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From:	Mr Olivier Guersent, Director General for DG FISMA, European Commission
date of receipt:	5 August 2019
To:	Mr Gabriel Bernardino, EIOPA Chairman
Subject:	Request for EIOPA technical advice on possible delegated acts concerning the Regulation on a Pan-European Personal Pension Product (PEPP)

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Delegations will please find attached a request from the Commission to EIOPA for technical advice on possible delegated acts concerning the Regulation on a Pan-European Personal Pension Product (PEPP).



**EUROPEAN COMMISSION**

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

The Director-General

Brussels,  
FISMA.D4/EP/ml/Ares(2019)5515171

Mr Gabriel Bernardino  
EIOPA Chairman  
Westhavenplatz 1  
60327 Frankfurt am Main  
Germany

**Subject: Request for EIOPA technical advice on possible delegated acts concerning the Regulation on a Pan-European Personal Pension Product (PEPP)**

Dear Mr Bernardino,

On 25 July 2019, the Regulation 2019/1238/EU of the European Parliament and of the Council of 20 June on a Pan-European Personal Pension Product (the “PEPP Regulation”) was published in the Official Journal.

Certain elements of the Regulation need to be further specified in delegated acts to be adopted by the Commission. These include in particular:

- the specification of additional information, with a view to ensuring to the appropriate extent convergence of supervisory reporting (Article 40(9), 1<sup>st</sup> subparagraph);
- criteria and factors to determine when there is a significant PEPP saver protection concern, including with respect to the long-term retirement nature of the product, or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union, for the purpose of EIOPA’s intervention powers (Article 65(9))

After having informed the European Parliament and the Council, I am pleased to enclose the Call for Advice.

I invite EIOPA to provide its final Technical Advice, including a cost-benefit analysis, to the Commission by **12 months after the entry into force of the PEPP Regulation (i.e. 14 August 2020)**, in order to allow the Commission to consider the adoption of the relevant delegated acts.

I believe that close co-operation between EIOPA and the Commission on this Call for Advice should be maintained. I am confident that such cooperation will contribute to a successful outcome in the preparation and adoption of the PEPP Regulation delegated acts.

Yours sincerely,

  
Olivier GUERSENT  
p.u. *Guersent*

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26/07/2019

**REQUEST TO EIOPA FOR TECHNICAL ADVICE ON TWO DELEGATED ACTS  
concerning**

**the Regulation on a Pan-European Personal Pension Product (PEPP)**

(Regulation 2019/1238/EU)

With this mandate to EIOPA, the Commission seeks EIOPA's technical advice on two delegated acts concerning Regulation (EU) 2019/1238 of the European Parliament and of the Council of 2019 on a Pan-European Personal Pension Product (PEPP) (hereafter the "**PEPP Regulation**" or the "**Regulation**"). These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union.

EIOPA should deliver technical advice on the following issues:

- (a) specification of additional information for supervisory reporting (Article 40(9), 1<sup>st</sup> subparagraph of the PEPP Regulation);
- (b) criteria and factors to determine when there is a significant PEPP saver protection concern, including with respect to the long-term retirement nature of the product, or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union (Article 65(9)) for the purpose of the EIOPA's product intervention powers under article 65 of the PEPP Regulation.

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"), the Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority (the "**EIOPA Regulation**") and the Framework Agreement on Relations between the European Parliament and the European Commission (the "**Framework Agreement**").

Under the Regulation the Commission shall adopt by means of delegated acts in particular:

- (a) measures to specify additional information, with a view to ensuring to the appropriate extent, convergence of supervisory reporting (Art. 40(9), 1<sup>st</sup> subparagraph);
- (b) criteria and factors to determine when there is a significant PEPP saver protection concern, including with respect to the long-term retirement nature of the product, or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union (Art.65(9)) for the purpose of the EIOPA's product intervention powers under article 65 of the PEPP Regulation

The Commission invites EIOPA to start the preparation of the technical advice as soon as possible and invites EIOPA to build on the results of previous work that has already been carried out by EIOPA, ESMA and EBA (e.g. EIOPA's previous technical advice on product intervention powers under the Regulation on key information documents for packaged retail and insurance-based investment products (hereafter the "**PRIIPs Regulation**")<sup>1</sup>, ESMA and EBA's previous technical advice on product intervention powers under the Regulation on markets in financial instruments (hereafter "**MIFIR**") as well as on the ESAs' experiences linked to product intervention powers.

<sup>1</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

## 1. Context

### 1.1 Scope

On 29 June 2017, the Commission published its proposal for a Regulation on a Pan-European Personal Pension Product (PEPP). On 13 December 2018, the European Parliament and the Council reached a political agreement on a compromise text of the Regulation. This compromise text was endorsed by COREPER on 13 February 2019. The text was adopted by the European Parliament on 4 April 2019 and by the Council on 14 June 2019. Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a Pan-European Personal Pension Product (PEPP) (hereafter "PEPP Regulation" or "the Regulation"), was published in the Official Journal on 25 July 2019. It will enter into force 20 days after the date of publication in the Official Journal.

The Regulation on the PEPP provides consumers with an additional option to save for retirement. The PEPP Regulation lays down the foundations for a pan-European personal pension market, by providing standardised rules for the core product features, such as transparency requirements, advice, investment rules, switching right, type of investment options, type of out-payments.

Certain elements of the Regulation need to be further specified in delegated acts to be adopted by the Commission.

### 1.2 Principles that EIOPA should take into account

In providing its technical advice, EIOPA is invited to take account of the following principles:

- It should respect the requirements of the EIOPA Regulation.
- Internal market: the need to ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to personal pension products and a high level of consumer protection.
- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the delegated acts set out in the legislative act.
- While preparing its advice, EIOPA should take fully into account the regulatory framework of the Union, and in particular the delegated acts on EIOPA intervention powers under PRIIPs and of EBA and ESMA's intervention powers under MiFIR, where appropriate – and build its advice on the experiences with those powers. It shall further develop the criteria and factors to be applied by EIOPA considering the specificities and objectives of PEPP.
- In accordance with the EIOPA Regulation, EIOPA should not feel confined in its reflection to elements that it considers should be addressed by the delegated acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- EIOPA will determine its own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by the various expert groups.
- As PEPPs can be offered by a wide range of PEPP providers (not only insurers, but also asset managers, banks, some investment firms and some IORPs), EIOPA should liaise closely with and consult ESMA and EBA when providing its technical advice to the Commission. EIOPA

should aim to achieve as much consistency as possible, while addressing the particularities linked to the various type of PEPP providers/PEPP products.

- The technical advice provided by EIOPA should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology at European level.
- EIOPA should justify its advice by identifying, where relevant, a range of technical options and undertaking a qualitative, and as far as possible, quantitative assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the advice to assist the Commission if it needs to prepare an impact assessment. Where administrative burdens and compliance costs on the side of the industry could be significant, EIOPA should where possible quantify these costs.
- EIOPA should provide sufficient qualitative evidence and where possible factual data backing the analyses gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by EIOPA makes maximum use of the qualitative evidence and data gathered and enables all stakeholders to understand the overall impact of the delegated acts.
- EIOPA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provisions of the legislative act, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.
- The technical advice given by EIOPA to the Commission should not take the form of a legal text. However, EIOPA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology in the Union.
- EIOPA should address to the Commission any question they might have concerning the clarification of the text of the legislative act, which they should consider of relevance to the preparation of EIOPA's technical advice.

## 2. Procedure

The Commission would like to request the technical advice of EIOPA in view of the preparation of delegated acts to be adopted pursuant to articles Art. 40(9), 1<sup>st</sup> subparagraph and Art. 65(9) of the PEPP Regulation and in particular regarding the questions referred to in section 3 of this mandate.

The Commission reserves the right to revise and/or supplement this formal mandate. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way.

In accordance with the established practice, the Commission may continue to consult experts appointed by the Member States in the preparation of the delegated acts relating to the legislative act.

The Commission has sent a copy of this mandate to the European Parliament and the Council. As soon as the Commission adopts the delegated acts, it will notify them simultaneously to the European Parliament and the Council.

3. **EIOPA is invited to provide technical advice on the following issues:**

3.1. **Specification of additional information, with a view to ensuring, to the appropriate extent, convergence of supervisory reporting (as laid down in the empowerment of Article 40(9) 1<sup>st</sup> subparagraph of the PEPP Regulation)**

- (A) The Commission seeks EIOPA's technical advice with regard to the adoption of delegated acts pursuant to Article 40(9), 1<sup>st</sup> subparagraph of the PEPP Regulation. EIOPA is asked to specify the additional information, including if applicable templates and means of communication, taking into account existing sectorial legislation, to be submitted by PEPP providers to national competent authorities, and subsequently to EIOPA, with a view to ensure efficient and effective supervisory review processes and to support taking appropriate supervisory actions. EIOPA's technical advice should ensure, to the appropriate extent, convergence of supervisory reporting on such additional information to be requested from PEPP providers by their respective national competent authorities.

In particular, EIOPA is asked to specify the additional information, depending on the type of PEPP provider, required to enable national competent authorities to assess the system of governance applied by the PEPP providers, the business they are pursuing, the valuation principles applied for solvency purposes (where applicable), the risks faced and the risk-management systems, and their capital structure, needs and management. This additional information, which should be tailored to PEPP providers activities relating to PEPP, should include but not be limited to the following items, **supplementing sectoral legislation**:

- a description of the risk management system (including its governance) put in place by the PEPP provider in order to manage the risks deriving from PEPP products;
- a description of the business pursued by the PEPP provider relative to the sector in which the PEPP provider operates, including the type of investments made and how those investments are managed (eg active/passive, whether guarantees are offered or not), the implementation of risk-mitigation techniques, the size in terms of contributions and asset values, and in which countries the PEPP provider operates and/or offers a PEPP;
- the determination of which written policies PEPP providers should have in place addressing relevant risks;
- information on the valuation principles applied for solvency purposes, where applicable;
- an overview of the relevant risks pertaining/linked to the provision of PEPP and how the PEPP provider intends to manage those risks, including but not limited to financial and liquidity risks, market risks, credit risks, reputational risks and ESG risks;
- determination of the appropriate reporting needs on the capital structure for each of the different PEPP providers, capital ratios and / or level of leverage;
- information on contracts held by PEPP providers or regarding contractual relationships with third parties, for example with a view to the obligations towards PEPP savers during the decumulation phase or for the provision of PEPP sub-accounts.

- (B) In its assessment of the required additional information, EIOPA should take into account whether and how the additional information could be presented in a comprehensive and comparable manner across PEPP providers. It should also take into account the historic, current or prospective elements of the additional information. EIOPA should also advise on the periodicity of the submission of the additional information and/or the events that should trigger the submission of such additional information and specify when and which additional information can be required from external experts, such as auditors or actuaries.

For all items, the advice should determine which information should be reported in a quantitative format and which in a qualitative manner or in a combination thereof. In case of qualitative information, the advice should indicate the qualitative parameters on which information should be provided. In addition and where appropriate, the advice should ensure that the requirements on reporting of additional information is proportionate to the nature, size and complexity of the reporting undertaking's business providing PEPPs.

**EIOPA is invited to specify in its technical advice the additional information referred to in paragraphs 1 to 5 of article 40 of the PEPP Regulation, to be submitted by PEPP providers to national competent authorities, with a view to ensure efficient and effective supervisory review processes and to support taking appropriate supervisory actions. EIOPA's technical advice should ensure, to the appropriate extent, convergence of supervisory reporting on such additional information to be requested from PEPP providers by their respective national competent authorities.**

### **3.2 Criteria and factors to determine when there is a significant PEPP saver protection concern, for the purpose of EIOPA's intervention powers (as laid down in the empowerment of Article 65(2) of the PEPP Regulation)**

The PEPP Regulation confers on EIOPA the power to monitor the market for PEPPs which are marketed, distributed or sold in the Union and, subject to certain conditions, temporarily prohibit or restrict in the Union the marketing, distribution or sale of certain PEPPs or PEPPs with certain specified features.

While these powers need to be applied in a proportionate way, and are expected to be of an extraordinary nature or constitute a measure of last resort<sup>2</sup>, there is also a need to ensure that such powers are dynamic enough to address significant risks that may arise in the markets.

Under article 65(9) of the PEPP Regulation, the Commission shall adopt, in the context of product intervention powers for EIOPA, delegated acts to supplement the PEPP Regulation with "*criteria and factors to be applied by EIOPA in determining when there is a significant PEPP saver protection concern, including with respect to the long-term retirement nature of the product, or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union referred to in point (a) of paragraph 3*" of the PEPP Regulation.

The PEPP Regulation already provides a framework for EIOPA's product intervention powers and lays down that the criteria and factors to be applied by EIOPA, in determining when there is a significant PEPP saver protection concern (including with respect to the long-term retirement nature of the product), or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union, shall include:

<sup>2</sup> That means a systematic prior approval of PEPPs' terms and conditions is not expected.



- (a) the degree of complexity of the PEPP and the relation to the type of PEPP saver to whom it is marketed and sold;
- (b) the degree of innovation of a PEPP;
- (c) the leverage of a PEPP;
- (d) in relation to the orderly functioning and integrity of financial markets, the size or the total amount of accumulated capital of the PEPP.

Those criteria and factors shall take into account the result of any relevant work conducted by EIOPA, in particular relating to the PRIIPs Regulation, and by ESMA and EBA under MIFIR and the ESAs' experiences related to their product intervention powers. EIOPA may differentiate between situations where EIOPA takes action because a competent authority has failed to act and situations where EIOPA takes action because the actions that have been taken by the competent authorit(ies) do not adequately address the significant PEPP saver protection concern (including with respect to the long-term retirement nature of the product) or the threat to the orderly functioning and integrity of financial markets.

The factors may refer to the degree of complexity or innovation of a PEPP and its particular features, the type of PEPP savers to which the PEPP is marketed or sold and their financial sophistication. The factors and criteria can be linked to product features pertaining to, for example, the proposed investments, the risk-mitigation techniques, the cost structures, the corresponding governance structures, and the PEPP provider's business model. In relation to the orderly functioning and integrity of financial markets, the factors may also refer to the size or the total amount of accumulated capital of the PEPP, the potential scale of detriment in the market and to the individual's savings, possible contagion effect and where relevant, the detrimental effect on the price formation mechanism in the underlying market.

EIOPA may also elaborate on the interlinkage between individual criteria and the assessment of their collective effect leading to a significant PEPP saver protection concern or a threat to the orderly functioning and integrity of financial markets.

Those criteria and factors should ensure a sufficient degree of legal clarity, in order to allow a harmonised application of EIOPA's intervention powers. They should also ensure that EIOPA can intervene and react towards exceptional situations or new and evolving market products or practices. When preparing its technical advice, EIOPA should also duly take into consideration relevant case-law<sup>3</sup>.

**EIOPA is invited to provide technical advice on measures specifying the criteria and factors to be taken into account by EIOPA in determining when there is a significant PEPP saver protection concern, including with respect to the long-term retirement nature of the product, or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union.**

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<sup>3</sup> Judgment of the Court (Grand Chamber) of 22 January 2014, United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union, Case C-270/12;

#### 4. Timetable

This mandate takes into consideration the expected date of application of the PEPP Regulation<sup>4</sup>, that EIOPA needs enough time to prepare its technical advice and that the Commission needs to adopt the delegated acts in accordance with Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Article 72 of the PEPP Regulation.

The deadline set to EIOPA to deliver the technical advice is twelve months after the entry into force of the PEPP Regulation (i.e. 14 August 2020).

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<sup>4</sup> The entry into application of the PEPPs Regulation will be 12 months from the publication in the official Journal of the regulatory technical standards provided for in the Regulation.