Position Paper

Insurance Europe response to the Commission Staff Working Document on Consumer Protection in third-pillar retirement products.

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General Remarks

Insurance Europe welcomes the Commission's aims in its White Paper on Pensions to develop complementary private retirement savings. Indeed, individuals should have the opportunity to build supplementary entitlements through supplementary retirement savings such as third-pillar pensions.

Insurance Europe strongly believes that all EU Member States would benefit from having multi-pillar pension systems. These have the advantage of diversifying risks since the factors that affect labour variables — and hence the first pillar — are not perfectly correlated with factors that affect financial variables, which determine the performance of second- and third-pillar retirement systems. For example, funded pension schemes can mitigate the risks of a lower dependency ratio, while unfunded schemes can mitigate the risks of a low interest rate environment but no system can respond to every challenge alone.

In Insurance Europe's opinion, a clear support for multi-pillar systems does however not mean that the same pension systems or products should be promoted all over the EU, as pensions have a strong national component and member states have the prerogative as regards the organisation of their pension systems, including the role of each of the three pension pillars. In particular, pension products are closely linked to national social and labour law. Additionally, the form and structure of a pension is shaped by and dependent on tax legislation, which is a responsibility of Member States. These specific features of pensions have to be acknowledged and duly taken account of when policy recommendations are formulated in specific areas, including in the consumer protection field.

Furthermore, a difficulty often arises in the pension area as many concepts can have different meanings across the EU. This is the case for instance for the definition of the three pillars, the differentiation between the pillars, and the definition of other retirement related terms, such as "plan", "scheme", "product" and "institution". Insurance Europe therefore encourages all parties involved in the different workstreams on pensions to coordinate closely and agree on a common terminology.

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Additionally, Insurance Europe notes that DG SANCO's description of the existing national frameworks seems to take the fragmented situation as evidence of insufficient consumer protection. In Insurance Europe's opinion, this is rather a reflection of the fact that consumer protection is in general tailored to the products offered, which vary along national lines.

Finally, Insurance Europe stresses that third-pillar pensions can be provided by a number of different entities and that discussions are currently taking place at EU level, such as those in the context of Packaged Retail Investment Products (PRIPs) Regulation, Insurance Mediation Directive (IMD 2) and Markets In Financial Instruments Directive (MIFID 2), which will have an impact on the provision of third-pillar pensions across the EU. Therefore, Insurance Europe suggests waiting for the outcome of these discussions, including discussions on their scope, in order to avoid overlaps and possibly contradictions between the different initiatives.

Questions

1. *Is the following definition, used in the 2012 questionnaire, effective for identifying third pillar retirement products?*

   "Third-pillar retirement products are defined as any type of private retirement product subscribed to by consumers on an individual basis [as opposed to occupational], either voluntary or mandatory"

Establishing a definition for third-pillar pension products is extremely challenging given the different features of pension products in the EU. A tightly worded definition might result in unintended consequences, such as excluding existing pensions from future EU legislation.

Insurance Europe agrees with the Commission that in general pensions have certain characteristics that distinguish them from other savings products. Therefore, Insurance Europe strongly suggests also defining "pension products" in order to differentiate them from other savings products. Insurance Europe suggests defining a "pension product" as "a type of savings products, the primary goal of which is to provide an income in retirement".

Insurance Europe would not support classifying the so-called 1st Pillar Bis pensions (funded first-pillar pensions) or pension products for which a contribution is requested by national law as third-pillar products. It would suggest adding "private and voluntary" before "individual" to distinguish them from public pension schemes or other schemes for which a contribution is requested by national law.

Furthermore, on the definition above, Insurance Europe welcomes the idea of clearly making a distinction between occupational and non-occupational pensions because individuals subscribe to third-pillar retirement products independently from their employment relationship. Therefore, we would suggest maintaining the wording between brackets ("as opposed to occupational").

Finally, we support the definition covering "products" rather than "plans" or "schemes", which are closely linked to occupational pensions.

Insurance Europe thus suggests the following definition of third-pillar pensions:

"Third-pillar pension products are defined as any type of long-term savings products subscribed to by consumers on a private, voluntary and individual, as opposed to an occupational, basis with the primary goal of providing an income in retirement."

It is important to keep in mind, however, that this is a rather general definition, which may have to be amended depending on, for example, the scope of the initiatives on third-pillar retirement products under consideration.

2. *If not, what would be the most appropriate common EU definition for third-pillar retirement products?*

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Please refer to question 1 for an explanation of the suggested changes.

3. *What are the main risks for consumers when purchasing a third-pillar retirement product?*

In Insurance Europe's opinion, consumers may be confronted with two main types of risk when purchasing a third-pillar retirement product:

- Regulatory and tax instability risk

Any changes to the regulatory and tax environment — which, for taxation, falls under national jurisdiction — may jeopardise consumers' confidence and significantly deter the purchase and development of pension products. The risk is all the greater given that many pension products are long-duration products.

It is therefore of the utmost importance that national authorities ensure there is a stable regulatory and tax environment so as to preserve consumers' confidence in this market in the very long term. In all cases, the impact of any changes on existing contracts, and the risk they pose to consumers' confidence over the long term, should be carefully considered.

- Inappropriate disclosure risk

Given the long-term nature of many third-pillar products and the possible lock-in effects (a situation in which it is difficult for consumers to change providers), it is important that consumers are provided with appropriate and relevant disclosures enabling them to make informed decisions before purchasing such products.

However, Insurance Europe is concerned that the present concurrent and uncoordinated EU work on PRIPs — the outcome of which is still unclear — and other initiatives (eg Solvency II and now third-pillar pensions) are creating a tangible risk of overload and overlap of information requirements to the detriment of consumers. These workstreams could ultimately result in consumers receiving excessive, duplicative, unnecessary, and thus confusing information. Insurance Europe therefore calls on the different institutions and authorities working on pension products to better coordinate their activities. Please also see our response to question 4.

4. *How problematic do you consider the asymmetry between the consumer and the provider in terms of information about and knowledge of third-pillar retirement products?*

Providing adequate information to consumers is an important part of improving consumers' understanding of pension products. Providing information in a clear, relevant and timely way allows prospective consumers to compare the key features, benefits and risks of different products and allows them to select the right product for their needs. Therefore, Insurance Europe is supportive of initiatives that help increase consumer information. However, for this information to be useful, it has to be tailored to the products offered and the consumers' demands in the respective national markets. Given the wide fragmentation in pension products offered across Europe, EU initiatives in this regard should avoid — as indicated in the response to question 3 —consumers receiving excessive, duplicative, unnecessary and thus confusing information. It should also be noted that in general, insurance products are already subject to high standards of consumer information and protection; any new initiative should be assessed on the basis of the existing regulatory frameworks.

Insurance Europe believes as well that the question of the asymmetry between the consumer and the provider in terms of information about third-pillar retirement products may not be as acute as indicated in the Commission's consultation. In particular, it is important to keep in mind the following features of pension products:

- Mechanisms behind pension products may be quite complex in nature because they are of a longer term nature and may provide guarantees against investment risk, inflation, longevity and premature death, etc. It would provide little benefit, if any, to the consumer to be informed about the way such complex mechanisms function.
- The pension product itself, when offered to a customer, is in general rather simple to understand: the consumer pays contributions to a provider and the provider invests the contributions in return for a fixed or minimum guarantee. In certain cases, the provider offers the possibility to have a say on the underlying investment instruments.
- Forthcoming or existing EU legislation such as Solvency II, the Electronic Commerce Directive and the Distance Marketing Directive already provide for the disclosure of information to consumers.

Furthermore, there are other ongoing EU initiatives considering the issue of information requirements for savings products, such as the proposed Key Information Document (KID) for PRIPS. EIOPA is also currently running a consultation on a possible EU single market for personal pension products.

Insurance Europe believes the following considerations are important with respect to the existing and pending EU initiatives:

- It is important to ensure coherence among the relevant initiatives. Duplicative or inconsistent information requirements are detrimental to consumers who are overloaded with information and confused. These would defeat the objective of improving consumer information about and understanding of third-pillar retirement products. Moreover, overlapping requirements or even contradictory rules create redundancy, legal uncertainty and an unnecessary burden for the industry.
- Given the specific characteristics of pension products, Insurance Europe believes that any additional disclosure requirements for pension products, if deemed necessary, should focus on such specific features. The DG SANCO consultation and the concurrent EIOPA consultation will both deal with disclosure requirements for individual pension products. It is, therefore, inconsistent to research how to best inform consumers about pension products at the pre-contractual stage on the one hand and, on the other, to include them in a general investment disclosure document within the PRIPs regulation.

Financial education has a vital role to play in ensuring that consumers are equipped with the knowledge, confidence and skills necessary to improve their understanding of financial products and make informed decisions on saving for retirement. In its Green Paper on Pensions, the European Commission acknowledged that as pensions have become more complex, financial education can help people to understand the information in order to make informed choices. It stresses the importance of individuals being properly equipped with economic literacy and planning skills to be able to adequately assess their need for financial and social protection; it also notes that informed decisions go hand in hand with adequate pension provision. Responsibility lies not just with consumers but with a wide range of stakeholders (EU member states, public authorities, consumer associations, academia and the private sector) to improve financial education and help address any knowledge deficits among consumers regarding financial products and services. Transparency efforts are likely to fail where appropriate measures on financial education and literacy are not introduced to enable consumers to understand financial information.

5. *Are there specific needs of consumers purchasing third-pillar retirement products that have to be better taken into account, for example via EU voluntary codes or certification schemes on consumer information (transparency) and protection standards?- If so, how could consumer information (transparency) be improved? Please cover precontractual and contractual information - If so, how could protection standards be improved? Please cover marketing, sales practices, inducements, advice and other aspects.*

No, Insurance Europe believes that there is no need for voluntary codes or certification schemes at EU level. In general, insurance products already have a high level of regulation related to consumer information and protection standards. Moreover, national self-regulatory codes designed for the purpose of advice or information — tailored to consumers' specific demands in a certain country — are already in place in some individual member states.

Insurance Europe wants to stress that such codes or schemes may be extremely difficult to be agreed on implemented at European level, not least given the difference in product designs in the member states, and the fact that third-pillar pensions can be provided by a number of different players (insurers, banks, investment firms, etc.).

Additionally, Insurance Europe believes such codes or certification schemes should not interfere with product design. The insurance industry constantly adapts its retirement products to clients' demands and needs. Any direct or indirect product regulation could prevent innovation and flexibility. This would be to the detriment of the insurers' clients. It would also be inconsistent with the freedom of product design established by Article 21 paragraph 1 of Directive 2009/138/EC (Solvency II).

6. *Would a self-regulatory code be the best tool for improving the quality of third-pillar retirement products?*

Please refer to question 5.

7. *For which objectives would it be the best way of doing so? (e.g. improving consumer confidence, providing a guarantee of quality, or others)?*

For Insurance Europe, objectives to ensure consumer confidence and to provide quality benchmarks are self-evident. Insurance Europe opposes the creation of European-wide self-regulatory codes for the reasons cited above. However, should such measures be imposed, given the diversity of the market today and the national prerogative to regulate pensions, any measures taken to harmonise requirements, even on a self-regulatory basis, must at least be fairly high-level and product-neutral in order not to reduce consumer choice. Moreover, any such obligations must respect competition law.

8. *What outstanding pension-specific consumer protection issues could a self-regulatory approach help deal with?*

The insurance sector is already subject to a high level of regulation with regard to consumer protection and Insurance Europe therefore sees no merit in developing a self-regulatory approach. For further clarification, please refer to question 5.

9. *How and by whom should the effective application of the code be monitored?*

Insurance Europe opposes the creation of such self-regulatory codes (see response to question 8). With reference to the issue of monitoring in particular, it is important to keep in mind that third-pillar products can comprise insurance, UCITS, bank products, etc, so it would be difficult to single out one monitoring body for all areas. Furthermore, Insurance Europe believes that supervisors should not be involved in the monitoring. Such involvement could turn into de facto product regulation without a thorough legislative process.

10. *Would an EU certification scheme be the best way of improving consumer protection for third-pillar retirement products?*

It is not entirely clear what exactly is meant by an EU certification scheme. However, in general, Insurance Europe believes that there is no need for certification schemes at an EU level. Insurance products already have a high level of regulation in regard to consumer information and protection standards. Furthermore, as indicated in the response to Question 5, such a certification scheme should not conflict with existing regulation or interfere in product design. Pension systems differ considerably between countries. Therefore, uniform consumer protection legislation would not be possible for all existing products. Furthermore, uniform legislation on new products could harm product design and choice.

11. *For which objectives would it be the best way of doing so? (e.g. improving consumer confidence, providing a guarantee of quality, or others?)*

Please refer to question 10.

12. *What outstanding pension-specific consumer protection issues could an EU certification scheme help deal with?*

Please refer to question 10.

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