

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:	Bund der Versicherten (BdV-German Association of the Insured)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP16-001@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the paragraphs refers to Consultation Paper on the proposal for implementing technical standards on special purpose vehicles.</p>		
Reference	Comment	
General Comment	<p>As Germany's most important NGO of consumer protection related to private insurances (with about 50.000 members) we would like to thank EIOPA for the opportunity to publish comments on this consultation. By its statutes our association is focussed on insurances, that is the reason why we give comments on the questions in this consultation mainly under the perspective of PPP being an insurance-based investment product.</p> <p>While BdV 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</p>	

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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.

The PEPP project is a one-time opportunity to address the most critical and so far unsolved issue for the standard of living of future European pensioners. And at the same time it may improve the long term financing of growth and jobs, the objective of the EC “Capital Market Union” initiative. Therefore we support EIOPA’s proposal for a PEPP with standardized and flexible elements, but we strongly urge EIOPA to “frame” this proposal by the array of EU directives and regulations, of its own Opinions and Reports which are absolutely relevant in this context:

- Solvency II Regulation (2015/35/EU), mainly chapter IX on governance and remuneration;
- Directive MIFID2 (2014/65/EU), mainly article 23 (conflicts of interest), article 24 (information to clients) and article 25 (suitability, appropriateness, reporting to clients);
- Directive IDD (2016/97/EU), mainly articles 26 to 30 on PRIIPs;
- PRIIPs Regulation (1286/2014/EU);
- EIOPA’s Fact Finding Report on Decumulation Phase Practices, October 2014;
- EIOPA’s Technical Advice on Conflict of Interest in direct and intermediated sales of insurance-based investment products, January 2015;
- EIOPA’s Technical Advice on criteria and factors to be taken into account in applying product intervention powers related to KID of PRIIPs, June 2015;
- EIOPA’s Opinion on sales via the Internet of insurance and pension products, January 2015;
- EIOPA’s Final Report on the proposal for preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors, Consultation Paper in April 2016;

This constitutes a non-exhaustive list of essential regulations and research work already done, which we consider as indispensable for any development of an EU single market for personal pension products. Any advice by EIOPA related to a possible future PEPP should clearly be guided by these regulations, opinions and reports, for any “softening” of these criteria may inevitably

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lead to increased consumer detriment.

This danger is only recently been shown by the new study of the European Commission (DG Justice) on “Consumer Vulnerability” across EU key markets, including financial services (January 2016). One of the main results of this study constitutes the assessment of an “informational vulnerability”, which implies three predominant consequences in the financial sector services (cf. chapter 9.1.):

- difficulties in obtaining or assimilating information,
- inability or failure to buy, choose or access suitable products,
- higher susceptibility to marketing practices.

Of course, the drivers for this consumer vulnerability are complex, but the study clearly indicates measures how to address this vulnerability (support, protection and awareness-raising measures). With this in mind we again stress the crucial importance of the regulatory “frame work” – as outlined above – of any proposal of the future PEPP.

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 clearly 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 Final Report on the proposal of preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors (mainly guidelines 3 and 6 for manufacturers) in April 2016.

Related to *risk management and actuarial tasks* we fully support the proposal of a legally protected whistle-blowing requirement for the compliance function to inform the supervisory authority if necessary.

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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 the actual amount of commissions, fees and any other incentives being payed by third parties. We refer to MIFID2 (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 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 *Pensionsfonds* and *Pensionskassen* as well, if they offer PEPPs 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 April 2016, 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 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).

Q2

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 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 Final Report on the preparatory *POG Guidelines* on product oversight and governance arrangements by insurance undertakings and insurance distributors in

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	<p>April 2016.</p> <p>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 or PEPP is <i>not</i> 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).</p> <p>Only by this way a clearly defined <i>consumer-centric approach</i> will be able to guarantee that the <i>guiding principles</i> of PEPP (simplicity, duty of care, value for money, fairness and adaptability; cf. CP, page 57/58) actually lead to PEPPs which are <i>simple, transparent and trustworthy</i>.</p>	
Q3	<p>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 EIOPA’s Final Report on the preparatory <i>POG Guidelines</i> for insurance undertakings and insurance distributors in April 2016.</p> <p>To give an example: at the point of sale it must be guaranteed that, due to the fact that PEPP 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).</p> <p>These requirements are particularly important for the <i>non-advised sale</i>, which shall become an important distribution channel for PEPPs. 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</p>	

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PEPP 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

Effective, meaningful disclosure during the pre-contractual stage is an unconditional prerequisite for overcoming consumer’s cognitive biases and bridging information asymmetries. We agree with the common basic structure for PPP pre-contractual disclosures as a starting point (CP, pages 32-33) and with the forthcoming KID for PRIIPs as main reference. The comparability with PRIIPs must be guaranteed, otherwise the consequence would only be more consumer confusion and information overload.

We stress that cost disclosures should include both monetary and percentage figures as well as cumulative figures to the retirement date used for the projection information. If performance scenarios for future developments are used, than they should obligatorily be probability-weighted. We clearly advocate past performance disclosures which are easily understandable and cannot be manipulated, because they are historical facts.

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	As PPPs/PEPP are only special cases of PRIIPs (like annuities insurances), the formal structure of their KID should exactly be same like the KID for PRIIPs. Only the differences related to the long-term asset allocation and to the decumulation options must be disclosed by the answers. But again, this should be the same as for any annuity insurance, which is a PRIIP and therefore is submitted to the clear product oversight and governance requirements following to IDD, article 25 (product testings and monitoring, target markets, distribution strategy etc.).	
Q5	<p>Yes, we agree with EIOPA's view not to add specific capital requirements for PPP. Solvency II may be considered as the most sophisticated regime, when PPPs include such features as minimum return guarantees and/or biometric risk coverage. This goes along with the request for a level playing field respectively "same risk, same rules".</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 (cf. our comment on Q9 in PEPP consultation, October 2015).</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 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 autorisation by the European Supervisory Authority which makes the difference of PEPP to any PPPs already existing on the national level and which underlines its foundation by the 2nd Regime. A centralised EU register of PEPPs only is not sufficient, because it would only constitute a formal notification, but not a materially controlled certification.</p> <p>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 mis-leading information for consumers would even become bigger. Why not using the already existing benchmarks for EU, European or World markets of shares, bonds etc.? These benchmarks are already known by many customers of financial services. Additionally the comparison of</p>	

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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 ongoing 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.

In Germany on the federal level, a similar institution has recently been created (“Finanzmarkt-wächter”), which makes a research work on financial product innovations and performances, supported by the Verbraucherzentralen (VZBV – Federal Association of Consumers), and which has to deliver regular reports to the BaFin (NCA). Therefore it would be very useful to foster an intensive exchange of information and knowledge between these new institutions.

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).

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

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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 pay-outs 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 pay-out phase (possibly free of charge).
- There has to be an obligatory participation at risk benefits (related to longevity / death risk).

Only by adopting these four basic principles, consumers will develop the necessary thrust that PEPP is not just another investment saving plan, but it will definitively offer an 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 the calculation of the annuity ought to be disclosed and fixed in an obligatory way at the moment of the contract subscription (mortality table, participation at risk benefits, fees for any changes of the contract etc.). Product regulation of PEPP must include this parameters (cf. our answer on Q3 for PEPP consultation in October 2015).

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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 our association – as consumer representatives - had published 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 (« 2 nd 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 (« 2 nd regime ») and on Q17 (level of standardization) of the first PEPP consultation in October 2015.	