



EIOPA-16/467
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Final Report
on
Public Consultation No. CP-16/001 on
EIOPA's advice on the development of an
EU Single Market for personal pension
products (PPP)

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1. Executive summary

1.1 Introduction

Following the European Commission's (COM) July 2012 request to develop technical advice on an EU Internal Market for personal pension schemes or products (PPPs), the European Insurance and Occupational Pensions Authority (EIOPA) responded to that request by publishing a Discussion Paper in May 2013 and a Preliminary Report in February 2014. Following on from the conclusions of that report, the Commission sent a Call for Advice (CfA) on personal pensions to EIOPA in July 2014.

In February 2015, the Commission issued a Green Paper on the Capital Market Union (CMU). The goal of the CMU is to unlock investment in Europe's companies and infrastructures. Among the measures envisaged to foster the supply of long-term financing, the CMU Green Paper explicitly referred to the possibility of introducing a standardised personal pension product, "for example through a pan-European or "29th regime" here referred to as the "2nd regime".

Due to the specific attention given to the 2nd regime in COM's CMU Green Paper, EIOPA initially focussed the scope of its work on the envisaged creation of a 2nd regime introducing a pan-European personal pension product (PEPP).

On 7 July 2015, EIOPA launched a public consultation on creating a standardised PEPP. Having analysed and weighed Stakeholder feedback EIOPA published its final advice on the PEPP on 1 February 2016¹.

From 1 February until 26 April 2016 EIOPA held a public consultation.²

During the consultation - in order to be able to provide final advice on the development of a single EU market for personal pension products - EIOPA asked Stakeholders' input with regard to the following questions:

Q1: 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?

Q2: 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?

Q3: 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?

Q4: Would PPP benefit from harmonisation in disclosure rules? What should be the basis of these rules? Do you agree with EIOPA's proposals?

Q5: 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?

Q6: Are further supervisory powers - tailored to PEPP - necessary? Do you agree with EIOPA's proposals?

Q7: Do you agree with EIOPA's assessment of the policy options' impacts?

¹ EIOPA's final advice on PEPP is included in the Consultation paper on EIOPA's advice on the development of an EU Single Market for personal pension products (PPP) - CP-16/001

² See EIOPA's Consultation paper on the development of an EU Single Market for personal pension products (PPP) - CP-16/001

1.2 Content

This Final Report includes a summary of Stakeholder feedback received during the 2016 Public Consultation and the conclusions EIOPA drew for the purpose of writing its final advice on the development of a single EU market for PPPs.

Annex I contains the Feedback Statement EIOPA received from its Insurance and Reinsurance Stakeholder Group (IRSG) and Annex II the Resolution of Comments received by other Stakeholders prepared by EIOPA.

1.3 Next steps

EIOPA is publishing its final advice on PPPs to the European Commission alongside this final report.

2. Feedback statement

2.1 Introduction

EIOPA welcomes the feedback provided by EIOPA's Insurance and Reinsurance Stakeholder Group (IRSG), and the comments received from all other stakeholders³, to the questions included in Consultation Paper EIOPA-CP-16/001. Their valuable comments enabled EIOPA to issue its final advice with regard to the possible development of a single EU market for PPPs to the COM.

2.2. General comments

This section of the report addresses the general comments made by stakeholders during the public consultation.

Stakeholders' detailed responses to questions 1 to 7 of the Consultation Paper (see section 1.1.c. above) and EIOPA's resolutions to these answers are discussed in the remaining sections of this report (see sections 2.3 and onwards below).

Many of the respondents - in the general comments section - elaborated substantially on EIOPA's final advice on the PEPP. Some respondents - both in the general comments section and in their answers to questions 1 to 7 and apparently strongly favouring the introduction of a 2nd regime for the PEPP over harmonising existing regulations for PPPs - focussed on the PEPP only.

As the February 2016 consultation already contained EIOPA's final advice on PEPP, PEPP related comments and answers (e.g. the call to regulate PEPP decumulation option on an EU-level) will not be discussed further in this Final Report⁴.

The primary goal of the February 2016 paper was to seek Stakeholders' input on EIOPA's views and proposals with regard to possible further harmonisation of regulations for PPPs.

Almost all respondents explicitly indicated they supported the overall goal of delivering sustainable and adequate pensions in Europe - some stating that at present the current PPP market is too fragmented.

Although some respondents indicated they would favour harmonising (in part) existing regulations governing PPPs and PPP providers, many respondents expressed the view they would not favour (fully or in part) harmonising existing regulations. Motivating their stance, the latter argued that a (partial) harmonisation might lead to an additional, duplicative and unnecessary layer of rules already applying to PPPs and PPP providers. Few respondents - while mentioning that it might be prudent to apply a European set of principles for PPP providers that are not regulated under existing EU rules - indicated that harmonising existing EU regulations would be too time-consuming. The view was also brought forward that (partial) harmonisation of existing rules might lead to a decrease of consumer protection levels in countries where these levels are currently high. Many consumers were cited as not trusting the third pillar because of the many reforms, further reforms would exacerbate this.

Other respondents were more firm in their answers, e.g. indicating that - due to largely differing customer demands and the current wide spectrum of PPPs that is a

³ EIOPA received 42 responses to its 2016 Public Consultation on PPPs from (representatives of) the following industries/sectors: IRSG, Ministry of Finance (1), consumer organisations (6), insurance firms (6), occupational pensions providers (9), asset management firms (8), a consultancy firm (1), intermediaries (3), actuarial organisations (4), legal advisors (1), services provider (1) and academics (1)

⁴ Except when relating to questions 6 and 7 of the February 2016 Consultation Paper

consequence of this differing demand - no harmonised rules for PPPs and PPP providers should be introduced at all. The view was also expressed that - before contemplating (partial) harmonisation - more evidence and/or cost-benefit analyses are needed. Some respondents believe it should be left to Member States to improve - at national level - existing rules governing PPPs and PPP providers located in their territory or that it would be a better solution to improve mechanisms to facilitate the sharing of best practices amongst Member States. One Stakeholder - pointing out that the design of retirement systems is a prerogative of individual Member States - believed the aim of the EIOPA February 2016 Consultation Paper constitutes a breach of EU-Law.

A large number of Stakeholders referred to the fact that - as long as taxation and national rules of general good/social and labour law policies remain a Member State prerogative - harmonising existing regulations for PPPs and PPP providers would not be effective. Some of these respondents mentioned they would have preferred EIOPA elaborating on these topics more extensively.

Some respondents believe EIOPA - in its February 2016 Consultation Paper - favoured 3rd pillar arrangements over 2nd pillar arrangements and the internet channel over other distribution channels. These respondents expressed a clear preference for promoting occupational pension arrangement over improving existing rules for PPPs. EIOPA wishes to state clearly it does not favour one private pension pillar or distribution channel over others.

2.3. Harmonisation of provider governance standards - PPPs

a. Summary of Stakeholder responses

The majority of respondents that are financial services providers⁵ opposed the idea of harmonising existing, sectoral provider governance standards for PPP providers in its entirety or in part. The main arguments brought forward were that:

- PPP providers are already well regulated at sectoral level at EU level;
- Provider governance standards should be regulated at the overall provider level and not at PPP product level;
- Harmonisation might lead to an erosion of consumer protection in countries where national standards already are high;
- Although harmonisation aims to allow PPP providers to operate under the same conditions, some respondents argued that an additional layer of provider governance rules might inadvertently lead to an unlevel playing field amongst PPP providers and entails the risk of creating a double, contradictory set of provider governance standards.

Some of these respondents indicated that if additional rules would prove to be too onerous insurance companies might even decide not to offer PPPs in the future.

Views brought forward by respondents that partly opposed to or agreed with harmonising provider governance rules were that:

- A remuneration policy for all PPP providers should be further developed;
- Although many respondents would favour harmonising the actuarial tasks of PPP providers that offer guarantees or biometric risk cover elements in their PPPs, a few Stakeholders indicated this would not be necessary;

⁵ That did not choose to only focus on the PEPP in their answers - mainly representatives of the asset management industry

- A distinction should be made between 1) the custody of shares in UCITS or AIFs and 2) the safekeeping of underlying assets. A simple custodian would suffice for the first, a depositary should be required for the latter; and
- Charging the compliance function within financial services providers with reporting whistle-blower messages to the NCA would be inappropriate. The task of liaising with NCAs should remain at the Board level of companies.

Some of the respondents that are not financial services providers - especially representatives of consumers - indicated they would favour or not necessarily disagree with harmonising existing provider governance standards for PPP providers. Often respondents in this group provided additional input with regard to EIOPA's proposals. For example:

- Some respondents invited EIOPA to be more precise with regard to the harmonising measures proposed (see resolutions in Annex II of this document);
- Additional provider governance rules should be added to EIOPA's proposals (e.g. sound communication policy requirements); or
- PPPs should be free of commissions.

Other respondents in this group cautioned EIOPA that further analysis is needed before additional, cross-sectoral provider governance standards for PPP providers will be introduced or indicated that existing provider governance rules should be the basis for cross-sectoral harmonised minimum standards.

b. EIOPA resolutions

Stakeholders' responses have led EIOPA to conclude at this point in time it would not be proportionate or efficient to amend existing provider governance rules and that the current approach - reflected by the fact these rules are currently regulated at sectoral level - should be respected. In addition - currently EIOPA has not been made aware of sufficient evidence suggesting that the current sectoral approach would lead to regulatory arbitrage.

Therefore EIOPA advises to maintain the current sectoral approach with regard to provider governance rules.

2.4 Harmonisation of product governance rules - PPPs

a. Summary of Stakeholder responses

Referring - by and large - to the same arguments mentioned in section 2.3 of this report, the majority of respondents that are financial services providers⁶ indicated they would not favour cross-sectoral harmonisation of existing product governance rules. Representatives of the asset management firms - who with regard to this specific issue often opted to focus their answer on the PEPP only - were far less outspoken however. Where most (representatives of) insurance companies indicated they believed existing sectoral legislation is sufficient, some indicated they believed IDD⁷ POG rules should apply to all PPP providers.

On occasion, (representatives of) insurance companies brought forward views with regard to specific topics:

⁶ That did not choose to only focus on the PEPP in their answers - mainly representatives of the asset management industry

⁷ Insurance Distribution Directive

- Annex VIII of EIOPA's February 2016 consultation paper makes reference to the 'objective to prevent and minimise consumer detriment'. This requirement is too vague and impractical;
- There should be flexibility with regard to the requirement to not sell a product outside the determined target market;
- PPP design is a matter of the provider, not NCAs;
- Harmonising redress mechanisms on a cross-sectoral level should take into account existing insurance contracts. POG rules should not have an impact on the latter.

Intermediaries strongly advocated the importance of providing advice to PPP holders, both during the pre-contractual and ongoing stages.

Welcoming EIOPA's consumer-centric approach the majority of respondents that are not financial services providers indicated they were in favour (or not opposed) to harmonising product governance rules on a cross-sectoral level. Representatives of consumers expressed especially strong support for this proposal. Some respondents provided helpful advice in suggesting the introduction of additional cross-sectoral product governance rules:

- Pre-sales product testing should not only include the identification of target markets, but also the identification of markets that are not targeted;
- Rules with regard to determining target markets and preventing poor product design should be more concrete than is stated in the ESAs Joint Position on product oversight and governance processes of November 2013;
- POG rules should also focus on rules aiming at making costs (for switching PPP or PPP provider) more transparent and the introduction of a benchmark enabling consumers to compare PPPs.

b. EIOPA resolution

Stakeholders' answers - by and large - confirmed EIOPA's views that the high-level principles - mentioned in the Joint Committee's Joint Position on manufacturers' product oversight and governance processes and which are reflected in relevant European legislative initiatives - are applicable to all PPP providers.

2.5 Harmonisation of distribution rules - PPPs

a. Summary of Stakeholder responses

The delineation that could be detected between representatives of financial services providers and respondents not representing financial services providers in sections 2.3 and 2.4 of this report was far less obvious with regard to the question if existing sectoral distribution rules should be harmonised for PPP providers.

The majority of respondents in the first category expressed the view that existing sectoral distribution rules should not be harmonised. This was due to the fact that new distribution rules have recently been introduced or are still 'under development' at Level 2 and existing sectoral distribution rules should apply due to the large variety of PPPs and its providers. All representatives of the asset management industry⁸ were in favour of or did not seem to oppose to harmonising (at least part of the) existing sectoral distribution rules for PPP providers.

The following views were expressed by (individual) insurance companies, occupational pension providers and intermediaries:

⁸ That did not choose to only focus on the PEPP in their answers

- Some respondents - not a majority - believed EIOPA's strong focus on the internet as a potential distribution channel poses a great risk to consumers;
- Few Stakeholders indicated that - in case of online distribution of PPPs - personal advice should always be provided;
- Further research is needed on online distribution and the non-advised sales of PPPs;
- Intermediaries and direct sellers of PPPs should not be obliged to disclose their commissions and remunerations as this would lead to an unlevel playing field.

Views expressed by individual asset managers were:

- With regard to remuneration - distribution rules should be aligned according to the regulations included in MIFID II and IDD;
- More focus should be placed on the financial education of consumers;
- In so far as cross-border provision of PPPs can be linked to distribution issues - an EU passport - in line with the current MIFID II and UCITS regimes - might prove to be more essential than harmonising existing sectoral regulations for PPP providers. The opinion was also expressed that - instead of focussing on harmonising distribution rules for providers - more emphasis should be placed on lowering the hurdles impeding the cross-border provision of PPPs (rules of general good/social and labour law/taxation);
- Commissions and the remuneration of benefits to PPP distributors should be abolished; and
- That the internet - both for PPPs and PEPPs - could become one of the most important distribution channels.

Practically all respondents not representing financial services providers indicated they would favour a cross-sectoral harmonisation of existing sectoral distribution rules. Representatives of this group brought forward the following views on this issue:

- Existing sectoral distribution rules for PPP providers should serve as a basis for introducing cross-sectoral minimum standards - e.g. combining Mifid II and IDD rules;
- The importance of distributor education is great;
- Improve the sharing of information between NCAs in cross-border PPP cases;
- The need for comparison websites;
- Harmonisation of sectoral distribution rules should not lead to diminished levels of protection than offered in Mifid II or IMD/IDD and EIOPA's preparatory guidelines for insurance undertakings and distributors;
- During the pre-contractual and ongoing stages consumers should be informed on 'cooling off' periods and their (decumulation) options at retirement;
- The need for a 'pop up' to appear on-screen if a consumer - buying a PPP on the internet - does not opt for a default but for a 'complex' investment option. The pop-up should inform the consumer on where to get advice if he wants advice;
- Non-advised sales of PPPs should only be allowed for independent distributors that do not receive commission;

b. EIOPA resolution

In its February 2016 Consultation Paper EIOPA highlighted - provided meeting certain conditions - the potential of non-advised distribution of PPPs and their distribution over the internet at the point of sale. EIOPA also emphasized it believes an ongoing duty of care⁹ should apply to all PPP providers.

⁹ The duty of care obligation would mean that PPP providers would need to take care of PPP holders at key trigger moments, e.g. retirement, and provide PPP holders with relevant and easy to understand information enabling the

Following stakeholders' input and in line with its February 2016 proposal EIOPA maintains its original stance and concluded that it would be most efficient and effective to use the existing, relevant sectoral distribution rules of MiFID and IDD as a starting point for all PPPs. Though we would note that as the new regulatory framework for distribution rules has very recently entered into force and work is ongoing on both Level 2 and 3 measures further rules are not needed at this stage.

2.6 Harmonisation of disclosure rules - PPPs

a. Summary of Stakeholder responses

Apart from the majority of respondents representing occupational pension providers and insurance companies, as well as the IRSG - who indicated they are not in favour of harmonising disclosure rules for PPP providers - the large majority of all respondents expressed the view that introducing cross-sectoral, harmonised disclosure rules for PPP providers would be beneficial.

When providing arguments with regard to how consumers should be informed during the pre-contractual and accumulation stages of PPPs, a few respondents expressed support for using the PRIIPs KID as a basis for PPP disclosures. A considerable majority of respondents that expressed an opinion on this issue however - to different degrees - expressed doubts with regard or were opposed to using the PRIIPs KID as the basis for PPP disclosures.

The arguments brought forward were:

- The PRIIPs KID applies to investment products only and does not sufficiently cater for the information needs of PPP holders;
- The PRIIPs KID can be used as a starting point only for harmonised cross-sectoral disclosure rules for PPP providers. Adjustments - needed to make the document suited for retirement savings products - are needed.
- Also referring to the opinion expressed by ESMA's Stakeholder Group - Draft Level 2 legislation with regard to the PRIIPs KID causes concerns - future performance scenarios could be misleading, past performances should be disclosed, Reductions in Yield are hard to calculate for providers and consumers will most likely not understand this figure and the proposed PRIIPs KID risk indicators would need to be adjusted in order to be able to better take in to account the long-term nature of PPPs;
- A PPP KID would be a more suitable name;
- An IORP II-like Pension Benefit Statement seems better suited for PPPs;
- More analyses should be carried out before the appropriate form of PPP disclosure is regulated.

latter to make informed choices. The duty of care would not require PPP providers to perform periodical suitability tests.

b. EIOPA resolution

While EIOPA continues to recommend using the PRIIPs KID as a starting point for PPP disclosures, EIOPA recognises the specifics of PPP, and notes that further work would be needed to assess how KID could be further developed so as to function effectively for PPPs - including in regards the level of standardisation that is appropriate in so far as PPPs themselves are not further harmonised (in contrast to the PEPP).

EIOPA believes many elements of PRIIPs and PPPs are similar, while recognising differences. Any disclosures for PPPs should thereby be designed to take into account the possibility of comparisons with a PRIIP's KID, whilst reflecting also differences. Further consumer testing would be necessary to calibrate and develop any harmonised requirements for appropriate disclosures in this regard.

Indeed, EIOPA is clear that a PPP disclosure regime cannot be a simple 'copy and paste' of the PRIIPs KID, even if there could be similarities.

EIOPA further believes that consistency between pre-contractual and post-contractual disclosures should be sought where this is relevant, for instance, to enable comparisons over time or to enable, for instance, comparisons between existing holdings and new savings options. Distinctions between consumer needs pre- and post-contractually should however be also reflected.

2.7 Differences in current prudential regimes / unlevel playing field? - PPPs

a. Summary of Stakeholder responses

The large majority of respondents indicated they are not aware of differences in prudential regimes that lead to an unlevel playing field amongst PPP providers. Some respondents were of the view however that PPP providers - offering a PPP with a guarantee and/or biometric risk cover - should be subject to identical prudential standards however, e.g. Solvency II.

b. EIOPA resolution

EIOPA maintains its original proposals made in February 2016. EIOPA recognises that PPP holders - irrespective of the type of provider offering the product - expect an equal level of protection if their PPP contains a guarantee or biometric risk cover element. EIOPA believes the focus of capital requirements should therefore lie on the product and not the provider. Nevertheless EIOPA advises - with regard to the prudential regime that should apply to PPPs containing a guarantee or biometric risk cover element - existing sectorial prudential standards should remain to apply at this moment in time.

2.8 Additional supervisory powers for NCAs - PEPP

a. Summary of Stakeholder responses

A majority of respondents, irrespective of the sector they represent, would not be in favour of granting further supervisory powers - at least not all powers proposed by EIOPA - to NCAs supervising PEPP providers. The arguments brought forward by individual respondents were:

- NCAs should not act as guardian claimholders or perform a check on mandatory PEPP elements. This should be a task of PEPP providers;

- The proposed 'caveat venditor' principle applies to auto-enrolment schemes where members do not have to make choices. As - in the context of PEPP - consumers will always have to make choices, said principle should not apply;
- Introducing a superstructure like the proposed independent watchdog committees would be costly. Its proposed tasks should be carried out by the PEPP provider;
- Having NCAs perform 'sense checks' on PEPPs (in development) might upset national regimes where this task is performed by other entities than the NCA;
- The usefulness of commitment memorandums was questioned by some respondents;
- The possibility for NCAs to monitor the value for money PEPPs offer is questioned. It is the consumer who determines if the price of a PEPP is adequate. He should therefore receive adequate information on, e.g., costs and charges of the PEPP. In addition the consumer is already protected by Directive 93/13/EEC on Unfair Terms.
- The proposed additional supervisory powers would overburden NCAs;
- A thorough cost-benefit analysis should be carried out before a decision is made on whether to grant additional supervisory powers to NCAs;
- With regard to authorisation - EIOPA does not propose to introduce a stand-alone authorisation regime as the marketing of PEPPs would only be allowed for providers already authorised under existing sectoral EU regulations. This poses a risk - the marketing of PEPPs should only be allowed for providers already authorised under existing sectoral EU regulations **and** that already develop and market PPPs.

The respondents in favour of granting additional supervisory powers to NCAs supervising PEPPs also brought forward valuable suggestions and views:

- The suggestion was made to - instead of introducing an EU benchmark for PEPPs which could be potentially misleading to consumers - make use of existing benchmarks enabling consumers to check on the performance of their PEPP;
- Support was expressed for establishing watchdog committees;
- The argument was also brought forward that product intervention powers are absolutely needed. Consumers cannot rely on the forces of the market or on the fact that they have sufficient provider and product choice in order to ensure themselves of the quality of a PEPP;
- The suggestion was made to oblige entities that operate comparative information tables to include data on PEPPs. This would alert potential personal pension product buyers to the existence of the PEPP;
- Reference was made to UK-rule RU 64: An equivalent rule with regard to PEPPs would oblige providers and distributors to explain in writing to a customer why they propose a personal pension product - different than the PEPP - to him.
- EIOPA was also encouraged to develop a clear vision on how to balance the costs related to the suggested additional supervisory powers with the attractiveness for providers to offer PEPPs.

b. EIOPA resolution

Stakeholder responses on whether to grant additional supervisory powers to NCAs that will supervise PEPPs varied. Some EIOPA proposals were well received, others less so. The answers provided have led EIOPA to believe that more research would be needed to see if additional supervisory powers are proportionate to supervising PEPPs.

2.9 Impact Assessment - Standardisation and harmonisation PPPs or 2nd regime PEPP

a. Summary of Stakeholder responses

On a cross-sectoral basis, the large majority of respondents indicated they believed EIOPA had correctly identified the relevant policy issues and options in its Impact Assessment and favoured the introduction of a 2nd regime for PEPP over the harmonisation of current sectoral standards - or that the 2nd regime project should at least be prioritised.

b. EIOPA resolution

Considering the views brought forward by Stakeholders on its Impact Assessment and the - overall - preference expressed with regard to EIOPA's proposal to introduce a 2nd regime for PEPPs instead of harmonising existing sectoral rules for PPPs, EIOPA maintains its February 2016 Impact Assessment.