability issue. Nevertheless it announced to investigate i.e. whether the tax rules, concerning cross-border transfers of occupational pension capital and life insurance capital, present discriminatory tax which obstruct cross border mobility. Where necessary, it will initiate infringement procedures. The Commission will also discuss with the Member States how to reduce the risk that cross-border pensions get a subject of double taxation (or escape taxation altogether).

The eventually adopted **Directive 2014/50/EU** on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and

[162] COM (2012) 55 final.

preservation of supplementary pension rights generally contains no provisions on transferability and states in this regard in recital (2): “This Directive does not provide for the transfer of vested pension rights. However, in order to facilitate worker mobility between Member States, Member States should endeavour, as far as possible, and in particular when introducing new supplementary pension schemes, to improve the transferability of vested pension rights.”

Nevertheless the Commission wants to carry the topic of transferability further and send EIOPA a Call for Advice to provide further input and advice.[163] This Call for Advice is part of the background of the study at hand.

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https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/otherdocuments/140520_DG_Letter_to_EIOPA_on__call_for_advice_portability.doc.pdf.
https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/otherdocuments/140520_DG_Letter_to_EIOPA_on__call_for_advice_portability.doc.pdf.

Annex III: Literature Review on transferability of supplementary pension rights

Generally one can note that there is some literature on portability in general and some literature with a focus on acquisition and preservation. But there are only few explicit statements on transferability in particular. Although this review deals only with statements on transferability the bibliography (at the end of the chapter) for convenience lists also general articles about portability of supplementary pension rights.

Bittner (2001) (p. 137 et seq.) analyses German cross-border transfers from a legal point of view. In Germany there is no individual right of an employee to a cross-border transfer of his accrued pension rights. Although Bittner considers this as a restriction of the freedom of movement for workers she argues that the German rules are justified because (1) the restriction is only minor since the preservation of the rights is secured and (2) the purpose of the prohibition to transfer would be legitimate and appropriate and necessary.

The study delivered by **Blake and Orszag (1998)** was commissioned by the UK Office of Fair Trading. Blake and Orszag examine extensively the calculation of the transfer value in UK for DB-schemes with much technical detail. They start with a discussion of the economics of pension portability. Interestingly they argue that in the absence of instruments for dealing with staff-training costs, performance monitoring and retirement inducement in a world with incomplete knowledge concerning the employee employers will continue to use their pension scheme to deal with these matters. The authors go on to trace the evolution of legislation on portability in UK and there is improvement since 1975 although the Pension Act of 1995 weakens some of these improvements. Regarding the calculation of the transfer value the authors found a considerable degree of actuarial discretion. The reasons for portability losses are twofold: (1) discriminatory assumptions of the future wage growth and (2) the implicit back loading character of final salary schemes. Blake and Orszag propose some policy options to remedy these deficiencies. The study also includes a small chapter on portability regimes in other countries (USA, Canada, Japan and Netherlands).

CEPS (with financial support from the European Commission) prepared from 2001 to 2003 a rather comprehensive report on cross-border portability of supplementary pension rights. In the course of preparing the report CEPS held a workshop from 28 February to 1 March 2003. **The summary of this workshop (2003a)** includes a report on the Danish regime of transferability (2003a, 20): "Following a 1987 law that obliged all pension institutions to make it possible for persons changing jobs to transfer pension rights (only annuities) between obligatory pension schemes, at only the cost of a transaction fee, the Danish Insurance Association and the Danish Association of Company Pension Funds approved an agreement that practically allows employees changing jobs to transfer their pension rights to a new scheme at no cost. Transfer is, however, optional and a worker changing jobs could stay in the same pension plan if he/she wishes." The report states that in Denmark the labour force is highly mobile and the coverage reaches 80 to 90% (establishes through collective agreements on industry level). At the same workshop Ralf Jacob from the European Commission pointed out that the lack of transferability is principal impediment to portability and that construction transferability cross-border might be even more difficult (2003a, 23). As policy aim transfers should be facilitated he concluded.

In 2003 a **CEPS Task Force on Cross-Border Portability** of pension rights published its **final report**. The report covers not only portability but also cross-border IORPs, tax etc. Regarding transferability the calculation of the transfer value and the credit granted from the receiving provider are seen as crucial for determining the

costs and benefits of a transfer. The calculation of the transfer values differs between Member States and schemes. The authors discuss the theoretical underpinnings of the calculation of the transfer value and refer to the work of Bulow who argued that the value of pension claims should be estimated as the max. liability the firm would incur in case the plan was terminated and not on the basis of „projected benefits". This would lead to results not far from the accrued value within a DC-scheme. Nevertheless accountants tend to measure the exposure of a company on the basis of projected benefits. The authors also give an overview of the calculation in different Member States. In some countries cross-border transfers are also subject to prudential regulation (e.g. regarding the qualifications of the receiving scheme) and the need for an approval by the NSA. The authors favour the development of guidelines for best practice on transfers by members of NSA's.

Guardiancich (2014) analyses the development of the policy on portability of supplementary pension rights against the background of the coordination rules for 1st pillar pensions (through Regulations 883/2004 and 987/2009). The author also sees the varieties of occupational pension schemes as a major impediment to harmonization. Guardiancich considers transferability as important for risk management and to receive pensions from fewer sources but he questions its importance for mobility. A transfer options for unfunded schemes would increase administrative costs. Transfers would only be straightforward between DC schemes. Different tax regimes would be an additional impediment. In other cases, transfers would be prohibited due to different rules governing the pay-out phase. As a recent example Guardiancich reports that transferring pension rights from the Netherlands to a British Superannuation Scheme would be prohibited since 2007 because of the possibility of a capital pay-out at retirement (which is prohibited in the Netherlands).

Guardiancich/Natali (2012) point out that the EU uses two instruments to increase portability of supplementary pension rights: (1) The EU promotes portability directly via legislation and (2) indirectly via the construction of a single market for occupational pension funds. After discussing the importance of portability in general the authors go on to analyse Directive 98/49/EC, the proposal for a portability Directive in 2005 and the amendment in 2007. They argue that the amended proposal seeks to strike a balance between (1) reducing impediments to portability without undermining the sustainability of schemes and (2) development of schemes that support outgoing workers without undercutting the right of remaining scheme members. The authors argue that the establishment of a matrix of the pension provisions in the EU across all three pillars would help to apply portability and prudential regulation as well. Concerning cross-border pension arrangements the authors discuss the development of cross-border insurance schemes and cross-border pension fund schemes.

Johnson (2013) proposes an automatic aggregation of pension pots via a central clearing house. The details and suggestions given are also relevant for (voluntary) transfers of pension pots. On this issue see also Department for works and pensions, Automatic transfers: consolidating pension savings (2013).

Kalogeropoulou (2006) analyses the proposal for portability Directive from 2005 and the policy issues related with portability in general. As specific impediments to transferability she identifies the mode of financing (book reserve or funded scheme), the calculation of the transfer value, administrative charges and taxation.

Kalogeropoulou (2007) places the discussion about portability of supplementary pensions within the context of the Lisbon Strategy[164] and analyses whether the Open Method of Coordination could help to make further progress on portability.

Meyer/Bridgen/Andow (2013) seek a more comprehensive approach to pension mobility (within the first and the second pension pillar). The existing literature would focus on regulation of the move only. The authors point to an issue hitherto neglected in the literature: the impact of the relative generosity of different pension regimes and large national wealth variations. The enlargement of the EU leads to a migration from east to west, from less generous pensions systems to more generous pension systems and richer countries. Analysing a cross-border job-change must also recognize the subsequent acquisition of pension rights in the new regime. Hence a move may prove profitable even if there are portability losses. So comparing a move within a country and cross-border can more complex. These aspects may matter even more than portability. Nevertheless the authors are in favour of better legislation on portability of supplementary pension rights since such rights become more and more important. But there would be too little knowledge on national portability regimes so they argue to set up a comparative database.

Olivier (2010) analyses the policy development on supplementary pension policy since the publication of the initial proposal for a portability directive in 2005 until 2010. She describes the legislative process hitherto, discusses the question regarding the proper legal basis and focuses on the amended proposal from 2007. Concerning the dropped requirement of transferability Oliver recognizes that the national regulations vary substantially. Employers and pensions providers would be worried about administrative costs and the taking on of liabilities unconnected with the present employment relationship. She also points out that the Commission will discuss the topic again in the future. For the way forward Oliver draws attention to the work of the Commission on transferability of the supplementary pensions of 'highly mobile workers including researchers'.[165]

Sahin (1989) focuses on the economic effects of a mobile working career which result from the enrolment in different plans.

Steinmeyer has worked extensively on the issue of portability of supplementary pension rights. In his paper from **2001** he discusses the problems associated with rules for more portability of supplementary pension rights against the background of the very different pension regimes in the Member States. Regarding transferability Steinmeyer argues that a transfer might be more easily if the schemes are financed in the same way. Transfers between different modes of financing (e.g. between book reserve and funded system) would be very difficult.

Turner (1993) describes and analyses the problems associated esp. with DB-pension schemes in the US-context. Beside rich empirical data Turner interestingly points out the winners and losers of different policy reforms envisaged. Since women and young worker change their jobs more often they are more vulnerable to portability losses.

Wood et al (2012) provide the findings of a study commissioned by the Department for Work and Pensions (DWP), designed to explore the processes and costs involved with the transfer of pension pots between providers of defined contribution (DC) pension schemes. The report describes in detail the stages of the transfer process as well as established factors that can affect the transfer process. It also examines the

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[164] Which aimed to become the EU most competitive and dynamic knowledge based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.
[165] COM (2008) 317 final.

time and cost of pension transfers and proposes improvements to the transfer process. Most interesting is the report regarding the "options platform". It is a web-based solution designed by the pension industry in 2008 for the processing of transfers between schemes. Although the membership to this platform is voluntary between 60% and 80% of the transfers were processed via options. With the use of options the transfer process could be considerably improved in terms of time, reduced complexity and costs. The authors also found that the involvement of an IFA (Independent Financial Advisor) means that formalities were more likely to be completed correctly. This report is a highly recommended reading on the problems and solutions associated with the transfer process (besides taxation and the calculation of the transfer value).

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