European Fund and Asset Management Association

EFAMA COMMENTS ON CONSULTATION PAPER :

EIOPA's Advice on the Development of an EU Single Market for Personal Pension Products (PPP)

GENERAL COMMENT

EFAMA welcomes EIOPA's consultation and the opportunity to share our views on EIOPA's recommendations to develop an EU single market for personal pensions.

EFAMA supports the conclusions of EIOPA's impact assessment:

- The standardization of key elements of a PEPP - as proposed by EIOPA in its advice - with space to accommodate the specificities of Member States, is the best policy option.
- It would be difficult to achieve full standardization via harmonization because this would require bringing all national regulations on PPPs to one level.
- We believe harmonization of PPPs would not be feasible, due to different social frameworks and taxation rules between member states. Furthermore, a full harmonization of PPPs would restrict competition between different product types and reduce choice for consumers.
- We strongly agree that the development of a successful EU Single Market for Personal Pensions can be achieved by a 2nd regime that creates rules for a standardized PEPP that do not replace national rules but are instead an alternative to them.
- The PEPP should benefit from an EU passport in order to be offered across Europe, once authorized by a competent authority in one Member State. To benefit from the passport, the PEPP should indeed be seen as a product. This said, the client of a PEPP may need to open an account.

Against this background, we recommend giving priority to the creation of the PEPP through the use of a 2nd regime.

For this reason, our response to the current consultation will focus on the PEPP and on the elements that should be part of its legislative framework.

At a later stage, once the PEPP is introduced and the first experiences on the PEPP and customer response are known, policy-makers could consider discussing potential adaptations to the existing PPPs.

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Question 1: Would PPPs benefit from harmonisation of provider governance standards? What should be the basis for provider governance standards for PPPs? Do you agree with EIOPA's proposals?

We believe a standardised model for governance would run the risk of creating a double layer of rules for providers that already have to apply protection mechanism for consumers under sectoral legislation.

EFAMA considers that all PEPP providers should operate under an EU sectoral legislation. No additional regulatory burden - including in the area of governance standards – should be created for PEPP providers.

We agree with EIOPA that asset managers’ business model “*provide[s] an adequate level of protection in the measures under both UCITS and AIFMD, central to the operation of funds in the EU, whereby all assets are held in the name of the individual investors, in segregated accounts that separate them from those of the asset manager and other clients.*”

We also agree with EIOPA that the actuarial support would only become a key function for PEPPs comprising life insurance elements. To the extent that providers will sell products with different features, they will not be subject to similar risks; hence, the governance requirements must be commensurate with the specific features of the PEPPs offered.

Question 2: Would PPPs benefit from harmonisation of product governance rules? What should be the basis for product governance rules for PPPs? Do you agree with EIOPA's proposals?

EFAMA supports EIOPA’s proposal regarding the essential mandatory characteristics to standardise the PEPP. We also agree that the benefits of standardization will largely be achieved in the accumulation phase. And we strongly believe that the decumulation elements of the PEPP, such as the possibility of adding a biometric risk cover, should be optional and flexible.

Concerning the decumulation options, we recommend that the EU framework for the PEPP allows Member States to decide the type of decumulation solutions that should be offered to PEPP holders. We strongly believe, though, that the options offered to people should include lump sums and/or phased drawdown plans for two reasons: first, people will need to be offered a sufficient degree of choice if policymakers want to convince them to increase their personal saving on a voluntary basis; second, the current level of interest rates makes it difficult to offer attractive annuities.

We generally endorse the ESAs high-level principles on POG rules.

Regarding the ‘target market’ concept, the rules are still being developed. So, at this stage, it is difficult to have a position on the potential application of this concept to the PEPP.

Question 3: Would PPPs benefit from harmonisation of distribution rules? What should be the basis for distribution rules for PPPs? Do you agree with EIOPA's proposals?

EFAMA agrees that it would be beneficial to facilitate non-advised online distribution of the PEPP. We certainly believe that the default investment option of the PEPP should always be designated as “non-complex” to avoid the application of appropriateness requirements.

We agree with EIOPA that an advice regime for the PEPP should not be mandatory to the extent that the PEPP will be a simple, transparent and highly standardized product. This being said, we agree that access to advice is likely to be important for many consumers. It is therefore important to keep in mind that online selling will only be one of the possible distribution channels of the PEPP. The existing distribution channels are likely to continue to play an important role, notably because they are suitable for providing advice or guidance, taking into account the consumers' best interests and needs.

EFAMA also agrees that both the IDD and MiFID II measures cover the conflicts of interest that might arise in relation to distribution arrangements and provision of advice.

We believe current EU legislation on distribution should be sufficient for PEPP distributors to apply. As EIOPA shows in its annex VI, MiFID has explicit conduct of business rules.

EFAMA believes that there is no need to establish further regulation for PEPP providers to ensure that distributors act in the best interest of consumers.

Question 4: Would PPP benefit from harmonisation in disclosure rules? What should be the basis of these rules? Do you agree with EIOPA's proposals?

EFAMA agrees with the general principles mentioned by EIOPA on risks, performance and costs for the PEPP. Still, we would add a number of comments:

- On risk disclosure: we agree with EIOPA that the information disclosed should take into account the impact that inflation might have on performance. We believe that focusing only on investment risk in a pre-sale disclosure could be misleading. Indeed, a bond or cash fund would score low in investment risk but high on inflation or shortfall risk.

- On performance disclosure: we strongly believe that past performance would be the most reliable indicator to make comparisons between various PEPPs with a similar investment strategy. The experience with the UCITS KIID shows that investors wish to see the product's history of returns (where there is one). This approach has the benefit of being based on facts, and giving an objective indication of the way in which a fund is run.

- On future performance scenarios: we fully agree with the position taken by the ESMA Securities and Markets Stakeholder Group which "*considers that the risks for future performance scenarios proving to be misleading and further also not comparable between different products are very high*" and warns "*the European regulators about the extreme danger of forcing EU individual investors to rely only shaky, hardly comparable future performance scenarios, while depriving them for the only performance information that is objective and that is least subject to mislead them: the standardised and comparable historical performance of the product and of its objective benchmark (currently required for all UCITS funds)*" [1]. The long-term nature of the PEPP makes these concerns even more relevant.

[1] See https://www.esma.europa.eu/sites/default/files/library/2015-smsg-028-smsg_letter_priips_past_performance.pdf

The fact that the consumer needs to stay invested in principle until retirement age is the fundamental distinguishing feature from a UCITS KIID or PRIIP KID. This feature should be mentioned at the very start of a PEPP disclosure document.

Any disclosure rules that may be developed for the PEPP should avoid duplication of documentation to the consumer (eg. A PRIIPs KID and a PEPP KID). Therefore, the PEPP should be supported by one specific PEPP KID and not by two disclosure documents, i.e., a PRIIP KID and a PEPP KID.

We have a concern related to EIOPA's reference to "personalised" disclosure during the pre-contractual stage. In our view, the pre-contractual documentation should not be personalised. Taking into account that on-line distribution is an explicit objective of EIOPA, it is important to note that personalised disclosure rules in the pre-enrolment phase would hinder the PEPP distribution on-line.

We agree with EIOPA's reference to supplementary tools that may be put at the disposal of the PEPP (potential) holder to help decision making: online calculators for PEPPs, capable of showing how incomes in retirement vary for different assumed returns, inflation amounts and savings rates. In such cases, the consumer could introduce his own data. We also agree with EIOPA on the need to standardise certain assumptions so that any projections can be comparable among PEPPs.

Question 5: Are you aware of any differences in prudential regimes that would lead to an unlevel playing field amongst PPP providers? Do you agree with EIOPA's view not to add specific capital requirements for PPPs?

EFAMA agrees with EIOPA that there should be no harmonised solvency regime for PEPP providers.

In sum, we believe that consumer protection rules should be embedded in the product (PEPP) while the providers should operate under their EU sectoral legislation. This would facilitate the creation of a standardised and high-quality Pan-European pension product and minimise the cost of creating a new business line for providers.

We agree with EIOPA that the provision of guarantees should be allowed, but not required, in order to ensure that the PEPP regulation is sufficiently flexible to accommodate investor needs and risk preferences.

We also believe that if the PEPP provider chooses to embed a financial or biometric risk coverage in its PEPP, there should be solvency rules to ensure that PEPP provider will fulfil its promise.

Question 6: Are further supervisory powers tailored to PEPP necessary? Do you agree with EIOPA's proposals?

EFAMA agrees with EIOPA that there is no need for a stand-alone authorisation regime for PEPP providers. The simplification of the authorisation procedure should minimise the cost of creating a new business line for providers and thus increase the market attractiveness of the PEPP.

We also agree with EIOPA on the scope of eligible PEPP providers: only those falling under EU sectoral legislation should be eligible to become PEPP providers.

We have reservations about EIOPA's proposals concerning EU benchmark measures, independent watchdog committees, and commitment memorandums.

- On EU benchmarks, we believe that it should not be necessary to develop EU benchmark measures. Market forces and transparency on past performance should help consumers to compare PEPPs' performances.

- On the creation of watchdog committees, we think that market forces and competitive discipline will act: PEPPs without this governance standard may be seen as being at a competitive disadvantage in the market place. National or EU consumer protection agencies will certainly play an active role comparing PEPPs. Therefore, watchdog committees should not be mandatory for PEPP providers.

- On the commitment memorandum, we question how useful and understandable it would be to the consumer and his/her decision-taking. The expected performance for one product will vary according to the market conditions and the periodicity, level and time-length of contributions. This suggests a customer-specific 'commitment memorandum' but it would be unduly burdensome. We also think that market forces alone will best support the aim of fulfilling the caveat venditor principle.

We advise EIOPA to consider the high costs of setting up a new business line and avoid discouraging providers of doing so with overly prescriptive reporting requirements.

Question 7: Do you agree with EIOPA's assessment of the policy options' impacts?

EFAMA agrees with the outcomes outlined by EIOPA in its impact assessment:

- **Full harmonisation of PPPs is not desirable.**

Full harmonisation would interfere with national pension solutions. It goes beyond the European Union remit of competences.

- **A standardised PPP with some flexible elements (PEPP)** is the best option.

Standardisation facilitates cross-border activity for the provider and enhances simplicity for the consumer. The advantage of this solution is the combination of the desired advantages of standardisation in a currently inefficient market with the flexibility and adaptability that is needed on a currently highly divergent market in Europe.

- **A 2nd regime can establish the PEPP.**

A 2nd regime can create a PEPP without harmonising national PPPs. The advantages of the standardised PPP with flexible elements can only be fully reaped through the use of a 2nd regime. Such regime can overcome more obstacles to cross-border activities than a harmonisation option.

Annex I : Impact Assessment: *Please refer to our 'General Comments' and our answer to question 7.*

Section 1. Procedural issues and consultation of interested parties: *Ibid*.

Section 2. Problem definition: *Ibid*.

Section 3. Objective pursued: *Ibid*.

Section 4. Policy options: *Ibid*.

Section 5. Analysis of impacts: *Ibid*.

Section 6: Comparison of options: *Ibid*.

Brussels, 25 April 2016

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