

Comments Template on CP EIOPA's advice on the development of an EU Single Market for personal pension products (PPP)

**Deadline
26 April 2016
23:59 CET**

Name of Company:	
Disclosure of comments:	Please indicate if your comments should be treated as confidential: <input type="checkbox"/> Confidential/ <input type="checkbox"/> Public
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Reference	Comment
General Comment	<p>Better Finance, the European Federation of Investors and Financial Services Users is the dedicated representative of financial services users at European level. It counts about fifty national and international members and sub-member organizations in turn comprising about 4.5 million individual members. Better Finance acts as an independent financial expertise centre to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry.</p> <p>Better Finance is the most involved European end user and civil society organisation in the EU Authorities' financial advisory groups, with experts participating in the Securities & Markets, the</p>

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Banking, the Occupational Pensions and Insurance and Reinsurance Stakeholder Groups of the European Supervisory Authorities; as well as in in the European Commission’s Financial Services User Group. Its national members also participate in national financial regulators and supervisors bodies when allowed. For further details please see our website: www.betterfinance.eu

While Better Finance welcomes EIOPA’s consultation on PPPs, we wish to make clear that this is only a second best option compared to the much more preferable and effective Pan-European Personal Pension product approach (PEPP). We doubt that any meaningful harmonisation of the myriads of PPP regulatory regimes within the EU could happen any time soon. But the pension issue is a ticking time bomb of tremendous magnitude, so time is of essence, and no further delay should be allowed for the completion of a common market for personal pensions in the EU. Only a PEPP approach can achieve this.

As the successful experience of the UCITS funds (the only Pan European retail investment product so far – almost 60 years after the Treaty of Rome which was supposed to provide for a common market in products, services and capital) shows, the only realistic and effective approach is a Pan-European PP Regulation.

Q1

Notwithstanding our general comment above (EU Authorities should focus on launching the “PEPP” as a top priority, not on harmonizing rules for all existing “PPPs”), we agree with EIOPA’s proposals on the harmonization of provider governance standards as pointed out in CP, pages 15 to 25. Nevertheless related to some particular issues we emphasize that they need to be more precise.

The fit and proper requirements should be aligned to the Solvency II Regulation (2015/35/EU, articles 273 and 275). The responsibilities of the providers for the crucial role of the distributors should clearly be aligned to EIOPA’s proposal of preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors (mainly guidelines 3 and 6 for manufacturers) in October 2015.

Related to risk management and actuarial tasks we fully support the proposal of a legally

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protected whistle-blowing requirement for the compliance function to inform the supervisory authority if necessary.

We agree with EIOPA’s assessment that “in order to avoid conflicts of interest, a guiding principle should be that the remuneration according to an eligible policy ensures that the remunerated person always acts in the best interest of the consumer”. Additionally we strongly underline that there should be an obligation introduced to publicly disclose not only the actual remuneration structure but also the actual amount of commissions, fees and any other incentives being paid by third parties. We refer to MIFID 2 (article 23) and IDD (article 28) on the disclosure of conflicts of interest as well as to MIFID 2 (article 24) and IDD (article 29) on the “soft disclosure” of commissions and incentives as minimum standards. At least these minimum standards for PRIIPs must not be overruled.

We agree with EIOPA’s proposal to follow the sector-specific requirements on the use of depositories, as those requirements are not necessarily specific to PPP. This must include in particular the specific model of capital reserves of the German life insurers (“Deckungskapital”) due to their guaranteed minimum interest rate for traditional life and annuity insurances. These requirements should be valid not only for life insurers, but for pension funds and pension schemes as well, if they offer PPPs additionally to their occupational pension products.

Related to out-sourcing we refer to EIOPA’s proposal of preparatory Guidelines on product oversight and governance arrangements (POG Guideline 11 for product manufacturers) in October 2015, which should fix the minimum standard.

Other aspects of the overall governance system should include a sanction regime with regard to reporting obligations and production of information before, during and after the contractual relationship between consumer and PPP provider (cf. mainly MIFID2 article 70, IDD articles 31 to 36, PRIIPs Regulation article 24).

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Q2

Notwithstanding our general comment above (EU Authorities should focus on launching the “PEPP” as a top priority, not harmonizing rules for all existing “PPPs”), we fully agree with the new Consumer-Centric Approach pointed out in EIOPA’s CP on page 48. It constitutes a useful and necessary clarification of EIOPA’s preparatory POG Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors in October 2015.

We emphasize the necessity that there must not be any setbacks related to the level of consumer protection. Product testings must not only identify possible target markets, but as well those consumer groups for which a PPP is not appropriate. Once the product is distributed, the manufacturer must monitor on an on-going basis that the product continues to be aligned with the needs, interests and objectives of the target market (cf. IDD recitals 55 to 57).

Only by this way a clearly defined consumer-centric approach will be able to guarantee that the guiding principles of PPPs (simplicity, duty of care, value for money, fairness and adaptability; cf. CP, page 57/58) actually lead to PPPs that are simple, transparent and trustworthy.

Q3

Notwithstanding our general comment above (EU Authorities should focus on launching the PEPP as a top priority, not on harmonizing rules for all existing PPPs), we agree with EIOPA’s proposals of the harmonization of distribution (on conduct of business rules as well as on the ongoing role of distributors; cf. CP, pages 26 to 28). But again we emphasize the necessity that there must not be any setbacks related to the level of consumer protection which is already reached by MiFID II (which is generally more protective of consumers), or at least by IDD article 25 (product oversight and governance requirements) and by EIOPA’s preparatory POG Guidelines for insurance undertakings and insurance distributors in October 2015.

To give an example: at the point of sale it must be guaranteed that, due to the fact that a PPP is long-term saving product followed by a long-term decumulation phase, consumers get appropriate advice on special contract clauses (like “cooling-off period”) and on options at the retirement (for the decumulation or pay-out phase; cf. our comment on Q7 for additional product features).

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These requirements are particularly important for non-advised sales, which could become an important distribution channel for PPPs. In this case EIOPA's analysis on overcoming consumer's cognitive biases and bridging information asymmetries are particularly relevant. Online sale on a non-advice basis must clearly indicate - for example - the identified target market for a selected PPP and of course all those consumer groups for which it is not appropriate. If a consumer decides not to follow the default investment options, automatically there have to "pop up" comprehensive explanations where and how to get additional advice.

Last but not least: There must be the clear provision that non-advised sales are only permitted for distributors who are independent or not commission-based. Rules should be the same, whether the distributors are traditional ones or coming from the "FinTech".

In January 2015 EIOPA published its Opinion on sales via the Internet of insurance and pension products, in which the main "types of consumer protection issues" were depicted. It was clearly emphasized that consumers wishing to research premiums via the Internet may not be fully aware that they may inadvertently enter into unsolicited contracts. This can be particularly the case given the various options and fields to 'tick-off', also taking into account that sometimes such fields are ticked-off as default options by the distributor. Such inadvertent and unsolicited contracts may be caused by a lack of comprehension of the online purchasing process. That is why online distributors must have a "duty of advice" in order to provide consumers with appropriate information and "with a view to avoiding unsolicited, or mistakenly concluded contracts". Only by this "proactive approach" consumer detriment will be reduced.

Q4

1. Better Finance believes that PPP would benefit from harmonisation of disclosure rules. Actually, this is the most important area of EU savings and it is the least harmonised despite the identification of pension savings as a critical area already in 2007 by the European Commission in its first "Green Paper on retail financial services". Since then, personal pensions have however been excluded as such from all the post 2008 crisis reforms on investor protection. However, some "individual pension products" (PRIIPS Regulation terminology) are covered by recent

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investor disclosure rules. For example:

- life cycle UCITS funds (which are investment funds solely designed for retirement purposes) are covered by the UCITS IV Directive and the Regulation on “KIID” (Key Investor Information Document) that standardize and simplify pre-contractual disclosures for UCITS investment funds;
- insurance-regulated PPPs that include a surrender value are covered by the recent PRIIPs Regulation and will have to produce a standardized (i.e. comparable) “KID” (key information document) from 1st January 2017.
- More generally, following article 2(2g) of the PRIIPs Regulation - all types of “individual pension products” that do not require by law a mandatory contribution from the employer and where the employee has a choice on the product or the provider fall under the PRIIPs scope.

Therefore, it is not correct to pretend that PPPs are not retail investment products, as quite a few “individual pension products” are already included in the scope of the PRIIPs Regulation. But, there is still no harmonisation for all PPPs, making it almost impossible for EU pension savers to compare one PPP offering to another, except if it is two life cycle funds (then the current KIID is a good tool for that purpose).

2. Better Finance believes the basis for these PPP rules should be inspired (but not copied) from the UCITS funds KIID and from the PRIIPS KID, but should also take into account the diversity of PPPs and therefore not try to be too specific and normative. The OPSG agrees with the common basic structure for PPP pre-contractual disclosures as a starting point, except for performance and risks (see below paras. 3 and 4), and as listed on pages 32-33 of the EIOPA consultation. In particular EIOPA’s approach on cost disclosure would bring a very important improvement to pension savers’ protection: “Include all costs – in a manner that is consistent with the approach used for the PRIIPs KID – covering both PPP costs and those at the level of the underlying investments (‘look through’). It should include both monetary and % figures, and include ‘cumulative’ figures to the retirement date used for the projection information. »

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3. Better Finance is concerned about the approach taken by EIOPA regarding performance disclosure: “include projections to retirement under different scenarios, and information on the possible income in retirement ». EIOPA mentions that this is inspired from the ESAs approach to performance disclosure in the PRIIPs « KID ». EIOPA does not make any reference to past performance disclosure. Besides Better Finance, a number of consultative bodies have however already formally alerted the ESAs and the Level I EU Authorities about the disastrous consequences of eliminating all disclosure of past performance in key information documents and its replacement by “future performance scenarios”.

In a nutshell, eliminating past performance disclosure (together with that of the benchmarks chosen by the asset manager as currently applicable for UCITS funds) will prevent savers from:

- knowing whether any PPP has made money or not in the past;
- knowing if any PPP has met its investment objectives or not;
- knowing if any PPP has performed below or above its benchmark;
- comparing the performance of similar PPPs (for example two different life cycle funds).

It will also make it very difficult for the ESAs and any other regulator to perform their legal duty to collect analyse and report on the performance of long term and pension savings products as they were reminded by the EU Commission in its 30/09/2015 Capital Markets union Action Plan .

Worse, the replacement of past performance disclosure by “future performance scenarios” will be even more misleading. One reason is that the three scenarios considered by the ESAs: “an unfavourable one, a neutral one and a favourable one” (page 35) – which are not at all probability- weighted will most likely make individual pension savers believe the “neutral” scenario is the most probable which it is certainly not.

Another reason is that these scenarios will always prove wrong contrary to past performance, which is an historical fact.

This would constitute a major step back in EU pension saver protection.

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	<p>4. Better Finance is concerned about EIOPA’s approach to risk disclosure: “a risk indicator similar to that with the PRIIPs KID could be designed to indicate risk in the short term, while performance scenarios could be more useful for communicating risk in the long term ». This approach seems too complex for savers and does not reflect a key specificity of pension savings and PPPs : the long term nature of these savings, and the fact that the risk and volatility of asset classes is different over the long term then over the short term. For instance a portfolio of diversified equity is less volatile over 20 years or more than a bond portfolio. This is very critical for the performance and the protection of the real value of pension savings over the long term. It is also critical for the financing of the EU economy, for growth and jobs as outlined in the Capital Markets Action Plan.</p> <p>Better Finance therefore favours more a specific approach to pension savings and PPP risks that takes into account not only the underlying asset classes in which the PPP intends to invest but also the different time horizons involved. The risk indicator could therefore take the format of a table crossing time horizons and asset classes, contrary to the ESAs approach for PRIIPs where the risk indicator table is for one time horizon only (the recommended holding period for the PRIIPs product).</p>	
Q5	<p>Yes, we agree with EIOPA’s view not to add specific capital requirements for PPPs. Solvency II may be considered as the most sophisticated regime when PPPs include such features as minimum return guarantees and/or biometric risk coverage.</p> <p>We agree, too, with the Prudent Person principle aligning all investment decisions “in best interest of the beneficiary of the contract”, except we would rather use the term “holder” than “beneficiary” as the pension saver is certain to contribute to the PPP, but not always certain to “benefit” from them. The asset liability management (ALM) has to take into account riskiness, quality, liquidity (availability) and profitability, and its rules should clearly refer to maturity, duration and currency.</p>	
Q6	<p>If even the majority of stakeholders disagreed with the proposal of a stand-alone regime for PEPP by EIOPA, a fact, which we would strongly regret, we still think that this is the appropriate authorization regime for PEPP. It is not the product passport in itself, but only the particular</p>	

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authorisation by the European Supervisory Authority which makes the difference between PEPP and any PPPs already existing on the national level. A centralised EU register of PEPPs only is not sufficient, because it would only constitute a formal notification, but not a materially controlled certification.

We clearly reject any development of distinct EU benchmark measures for PEPP. It would not enable the comparison of the performance of PEPP providers; quite on the contrary the risk of misleading information for consumers would even become bigger. Why not using the already existing benchmarks for EU, European or World markets of shares, bonds, investment funds, etc.? These benchmarks are already known by many customers of financial services. Additionally the comparison of performances of other funds or bonds which are not integrated into a PEPP would be made possible. Specialized benchmarks for PEPPs may create a competition amongst providers of PEPPs, but they would exclude the comparison and therefore the competition with all the other providers of “substitutable “ pension and investment products.

We clearly support the proposal of creating an « independent watchdog committee » for the additional governance of any provider, i.e. « an external and independent body with relevant pension knowledge and expertise ». As pointed out, “such committees would be responsible and accountable for assessing the on-going Value for Money, especially with respect to the default investment option, and act as a challenging function to the PEPP provider to make appropriate changes as and when needed e.g. risk of unsuitable investment strategy”. “Independent” body must mean that at least a majority of its members are economically independent from the financial industry and from its providers.

Q7

We agree with EIOPA’s proposals for an appropriate legal and regulatory framework aiming at developing safe, cost-effective and transparent PPPs and PEPP (cf. product features, information provision and conduct of business rules: CP, pages 72/73). Therefore we agree, too, with EIOPA’s fundamental choice of a standardized PEPP with flexible elements implemented under a second regime (although we believe EIOPA should eliminate any reference to a «2d Regime ». This wording is not intelligible for EU citizens, as it is not clear if a « 1st regime » already exists in all 28 Member States; cf. our comment on Q2 in PEPP consultation, October 2015).

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But we consider these fundamental policy options only as minimum standards that have to be clarified and complemented in order to prevent any consumer detriment. In order to achieve a simple, transparent and trustworthy PEPP, additional product features should necessarily be integrated.

In our answer to the first PEPP consultation in October 2015 we had already outlined that PEPPs should include these four basic principles (Question 2):

- The higher the accumulated capital by payments/contributions is, the higher the payouts have to be.
- Any PEPPs must guarantee a life-long annuity as one of the decumulation / pay out options (cf. EIOPA's Fact Finding Report on decumulation Phase Practices, October 2014).
- At the end of the payment / contribution phase there has to be an open market decision for the consumer for choosing a provider for the payout phase (possibly free of charge).
- There has to be a mandatory and fair participation to risk benefits (related to longevity / death risk).

Only by adopting these four basic principles, consumers will develop the necessary trust that PEPP is not just another investment saving plan, but it will definitively offer a safe income at retirement. That is the reason why we believe that the EU Authorities should also establish EU-wide transparent, competitive and standardised retail annuities markets; and grant more freedom to pension savers to choose between annuities and withdrawals (but after enforcing a threshold for guaranteed life time retirement income) (cf. Better Finance Briefing Paper on CMU, 6 May 2015, p. 28).

A PEPP contract should be a contract with transparent contract clauses related to cooling-off period, early withdrawal, exemption from payment of premiums; participation to benefits; and with several pay-out options (annuities or lump sum) (cf. Better Finance Response to the EC CMU consultation, 13 May 2015, p. 18).

In order to ensure a high minimum standard of consumer protection, the terms and conditions of

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	the calculation of the annuity ought to be disclosed and fixed in a mandatory way at the time of the contract subscription (mortality table, participation at risk benefits, fees for any changes of the contract etc.). Regulation of PEPP must include these parameters.	
Annex I : Impact Assessment		
Section 1. Procedural issues and consultation of interested parties	Taking in consideration EIOPA's assessment related to the first PEPP consultation until October 2015 that « consumer representatives' input was fairly limited », we would like to stress that at least Better Finance and der Bund der Versicherten– as consumer representatives - had provided detailed and comprehensive comments.	
Section 2. Problem definition	Cf. our General Comments for this consultation and for the first PEPP consultation in October 2015.	
Section 3. Objective pursued	Cf. our comments on Q2 above (« consumer centric approach ») and on Q2 (« 2nd regime ») of the first PEPP consultation in October 2015.	
Section 4. Policy options	Cf. our comments on Q7 above and on Q3 (challenges of consumer protection) of the first PEPP consultation in October 2015.	
Section 5. Analysis of impacts	Cf. our comments on Q3 (distribution rules) and on Q4 (disclosure rules) above as well as on Q5 (number of investment options), on Q14 (disclosure elements), on Q15 (internet sale), on Q16 (appropriateness test), on Q18 (biometric risk coverage), on Q19 (cap on costs and charges) of the first PEPP consultation in October 2015.	
Section 6: Comparison of options	Cf. our comments on Q7 above as well as on Q2 (« 2nd regime ») and on Q17 (level of standardization) of the first PEPP consultation in October 2015.	