

The European Ombudsman : Complaint about maladministration

1. Plaintiff

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2. Against which European Union (EU) institution or body do you wish to complaint?

The European Insurance and Occupational Pensions Authority (EIOPA)

3. What is the decision or matter about which you complain? When did you become aware of it?

It concerns the EIOPA decision on the composition of its Occupational Pensions Stakeholder group announced by Press Release on 8 March 2011¹.

4. What do you consider that the EU institution or body has done wrong?

This decision does not comply with Article 37.3 and 37.4 of the Regulation (EC) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Insurance and Occupational Pensions Authority, which provides for a balanced representation of different stakeholders (see Annex II).

In March 2011, the EIOPA announced the members of its Stakeholder Groups, established to facilitate EIOPA's consultation with "stakeholders" in Europe. However, following our analysis of the composition of the Occupational Pensions Stakeholder Group, we must raise serious concerns about the over-representation of financial industry interests and the under-representation of occupational pension beneficiaries' representatives on the group.

We do not have access to biographies of all of the members of the stakeholder group but from the analysis we have been able to undertake we would make the following points (see details in Annex III):

"Representing in *balanced proportions*"

- "*institutions for occupational retirement provision operating in the Union*": in conformity with the regulation, ten members of the thirty member Stakeholder Group are senior level professionals employed and paid directly by the pensions industry.
- "*representatives of employees*,": we do not question the appointment of employees' representatives, as this is required by Article 37 and because they

¹ See Annex I and https://eiopa.europa.eu/fileadmin/tx_dam/files/pressreleases/Stakeholder-Groups.pdf

represent their own interests which are not necessarily those of their employers. However we would like to underline that employees of the occupational retirement provision industry are not economically independent from it. Surprisingly, EIOPA adds also "employers" representatives in this category. Not only, this is not provided for in the Regulation article 37 and its recital, but it also contradicts the limit of ten persons representing the pensions industry imposed by article 37. Indeed, we identified at least one "employer" representative who works for national pension industry federation (see Annex III).

- *"representatives of beneficiaries"*: one of the designated beneficiaries' representatives is actually an academic: he does not represent beneficiaries and never did it in the past. Only two members are actually representatives of beneficiaries.

Five "users of occupational pensions services":

- First, there are no "users" representatives mentioned in Article 37.3, only "beneficiaries" who should be only "consumers" and "retail users" as per Recital 47 (see Annex II).
- Second, the five chosen persons are certainly not "users" of occupational pensions services; they are actually from influential organizations that provide services to institutions for occupational retirement provision. The description of these paid service providers to the occupational pensions industry as "users" is at the very least misleading and contradicting the Regulation. Users of occupational retirement provision refer to the notion of customers of such services. This is clear in the Recital 47 (see annex II): "other retail users of those financial institutions" should be represented in the Pensions Stakeholder Group in addition to "consumers". Therefore "beneficiaries" in Article 37 can only refer to the "consumers and other retail users" as specified in Recital 47. And there is not any mention of providers or suppliers, who – therefore – should not be represented as such.
- Thirdly, in fact, there are no "other retail users" representatives as mandated by Recital 47, and, in particular not any representatives of pension funds participants despite their applications.

EIOPA seems therefore to have seriously mistaken "users" of pension services with occupational pensions industry executives themselves and with providers to this industry. Nevertheless, there is no ambiguity at the EU level in the term "users" of services. We refer to the above mentioned Recital 47 and - for example - to the creation of the "Financial Services Users Group" (FSUG) in 2010 by the European Commission, which does not include any representatives of the financial industries or any of their providers.

- *"representatives of SMEs"*: we find that there is not any representative of SMEs in this stakeholder group.
- *"and representatives of relevant professional associations"*: the EIOPA decision seems to comply with this criterion.
- *"At least five of its members shall be independent top-ranking academics"*: we could not check if they are really economically independent from the financial industry, as EIOPA did not disclose the resumes of these persons.

..."Ensuring, to the extent possible",

- "An appropriate geographical (balance)": 5 of 30 members come from UK;

- “*And a gender balance*”: only 6 of the 30 members are woman.
- “*And representation of stakeholders across the Union*”: there are 3 out of ten representative of institutions for occupational retirement provision from Belgium, 2 out of ten from 10 from the Netherlands while only 1 representative from new EU Members States.
- More generally the demand side is underrepresented while the insurance industry and its providers are largely overrepresented.

In our view, the make-up of the Occupational Pensions Stakeholder Group falls well short of the intentions expressed in many public statements made by European Authorities since the financial crisis, committing to make the voice of financial services users “*much more strongly heard on all financial issues*”, and to restore balance between the representation of financial services providers and that of users².

Specifically, this goes against both the spirit of the EU legislation and the wording of new financial supervision regulations (see Annex II) which require a balanced proportion between the representatives of financial services providers and financial services users.

As a matter of fact, the 30 member Group is heavily outweighed towards the persons paid by the occupational pensions industry or by its suppliers with at least 16 members, versus only 2 representing consumers and users in general. When the group will have to issue an opinion, advice EIOPA, or decide on the agenda of its meetings, because of the dominance of industry representatives and its suppliers, it will be impossible for the rest of the group to make up a majority. There is a serious risk that the membership vote will always lean on the same side.

As a result, this creates a serious risk of the EIOPA failing to properly understand the needs and interests of ordinary occupational pensions beneficiaries and could undermine effective policymaking.

5. What, in your views, should the institution or body do to put things right?

EIOPA should reconsider the composition of the Occupational Pensions Stakeholder Group at once without waiting for the renewal of this group foreseen in 2013. The new stakeholder group should be composed in balanced proportions and the users of occupational pensions services should be real users of those services – and not providers of services to the industry. It is also important to avoid potential conflicts of interests.

Even if the concept of balanced proportions is not defined by the Treaty or a previous directive, it is not new in the EU context. The Commission’s White Paper on European Governance³, published in July 2001, mentions that – in order to “*reduce the risk of*

² See for example Annex IV: 4 March 2009 « *Driving EU recovery* » communication from the EC, Annex I, page 4: «*The interests of European investors, consumers and SMEs, must be at the centre of the reform... The Commission will ... ensure that the voice of European investors is much more strongly heard on all financial issues*”.

³ European Governance – A white Paper, 25/07/2001, COM(2001) 428 final.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0428en01.pdf

the policy-makers just listening to one side of the argument or of particular groups getting privileged access...⁴, – the Commission will adopt minimum standards for consultation and publish them in a code of conduct. The subsequent Commission's Communication on 'General principles and general standards for consultation of interested parties'⁵ lays down the principles of equitable consultation. Under those principles:

In determining the relevant parties for consultation, the Commission should take into account the following elements as well:

- ...
- *the need for specific experience, expertise or technical knowledge, where applicable*
- *the need to involve non-organised interests, where appropriate*
- *the track record of participants in previous consultations*
- *the need for a proper balance, where relevant, between the representatives of:*
 - *social and economic bodies*
 - *large and small organisations or companies*
 -

As the stakeholder group is established to '*facilitate consultation with stakeholders in areas relevant to the task of the Authority*' (Art. 37, 1. ; Regulation 1094/2010 establishing the EIOPA), the Commission's White Paper and Communication are adequate sources of inspiration to interpret rightly the concept of balanced proportions.

Additionally, in order to insure full transparency and prevention of conflicts of interests we would like the CVs of chosen members of stakeholder groups to be published on EIOPA website together with the criteria that were taken into account while recruiting.

6. Have you already contacted the EU institution or body concerned to obtain redress?

Yes

On 16 March 2011, we sent a letter (see Annex V) to the EIOPA Chairman raising our concerns on its decision and asking him to reconsider the composition of the EIOPA occupational pensions stakeholder group. On 23 March 2011, we received a response we consider unsatisfactory (see annex VI).

7. If the complaint concerns relationships with the EU institutions or bodies; have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

No, not relevant in this case

⁴ European Governance – A white Paper, 25/07/2001, COM(2001) 428 final, p. 17.

⁵ Communication from the Commission towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission, 11/12/2002, COM(2002) 704 final, p. 20.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704:FIN:EN:PDF>

8. Has the object of your complaint already been settled by a court or is it pending before a court?

No

9. Please select one of the following two options after having read the information in the text below:

Please treat my complaint publicly

10. Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Date and signature:

Brussels 14/09/2011



List of attachments:

1. [Annex I - Press Release on the establishment and composition of EIOPA's two Stakeholder groups announced by on 8 March 2011](#)
2. [Annex II - Article 37 and Recital 47 of the Regulation \(EC\) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Insurance an Occupational Pensions Authority](#)
3. [Annex III - Analysis of the EIOPA Occupational Pensions stakeholder group published list of members](#)
4. [Annex IV - 4 March 2009 « Driving EU recovery » communication from the EC](#)
5. [Annex V - EuroInvestors' letter to the Chairman of EIOPA, Mr. Gabriel Bernardino](#)
6. [Annex VI - Reply from the Chairman of EIOPA, Mr. Gabriel Bernardino to EuroInvestors](#)

Complaints to the European Ombudsman (and any annexed documents) are normally dealt with publicly.

'Dealing publicly' with a complaint means that any member of the public may have access to the complaint and its annexes. If the Ombudsman opens an inquiry, the opinion of the institution or body concerned on the complaint, any observations on the opinion made by the complainant, as well as other documents mentioned in Article 14 of the Implementing Provisions (available on the Ombudsman's website) are public documents to which any member of the public may have access on request. The Ombudsman's decisions on complaints are published on his website with the complainant's name removed. Some are also published in full, or in summary form, in hard copy and electronic formats. These publications do not include the complainant's name or address.

A complainant has the right to request that his or her complaint be dealt with confidentially. If confidentiality is requested, there is no public access to the complaint or to the other documents mentioned above. However, even a confidential complaint must be sent to the Union institution or body concerned, if the Ombudsman begins an inquiry. The Ombudsman's decisions on confidential complaints are published on his website, after the removal of any information which could lead to the identification of the complainant. This information is also removed if the decision is published in full, or in summary form, in a hard copy or electronic format.

Complaints to the Ombudsman may contain personal data relating to the complainant, or to a third party. The processing of personal data by the European Ombudsman is governed by Regulation (EC) No 45/2001 (1). Unless the complainant requests confidentiality, he or she is understood to consent for the purposes of Article 5 (d) of Regulation (EC) No 45/2001 to the Ombudsman dealing publicly with any personal data which the complaint may contain.

(1) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

