Comment

of the German Insurance Association (GDV)
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on the Proposal
for a Regulation on a
pan-European Personal Pension Product
(PEPP)

Gesamtverband der Deutschen Versicherungswirtschaft e. V.

German Insurance Association

Wilhelmstraße 43 / 43 G, D-10117 Berlin
Phone: +49 30 2020-5222
Fax: +49 30 2020-6222

51, rue Montoyer
B - 1000 Brussels
Phone: +32 2 28247-30
Fax: +32 2 28247-39
ID-number 6437280268-55

Contact:
Dr. Michaela Willert
Pensions Policy

E-Mail: m.willert@gdv.de

Finn Meunier
Brussels Office

E-Mail: f.meunier@gdv.de
www.gdv.de

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Executive summary

In light of demographic ageing, supplementary retirement savings will inevitably have to play a more important role in providing an adequate old age income for the majority of European citizens. The European Commission published a draft Regulation for a pan-European Personal Pension Product (PEPP) that aims at raising more capital for long-term investments, offering enhanced product features for consumers and encouraging cross border provision.

The German Insurance Association (GDV) shares the **objectives of the European Commission's initiative**. However, the draft Regulation still poses open questions for providers as well as for consumers that require a thoughtful debate. Moreover, German insurers currently only see a **limited market potential** for an additional product like the PEPP against the background of a developed market for private pensions. Nevertheless, **PEPPs could offer opportunities** for more retirement savings for less developed markets as well as for cross border mobile workers.

Simpler and more transparent features for true pension products

For consumers, on the one hand, the current proposal offers much choice in form of safety level, type of provider and decumulation options. Consequently, many decisions need to be taken. For providers, on the other hand, the proposal sets high administrative burdens and demands a design of varied products in order to be applied in different Member States.

The objectives of the initiative could more efficiently be achieved by a framework setting **features that make a PEPP a true pension product** and by less complex portability solutions. The pension features should be offered by all eligible providers. By that, transparency and comparability of products would be enhanced and, thus, competition could be fostered. In addition, products based on these features would be more cost-efficient as they would enable consumers to take adequate decisions without much advice. A framework following these proposals would also generate economies of scale for providers through a real pan-European product design.

Therefore, the **following key elements** should be considered in the PEPP framework:

1. **A default decumulation option protecting against outliving the retiree's assets**: The PEPP Regulation should stipulate that all providers are obliged to offer a protection in the default option for consumers against running out of financial resources in retirement (longevity protection), for example through a life-long annuity.

2. **A high level of security in the default investment option:** The PEPP is intended as a pension vehicle also for citizens with low income who primarily put their savings in very low risk deposits. These consumers are particularly vulnerable with regard to investment risks. Therefore, a PEPP should truly limit the downward investment risk in the default option. A capital protection by means of guarantees on accumulated capital at maturity or guaranteed minimum annuity is particularly suitable for PEPP.
3. **A cost-efficient solution for portability services:** The current proposal leaves many uncertainties with regard to cross border provision of PEPPs. The obligation to handle 28 (or in the future 27) legal regimes within different compartments would be an unproportioned burden. The overwhelming number of national rules that still apply to the provision of PEPPs and the underlying compartments would require designing separate national products and keeping them up to date with legislations in all Member States. This would make it difficult for providers, specifically small and medium-sized ones, to offer PEPPs and might lead to less rather than more competition.

Further concerns regarding the product features

Above that, other so far described product features need to be discussed. **Switching**, for instance, is a core element of the draft Regulation as the European Commission aims at stimulating competition between PEPP providers. And although the aim to allow more flexibility by offering switching for long-term pension products by all means is understandable, the encouragement of switching in the accumulation phase would **undermine the objective** of the PEPP initiative **to raise more long-term capita**l and could severely impede provision of capital protection. Consumers would lose capital protection and biometric risk coverage with every switching. More importantly, the proposal also allows switching of providers during the decumulation phase. Particularly in case of annuities, such switching could have severe consequences for retirement income of PEPP beneficiaries and the ability of providers to offer benefits. This proposed feature **would thwart a fundamental insurance principle** and could potentially lead to market failure.

Role of Taxation

The European Commission complements the draft Regulation with a Recommendation to Member States demanding to extend the benefits of the existing tax advantages granted to national PPPs also to PEPPs – even if a PEPP does not fulfil all the national criteria for these tax advantages.

Member States, however, aim at granting tax incentives only to those particular products that are in line with the retirement purpose. These products encompass features that are the result of thorough political discussions taking into account historically grown social security systems as well as national preferences. Granting preferential tax treatment to products that do not fulfil these criteria would undermine these agreements.

In Germany, the proposed features of PEPPs so far do not meet the essential criterion for tax incentives of providing an income for life. Therefore it is neither likely nor desirable that PEPPs would receive preferential tax treatment in Germany.

Comments on the legal framework

With regard to the general legal framework, German insurers have some major concerns. Firstly, the German insurance industry is firmly opposed to giving direct supervisory powers to EIOPA. It is EIOPA's task to ensure that all national competent authorities (NCA) apply the qualitative PEPP criteria in the same way but not to authorise PEPP under its own responsibility. In general, the authorisation procedure seems to be very burdensome for both supervisors and providers. Also, ongoing supervision should be conducted by the NCAs – as it is currently the case – which already have the necessary expertise. This would also avoid unnecessary bureaucracy.

Secondly, the PEPP framework duplicates existing requirements for insurance undertakings, including essential aspects such as investment rules and reporting to NCAs. Duplications should be avoided, since they pose the risk of legal ambiguity and red tape to the detriment of both providers as well as supervisory authorities.

Facilitated technical administration

Finally, providers of a pan-European product would need to be in contact with many authorities or providers (e.g. in case of switching). To make communication smooth and cost-efficient, it should be as standardised and centralised as possible. Where appropriate, documents should be exchanged via one single clearing point, thus avoiding the development of a multitude of technical interfaces for safe communications. For the administration and exchange of cross border tax information of PEPP savers, for instance, the feasibility of using distributed ledger technologies could be explored.

German insurers look forward to further discussions to create a true European pension product and reduce complexity of PEPPs, thus making them more comparable, cost-efficient and more attractive for providers to launch and for consumers to save for retirement.

I Introduction

The European Commission tabled the proposal for a pan-European Personal Pension Product (PEPP) after a series of preparatory steps, including an extensive study on the tax treatment of Personal Pension Products (PPP) in Europe. The PEPP framework aims at raising more capital for long-term investments, offering enhanced product features for consumers and encouraging cross border provision.

The German insurance association (GDV) shares those objectives. In light of demographic ageing, supplementary retirement savings will inevitably have to play a more important role in providing an adequate old age income for the majority of the people in Europe. Personal pensions provide a valuable alternative or supplement to occupational pension schemes for many individuals. Moreover, PPPs can contribute to the EU objective of creating a Capital Markets Union and provide for more investment in the real economy. However, the draft Regulation still leaves many questions open – in terms of the achievement of social policy objectives which are usually linked to pension products but also for providers and consumers.

The German private pension market is highly developed with a coverage rate of employees with occupational and personal pensions of 70 %. German insurers are the main providers of so-called Riester-pensions, one of the most successful PPPs in Europe according to the European Commission's impact assessment. Against that background, there seems to be only a limited market potential for an additional product like the PEPP at the moment. However, for cross border mobile workers, PEPPs could offer opportunities for more retirement savings, in particular if Member States co-operate to ensure for smooth transitions from one pension and tax system to the other. Besides, PEPPs may indeed contribute to more savings for retirement in Member States in less developed markets.

German insurers would like to contribute with their comments to the development of a pan-European product which offers true pension benefits. The following document, firstly, presents proposals to better align the PEPP with the objectives of the initiative of simple, transparent and safe personal pension products. This will be followed, secondly, by further questions regarding the product features. The following chapters raise the GDV's concerns regarding taxation, the authorisation process, and the general legal framework. The GDV is highly concerned regarding duplicating requirements for insurers, which would cause legal ambiguity and increased administrative burdens for both insurers and supervisory bodies. Finally, the paper presents possible ways forward for a PEPP provision by digital solutions. A more detailed assessment and open questions with regard to particular Articles can be found in the Annex.

II Simpler and more transparent features for true pension products

The objectives of the initiative could more efficiently be achieved by a framework requiring several features that make the PEPP a true pension product. These features should be offered by all eligible providers, thereby enhancing transparency and comparability of products and thus foster competition. In addition, products based on these features would be more cost-efficient as they would enable consumers to take adequate decisions without much advice. They would generate economies of scale for providers through a real pan-European product design. In the current proposal, the PEPP-framework offers much choice and consequently many decisions to be taken by consumers on the one hand. On the other hand high administrative burdens and the necessity to design varied products for use in different Member States would be imposed upon providers. Such burden would have huge impact on the provision of products, given that over a long implementation period only small amounts of regular contributions would flow into a PEPP and consequently the assets under management would grow slowly. By leaving many conditions to be determined by Member States, the framework would create many uncertainties for consumers and providers with regard to cross border provision of PEPPs. Thus, the Regulation in its current shape would hardly meet the European Commission's objectives.

Drivers for complexity and costs in the PEPP proposal

Consumers' choices

Consumers (recurrently) have to make many decisions about substantial features of their PEPP:

- **Type and origin of provider**: Consumers need to know which provider is able to offer which product features and ideally have knowledge of the level of stability of each provider.
- **Investment strategies available for consumers**: This decision is linked to the level of security entailed in the default investment strategy (true guarantees compared to de-risking investment strategies; the latter may entail a variety of glide paths and asset allocations for determining the in-

vestment risk at a certain age) as well as the risk-reward profiles of the other options. Some of the options may even lead to losses for consumers.

- **Decumulation option:** Consumers have the choice between annuities, withdrawal plans and lump sums. Research shows that most consumers heavily underestimate their individual life expectation and, therefore, are not in a position to choose an adequate decumulation strategy.
- **Switching/Portability**: Consumers need to be aware that they will lose capital protection features and biometric risk coverage, if they switch providers. When moving abroad, consumers must choose which option they prefer for portability, in particular in the light of different regulations by Member States for the accumulation and decumulation phases, as foreseen by the draft PEPP Regulation.

In sum, with regard to consumers' choices, the PEPP is not as simple as it could be and not as safe as it should be. In addition, its comparability remains limited. Consumers could find themselves in a position where they bear most of the pension risks alone (investment risk, longevity risk) instead of benefitting from risk sharing mechanisms. Areas of substantial information asymmetries between consumers and providers are remaining. Since it is currently not clear which product features the Member States acknowledge as eligible for tax incentives, it is possible that only some PEPPs would receive tax privileges within one country whilst others do not. Many consumers would need advice to find a suitable PEPP.

Providers' perspective

The flexibility offered to consumers and the multitude of rules set by Member States result in increased bureaucracy and costs for the manufacturing, distribution and administration of PEPPs:

- **Design of products**: Different requirements set by Member States for the accumulation and decumulation phases, in particular with regard to the retirement age, limit the possibilities for providers to design only one single PEPP for as many countries as possible. Member States may for example impose additional rules on the valuation of assets in case of early redemption or other contractual details. Providers are also obliged to follow national supervisory and distribution law. All of these factors affect the product design and will impede the supply of one single PEPP.
- **Compartments:** Different PEPP rules, tax and social law in at least 27 Member States add enormous complexity, if a PEPP provider is obliged to provide compartments for all Member States, regardless of the probability of consumers moving abroad. Currently, the rules on compartments raise too many questions and entail legal risks for a provider (see also below).

- **Tax administration:** The communication with national or even regional tax authorities often requires special IT tools and infrastructure.
- **Investment horizon**: The right of consumers to change the investment strategy, the decumulation option and the provider once within five years poses a risk to providers, which will be reflected in pricing. Frequent switching will also increase costs for manufacturers and consequently for consumers. It could lead to shorter investment horizons than optimal for retirement products, thus, limiting returns from long-term investments. This would directly counteract one of the main objectives of the PEPP initiative to provide for more long-term investment in the real economy and it would generally undermine the long-term nature of a PEPP.

In sum, from a provider's perspective the PEPP could not be offered as cost-effective as it would be desirable. The administrative and also legal challenges remain substantial. They are compounded by the requirement to offer compartments. This would prevent specifically smaller and/or local providers from entering the market for PEPPs and consequently contradict the principle of proportionality.

The very nature of pension products lies in their long-term character and their objective to provide income in retirement. This long-term nature of pension products implies that providers are allowed to generate long-term liabilities. Such liabilities enable providers to invest in illiquid or less liquid assets so that their consumers benefit from higher returns and the economy from long-term funding. This long-term character of pensions would even be strengthened if the products provided for lifelong annuities in the decumulation phase or for protection of longevity risk more generally.

The following proposals contribute to the objectives of the PEPP initiative as they reduce complexity of PEPPs, thus making them more comparable, and increase cost-efficiency as well as attractiveness for providers to launch a PEPP respectively for consumers to save for retirement with a PEPP.

1. A default decumulation option protecting against outliving a retiree's assets

The PEPP Regulation should stipulate that all providers have to offer protection against running out of money in retirement as a default option for consumers (longevity protection). This is also in line with the OECD

Roadmap for the Good Design of DC pension plans: “For the payout phase, encourage annuitization as a protection against longevity risk.”[1]

- For a pan-European pension product, a **default option for longevity protection** would provide safety and comparability for consumers as well as flexibility and choice to adapt the retirement income strategy to the respective national pension system.

- Such a default option for a PEPP would increase supply, foster innovation and thus **promote competition** in the field of longevity protection.

- The European Commission’s impact assessment shows that two thirds of all personal pension products already offer an annuity or combinations of annuities and lump sum payments. Thus, most pension savers expect that pension products offer longevity protection. A PEPP without such a feature would be in conflict with the expectations of consumers of a true pension product.

- For **Riester pensions,** which the European Commission regards as one of the most successful PPPs, longevity protection is a mandatory feature. Consumers have the choice between a lifetime annuity or a combination of a draw-down plan until the age of 85 and a life time annuity thereafter. Consumers can also take 30 % of their assets as a lump sum at the date of retirement, which offers them some liquidity and flexibility.

- Member States could set appropriate limits on **minimum annuity payments** to avoid that providers have to administrate very small pension pots.

- However, every decumulation strategy needs to provide **stable out-payments** since most pensioners are not able to bear high income volatility. This requires a long-term de-risking approach. In particular, life-long annuities cannot be designed if provider switching was allowed. This would thwart a fundamental insurance principle and could potentially lead to market failure. Therefore, switching of providers in the decumulation phase should not be possible.

[1] http://www.oecd.org/finance/private-pensions/50582753.pdf

2. A high level of security in the default investment option

The PEPP is intended as a pension vehicle for citizens with low income also, who primarily put their savings in very low risk deposits. Those consumers are particularly vulnerable with regard to investment risks. In addition, if Member States contributed to the PEPP by granting tax incentives, it is the inherent objective of these incentives to create positive returns for the investor rather than being casualties in a volatile stock market. Therefore, a PEPP should truly limit the downward investment risk in the default option.

- The PEPP Regulation needs a **clear definition of what is meant by capital protection** (Article 37). Such definition should not be left to Delegated Acts, which would create uncertainty.

- A proper capital protection should be provided by **real guarantees** covered by the Solvency II framework. A capital protection by means of guarantees on accumulated capital at maturity or guaranteed minimum annuity is particularly suitable for PEPPs. A life-cycle approach to investment is not as robust as real guarantees since it contains no capital buffers against investment shocks. With life-cycling, consumers are exposed to the risk of losing their capital and consequently having a lower retirement income than expected. Therefore, German insurers come to a substantially different conclusion than the European Commission that regards both guarantees and life-cycling as “robust capital protection” (Impact Assessment page 43).

- It needs a **clear ruling that capital protection will be due at retirement** of a consumer. It is crucial that in case of provider-switching no capital protection is due at this point in time, as stated in Article 49 (5). Such a rule should apply generally, e.g. also when Member States allow redemption before retirement age in case of particular hardship (Article 40). Only the time or market value of the assets should be transferred to a new provider or payed out before retirement age. This is very important as otherwise Member States could apply different rules on the redemption value when consumers leave a provider (e.g. through national insurance contract law) and providers will not be able to design one single PEPP for several Member States. In addition, such rule would provide a level playing field between different types of providers.

- A capital protection in terms of real guarantees would also make a PEPP **more comparable and comprehensible** (in terms of the safety level) for potential consumers. The term “capital protection” may conceal the substantial differences in the quality levels of this protection and would consequently mislead consumers. Life-cycling investments entail a significant variety of asset allocations in combination with particular de-risking strategies (the so called glide path, i.e. the declining level of investment risk linked to the years up to retirement). Such strategies are mainly driven by assumptions about rates of returns for different asset classes based on historical data. However, historical data are no reliable indicators for the future and not a guarantor of safety. If a PEPP does not meet the investment expectations, consumers would lose their savings and this would harm the reputation of the whole label.

- From a consumer’s perspective, a guarantee level should be set adequately and in particular take into account the opportunities to generate yield.

- The provision of a robust capital protection in terms of a guarantee does not necessarily exclude certain undertakings from providing a PEPP since such guarantees can be offered by re-insurance undertakings or **cooperation between different types of providers.** German Riester pensions provide good practice examples in this regard. This could even increase competition as smaller or more local providers could liaise with larger ones with pan-European expertise. Consequently, the PEPP would also promote innovative pension solutions while maintaining security for pension savers.

3. A cost-efficient solution for portability services

Offering EU-wide portability to consumers is an essential objective of the PEPP. The draft Regulation foresees an obligation for providers to offer national compartments for all Member States, if consumers move abroad and wish to remain with their original provider (Articles 12-13). However, the **proposed compartment solution is very burdensome**, in particular for smaller and medium-sized providers, and may limit both competition as well as the potential number of PEPPs on the market.

The variety of different national regulations that would apply to the provision of PEPPs and the different compartments would not only create a significant administrative burden, but may require the design of separate national products (see also the more technical comments on the portability requirements in the Annex).

- Providers would have to comply with the following **diverging rules for each compartment**: Contract law, national requirements for PEPP accumulation and decumulation, tax rules for PEPP, indirect taxes on insurance premiums, national distribution law, and additional information requirements for PPP. Contractual and information documents would have to be provided in different languages and relate to different currencies. All regulations would have to be observed continually and consequently the compartments had to be adapted throughout the product cycle of a PEPP.

- With a mandatory requirement for the establishment of compartments those efforts would have to be made up front, regardless of any potential success of that PEPP on the market or the probability that consumers move abroad. This would **render the product unnecessarily expensive** and thus contradict the objective of cost-efficiency.

- If providers were to offer PEPPs which are incentivised by the respective tax regimes, they would need to establish the **necessary connections for tax filing to all** relevant national or even regional tax authorities. This is not only a technical challenge but may also involve language barriers.

- Many **small and medium-sized providers would not be capable** to comply with such amount of different national regulation. Thus, the requirement to offer compartments would limit competition, by systematically excluding small and medium sized providers from the PEPP market. This would contradict the principle of proportionality and rather increase concentration in the market than creating more competition.

III Further concerns regarding the product features of a PEPP

1. Investment rules for providers (Article 33) and reporting to national authorities (Article 32)

The GDV appreciates that the investment rules proposed in Article 33 largely correspond with the prudent person principle rules stipulated in Article 132 of the Solvency II Directive as this increases security for all PEPP savers. In contrast to Article 33 of the draft PEPP Regulation, however, Solvency II rules – including governance requirements and reporting to supervisory authorities – cover all business activities of insurers and not only a single product. Those rules also apply to unit-linked insurance products. However, some aspects of Article 33 PEPP draft Regulation diverge from Article 132 Solvency II (for more details please see the Annex). The information to be submitted to national authorities is – in principle – also in line with Solvency II rules.

The GDV urges to avoid double regulation as this would lead to inconsistencies and difficulties in the interpretation of those rules. Insurers should not be obliged to implement specific processes for PEPPs within their asset allocation and for information to supervisors. Therefore, entities that are covered by the Solvency II Directive should be exempt from Articles 32 and 33 PEPP Regulation.

2. Switching of providers

In addition to the general assessment that the short time horizon of five years may increase costs and risks for savers (see BOX above), there are some more technical concerns and need for clarification:

- Switching of providers **during the decumulation phase should not be permitted, in particular in case of life-long annuities**. Such switching could have severe consequences for retirement income of PEPP beneficiaries and the ability of providers to offer protection against longevity risk. Life-long annuities are based on a risk sharing pool of consumers where the possibility for early redemption would pose the severe risk of adverse selection. For example, once the health of a PEPP saver with a life-long annuity deteriorates, she/he would dissolve the technical provisions covering the annuity, and detrimentally affect the actuarial calculation based on the original risk pool and consequently the benefits of the remaining beneficiaries. This would thwart a fundamental insurance principle and could potentially lead to market failure. Therefore, Recital 47, Articles 52 (2) and 46 (3) should be changed accordingly.

- The PEPP proposal stipulates in several articles that assets could be transferred without redemption in kind (e.g. Article 16, 49). According to Articles 46 (2) and (3), PEPP savers can choose whether they transfer an asset portfolio to the receiving provider or redeem them. **Such choice is not possible for collective investments** in traditional insurance products. Also in long-term investments, consumers may possess only a marginal part of some assets and in unit-linked products consumers do not always hold integer number of shares. Therefore, it should be clarified that transfers of asset portfolios can only made after explicit consent of the receiving provider. As a default, only the market value of the assets should be transferred.

3. Biometric Risk Coverage

The German insurers welcome that PEPP may include additional biometric benefits. **Protection of surviving dependants** and **occupational disability benefits** are very **important features** of retirement provision. Consumers should be made aware whether or not a product offers the possibility to add coverage against such risk. In contrast to the importance of those features, the **rules on switching do not take biometric features sufficiently into account**. Therefore, consumers should also be made aware that they could lose their biometric protection in case of a switching.

In addition, biometric risk coverage is rather a product feature then a measure for consumer protection vis-à-vis the provider. Therefore, Article 42 should be moved to the section on the accumulation phase.

IV Taxation

Many Member States incentivise pension savings with tax privileges, because citizens often do not see the necessity for savings for retirement. However, in order to target tax incentives to the retirement purpose, Member States **grant tax incentives only to products with particular features.** Member States have had well-reflected reasons for selecting the criteria for eligible PPP which **are the result of thorough political discussions** taking into account historically grown social security systems as well as national preferences. Granting preferential tax treatment to products that do not fulfil these criteria undermines these decisions.

The European Commission commissioned an extensive study about the different tax treatments of PPP across Europe. Moreover, the Commission accompanied the draft proposal for a PEPP with a Recommendation on the tax treatment of personal pension products, including the PEPP. The Recommendation encourages Member States to extend the same benefits of the tax advantages they grant to national PPPs also to PEPPs, even if specific PEPPs do not fulfil all national criteria for the tax relief. Furthermore, the Commission suggests Member States with more than one type of PPPs should grant the most favourable tax treatment available to the PEPP.

In Germany, **tax privileges are granted to PPPs guaranteeing a lifelong annuity payment**. Additional requirements apply to Riester-pensions which were selected to ensure that these products adequately complement public pension benefits. Riester-pension products are authorized by a tax authority and they need to carry out a classification procedure to fulfil information requirements.

The features of PEPPs, as proposed by the draft EU-Regulation, so far do not meet the essential requirement of providing an income for life. In addition, PEPP savers may change between different forms of out-payments (annuities, lump sum, drawdown payments and combinations of these forms) every five years in the accumulation phase. Though, even if a PEPP fulfils the criteria for a beneficial tax treatment at first, this may change due to an alteration of the form of out-payment later on. Therefore it is neither likely nor desirable that PEPPs would receive preferential tax treatment in Germany. It is also unclear whether a PEPP could receive the same tax treatment without authorization from the tax authority.

With regard to portability, the draft proposal suggests that PEPP savers moving to another Member State can continue saving in form of the same PEPP by setting up new national compartments. The compartments in the new Member State should adapt the PEPP to the legal requirements and conditions for using incentives fixed at national level. Nevertheless, as long as the differences between the PEPP Regulation and national tax rules remain substantial, there is a risk that other Member States would not grant tax privileges to PEPPs. Besides the technical difficulties in administrating compartments, savers, providers and Member States would face high uncertainty on tax issues, in particular if a PEPP saver wishes to consolidate all savings in one compartment in line with Article 16 (1). Thus, the challenges regarding the portability of personal pension savings but also for cross border provision of PEPPs still remain.

V Comments on the legal framework for PEPP

1. EIOPA’s role with regard to authorisation and supervision

Whilst the German insurance industry welcomes the introduction of PEPP in general, it should not be used to expand EIOPA’s powers beyond the remit which the EIOPA Regulation determines. In its area of responsibility, EIOPA is in charge of ensuring coherent application of the law and of coordinating a uniform supervisory practice by the national authorities. Direct supervision vis-à-vis the undertakings remains with the national supervisory authorities. Thus, the German insurance industry is firmly opposed to giving direct supervisory powers to EIOPA such as the right to authorise a PEPP or to monitor the use of the PEPP designation. Also, it remains unclear what the concrete conditions for EIOPA to renounce a product authorisation are (Article 6), which would create significant detrimental legal uncertainty. Double supervision and unnecessary red tape for both undertakings and supervisory authorities should be avoided by any means. In particular the authorisation requirements for providers like insurers, which already offer pension products, are excessive (e.g. experiences on the German market with Riester-products document how burdensome authorisation processes often are.

Authorisation of PEPP:
In concrete terms, **EIOPA should not authorise PEPP**, but rather **ensure that all NCAs apply the qualitative PEPP criteria** in the same way. To that end, the EIOPA Regulation already contains appropriate tools allowing also to coordinate and monitor the uniform application of PEPP provisions in the Member States (cf. Article 16 – 19 EIOPA Regulation). Furthermore, EIOPA may make use of the powers established in Article 20 and 21 EIOPA-Regulation to promote convergence through the supervisory colleges. In order to ensure a level playing field for all PEPP providers, irrespective which sector they belong to, EIOPA should coordinate its actions with EBA and ESMA in the Joint ESA Committee.

The European Commission currently conducts a comprehensive review of the ESA-Regulations (“ESA review”). Inter alia, it deals with supervisory powers of EIOPA. The results of this review should be neither anticipated nor contradicted. There might be room to give EBA and ESMA direct supervisory rights in specific cases. However, these cases are strictly limited, e.g. to exceptional constellations such as the supervision of rating agencies by ESMA. PEPP is not comparable to this case and there is no justification to create a precedent giving EIOPA direct supervisory powers.

Also from a practical point of view, it should be the **national authorities’ task to grant authorisation**. They are in a better position to assess whether or not the conditions for granting authorisation of a PEPP are met and continue to be met subsequently. They know the providers best as they are responsible for their ongoing supervision and may rely on existing experience. This is specifically important for the supervision of cross-border business.

Finally, a **clear separation of responsibilities** ensures that double assessments are avoided. The extensive obligations to liaise with the NCAs (see for example Article 5 (4), Article 6 (2)) would cause extensive coordination challenges and hinder efficient supervision. However, it seems sensible that EIOPA is in charge to keep a central register of all authorised products (Article 10).

Ongoing Supervision:
According to Article 53 (1), the NCAs are competent to supervise compliance on an ongoing basis. It is unclear why on the other hand EIOPA should be responsible to monitor the use of the PEPP designation (Article 53 (2)). NCAs are in a much better position to do so as they already monitor the respective markets on an ongoing basis. Moreover, they dispose of the necessary powers to enforce the provisions (Article 54). Therefore it should be clarified in recital 43 that only competent authorities in terms of Article 2 (17) have intervention rights vis-à-vis PEPP providers.

2. Consumer Protection

German insurers appreciate the application of existing distribution requirements for specific types of PEPP providers and distributors in Article 19. It is important that insurance-PEPPs are subject to specific standards addressing the insurance issues as well as the issues of investment elements embedded in these products. Therefore, the **application of IDD provisions** (Chapters V and VI) **would be the logical consequence.** However, the GDV would like to point to concerning or duplicative requirements for Product Oversight and Governance (POG) and complaints handling.

Product Oversight and Governance:
The GDV welcomes the objective of the draft Regulation to apply similar rules on product governance to all providers. However, insurers shall apply the POG requirements of Article 25 IDD, which are currently being specified by delegated acts, and cumulatively Article 22 of the draft PEPP Regulation. The latter is identical with Article 25 IDD, but so far no further specifications are foreseen in the PEPP-Regulation. Therefore, the reference to Article 22 of the draft PEPP Regulation in Article 19 (a) should be deleted as it is unnecessary and may cause legal uncertainty.

Concerning providers referred to in Article 19 (c), for whom no POG regulation applies so far, there is a risk of an un-level playing field with regard to POG procedures. While POG rulings in IDD and MiFID II are specified on Level 2, Article 62 does not contain an equivalent empowerment to adopt Delegated Acts specifying how PEPP providers and distributors as referred to in Article 19 (c) can comply with the provisions of Article 22 (POG).

Complaints Handling:
The GDV is convinced that providers should **ensure for a proper handling of complaints by consumers**. However, neither the proposal nor the accompanying documents appear to consider the **existing framework of rules** in this respect. EIOPA has published Guidelines on Complaints-Handling by Insurance Undertakings in 2012 (EIOPA-BoS-12/069) and Guidelines on Complaints Handling by Insurance Intermediaries in 2013 (EIOPA-BoS-13/164). ESMA and EBA have, in turn, developed similar Guidelines for Complaints-Handling for the Securities and Banking Sectors in 2014 through the Joint Committee (JC 2014 43). These rules have subsequently been implemented by the respective undertakings.

The GDV considers it **disproportionate to develop yet a new set of rules** on complaints-handling only a short time after the abovementioned Guidelines have been implemented. Furthermore, the application of different internal procedures for different products is not feasible in practice. Therefore, undertakings were to implement the rules on complaints-handling for their entire business even though the Regulation would only apply to PEPP.

3. Information requirements

Format of information:
The GDV welcomes that according to Article 21, all documents and information are, in general, to be provided electronically to PEPP consumers. However, as Article 19 (a) stipulates that the rules set out in Chapters V and VI of IDD are to be complied with, it should be specified that information and documentation obligations stipulated in the relevant articles of IDD should also to be provided electronically. Otherwise **different rules might apply with regard to the provision of information** within the PEPP-Regulation.

PEPP-KID:
Clear, not-misleading and standardised information is important for PEPP consumers. **Existing regulation would be a good starting point** for PEPP information requirements, if adapted to particularities of pension products. The PEPP information requirements should be sufficiently concrete, clear and explicit on Level 1 already to prevent any ambiguities that might arise from subsequent Delegated Acts and Guidelines.

However, the following specificities of pension products should be taken into account more prominently both on Level 1 and Level 2:

- A PEPP KID **should include concrete information** on coverage against biometric risk, such as protection against longevity risk, protection of surviving dependants and protection in case of work incapability. General information would not be sufficient. In particular, information on future pension payments is essential for consumers when they choose a pension product (duration of payments, guaranteed and possible benefits).
- Consumers should be informed about **possible maximum loss** of invested capital at retirement and whether they can lose all accumulated capital.
- Consumers who want to **switch provider** need to be aware that they lose capital protection features and biometric risk coverage.
- The risk indicator has to take into account **the specificities of long-term products** instead of focusing on short-term volatility. Such indicators must also differentiate between products which typically involve lower risks. Therefore, forward-looking probabilistic modelling should be considered for determining the risk/reward indicator of a PEPP.
- Deterministic **forward-looking future performance scenarios** should be used to indicate the ranges of possible return. **Using short-term past performance** (Article 23 (5)) for long-term pension products as a benchmark **is inappropriate**.
- Past performance was deliberately excluded from the PRIIP-Regulation since past values are insignificant and even misleading indicators for the future performance of a product. This holds true even more for a long-term product like PEPP which probably offers de-risking strategies for savers approaching retirement.

For these reasons, it is important **not to “copy/paste” the PRIIPs RTS** but develop a lean Level 2 regulation that suits pension products.

PEPP Benefit Statement:
Ongoing information is important for savers to keep in touch with their pension products. The IORP II provisions on a Pension Benefit Statement provide a good starting point in this regard. The draft PEPP regulation should, however, adapt the IORP II requirements to the PEPP, since not all of the information requirements are appropriate for personal pensions, e.g. general information about the national pension system or other schemes, assumptions on wage growth, references to labour law, and the funding level. A re-formulation of Articles 27 and 28 would add clarity and legal certainty.

Moreover, the competencies with regard to the specification of the content of the PEPP Benefit Statement remain unclear: While Article 28 (2) and

29 (3) empower the EC and EIOPA to adopt delegated acts and implementing technical standards, respectively, Article 28 (3) asks the Member States to exchange best practices with regard to the content and format of the Benefit Statement.

4. Sanctions

The **maximum administrative fine** of 10 % of the total annual turnover of the ultimate parent undertaking (Article 57 (2) (e)) is **not appropriate for highly regulated products** with a long term savings objective such as the PEPP. Since the PEPP is a long-term, non-speculative product, the sanction level should be determined along the lines of Article 21 (2) (e) (i) PRIIP-Regulation (3 %) or Article 33 (2) (e) IDD (5 %).

The duty of supervisory authorities to publish any sanction or measure without undue delay (Article 59) may yield inappropriately serious consequences in the case that the authority’s decision turns out to be erroneous at a later stage. Even though Article 59 (4) provides for the immediate information on the outcome of an appeal, the reputational damage after such a publication would be irreparable. Comparable regulation, therefore, limits the publication to decisions against which there is no appeal (see Article 29 (1) PRIIP-Regulation and Article 32 (1) IDD). Whilst the draft PEPP-Regulation follows this example in principle (see Recital 63), this should also be clarified in Article 59 (1) itself.

5. Data protection

It remains unclear for what purpose PEPP providers have to notify all contractual arrangements to the respective national prudential supervisor and why such detailed information (e.g. name of the PEPP saver) would be necessary (Article 17).

The **obligation to provide information on portability to the national authorities** pursuant to Article 17 of the draft Regulation **is very sensitive** with regard to data protection. One of the main principles in data protection law is **data minimisation**. This implies that processing of personal data shall be limited to what is necessary for the purpose of the processing. As to that, the GDV is very sceptical towards any transfer of personal data of the PEPP saver, which are already processed by the PEPP provider for contractual purposes, to the national supervisory authorities. Unnecessary spread of personal data should be avoided.

Apart from the fact that personal data is transmitted to an additional recipient, there are comprehensive information duties for data controllers pursuant to the upcoming General Data Protection Regulation (GDPR). According to Article 14 GDPR, controllers, who obtained personal data from a third party and not from the data subject itself, are obliged to provide the latter with comprehensive information, for example about identity and contact details of the controller, the purposes of the processing and the storing period. By transmission of the PEPP saver's data, national authorities will become a controller of personal data and are obliged to fulfil the information duties laid down in Article 14 GDPR.

VI Suggestions for facilitated technical administration of PEPP

The PEPP offers a high degree of flexibility for consumers and, therefore, **many potential points of contacts for providers** with supervisory authorities in Member States, with tax authorities in different countries and with other providers. To make communication smooth and cost-efficient, interoperable standards, e.g. on necessary data formats, and open interfaces need to be agreed upon by relevant stakeholders on a European level. Furthermore, data exchange with multiple stakeholders should be conducted in an efficient and at the same time reliable manner. Apart from solutions which could include a single exchange node or gateway to transfer information to the respective recipients, **the feasibility of distributed ledger technology should be explored.** This technology especially facilitates multiple stakeholder data exchange while maintaining a high level of confidentiality, data security and thus creating trust. Any solution must, however, strictly respect the competences of the parties involved, especially with respect to supervisory law.

Berlin, October 2017

Annex: Detailed comments on Articles

Article 2: Contradictions of definitions with requirements in other Articles and need for clarification

- Article 2 (21) defines as capital also “uncalled committed capital”. It is unclear what this could be, in particular in a personal defined-contribution pension scheme.
- Article 2 (24) defines a “default” option as ‘when the PEPP saver has not provided instructions on how to invest the funds accumulating in his PEPP account’. In contrast to this, Article 35 requires that a PEPP saver *must* opt for an investment option. Moreover, a saver can only decide about the investment of his in-payments, if applicable, but not of funds.
- Article 2 (26) stipulates that switching may occur with or without closing the former account while Article 45 (1) provides for the closing of the former account. Given that partial switching would entail many difficulties, Article 2 (26) should be aligned with Article 45 (1).

Article 12-17: Portability service

Besides significant potential legal risks for the initial PEPP provider, e.g. in the case of loss of assets during the switching procedure, legal questions arise with regard to the obligations of providers on the portability service:

It is not clear what happens if a consumer has opened one or more compartments and wishes to switch the provider afterwards. Providers are free in designing the compartments within the limits of the PEPP Regulation and the (national) supervisory frameworks. Consequently, compartments for the same country could differ between providers, e.g. by type of provider or by country of origin. Consumers wishing to switch would have to assess the PEPP features of old and prospective providers compartment by compartment. Receiving providers would encounter considerable challenges in converting compartments from the transferring provider.

Article 12 (2) of the draft Regulation allows PEPP savers to retain “all advantages and incentives“ in case of using the portability service. However, as the term “incentive” is regularly used by the draft Regulation to refer to tax privileges granted to PPP on a national level, Article 12 (2) should define more precisely that it only refers to contractual rights of the PEPP saver.

Aside from the aforementioned proposed changes, legal difficulties with regard to Article 12 (2) would still remain. While Article 12 (2) guarantees that contractual advantages are to be maintained, Article 14 provides that the new compartment should correspond to the new national requirements for using the incentives. Both entitlements of the PEPP saver may therefore, in certain cases, be mutually exclusive if contractual advantages contradict the national provisions for incentives which apply to the new compartment.

Similar concerns apply with regard to the fact that opening a new compartment by signing a new contract (Article 15 (3)) may involve a change of applicable contract law (Article 7 (3) Rome I Regulation). The new contract law may not permit certain features of the original contract. It should, therefore, be clarified that Article 12 (2) applies only as far as accumulated assets remain in the original compartment and are not transferred in accordance with Article 16.

The request of the portability service by the PEPP saver will involve administrative expenses for the provider. Whereas Article 63 (1) (e) acknowledges in principle that these expenses will have to be covered by corresponding charges, Articles 12 to 17 remain mute on this subject. In order to avoid legal uncertainty, which may for example result from the obligation stipulated in Article 16 (1) to consolidate “all assets” without mentioning the deduction of costs, it should be clarified that adequate costs may be charged.

Article 23: Information Requirements

The reference in Article 23 (2) to specific articles of the PRIIPs Regulation includes the rules on market monitoring and product intervention by supervisory authorities with regard to insurance-based investment products (Article 15 to 18 PRIIPs Regulation). However, it is evident from the wording of Article 23 (2) (“distributors shall comply with”) that an inclusion of these provisions was not intended. The reference should therefore be limited to Article 5 (2) and 6-14 PRIIPs Regulation.

Article 33: Investment rules

The following stipulations of Article 33 of the draft PEPP-Regulation differ from Article 132 Solvency II:

- In paragraph 1a) of Article 33 the term “sole interest” is used whereas paragraph 2 subparagraph 3 of Article 132 of the Solvency II Directive requires only a “best interest”.
- The specifications in paragraph 1c) of Article 33 concerning assets not admitted to trading on a regulated financial market are more stringent. According to Article 33, these assets “must in any event be kept on prudent levels” whereas paragraph 4 subparagraph 3 of Article 132 of the Solvency II Directive requires only that these assets “shall be kept on prudent levels”. This ruling has a special relevance for the German market and could therefore have more negative consequences than in other Member States. In Germany, assets that are not admitted to trading on a regulated market such as borrower´s note loans, registered bonds or mortgage loans are widespread assets in the portfolios of insurers. For these assets, relatively liquid secondary markets exist. Also these investments are usually very safe with low default rates. Moreover, mortgage loans are widely diversified.
- Concerning derivatives, Article 33 paragraph 1d) stipulates in contrast to Article 132 that PEPP providers should avoid excessive risk exposure to a single counterparty and to other derivative operations. Solvency II insurers already meet this requirement due to the requirement that assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Moreover, the EMIR-Regulation, which aims to make the whole derivative market substantially more secure, already provides for a sufficiently sound regulatory system. Therefore, this additional ruling is not necessary and could even prevent or hinder reasonable use of derivatives which help reducing risks to the benefit of the consumer.
- According to Article 33 paragraph 1f), assets shall not be invested in a high-risk and non-cooperative jurisdiction identified by the FATF. Article 132 of the Solvency II Directive only requires the localisation of those assets shall ensure their availability.

The aforementioned divergent and partly more stringent terms would lead to inconsistencies and difficulties in the application of those rules.

Article 38: Investment options for savers

The proposal by the European Commission states that if a PEPP provides several options, at least one of the alternative options shall be a cost-effective investment option to PEPP savers (Article 38 (1)). It is unclear what that provision refers to. It moreover implies that all other options are inefficient or too expensive. Therefore, this requirement should be deleted.

Articles 40 and 51: Provisions set by Member States

In Article 40 (1) the reference to Article 3 (b) is wrong.

Duplication: The provision that Member States can define “conditions for redemption in case of particular hardship” appears in Article 40 (2) and Article 51(2). For clarification it should be deleted in Article 51 (2).

Article 42: Biometric risk coverage

According to German insurance supervisory law, insurance companies may, apart from exceptions, only offer products which include an element of risk protection, e.g. the risks cited in Article 42. The wording of Article 42 should therefore allow for products where the coverage of biometrical risk is not necessarily optional but an essential part of the contract.

Moreover, the content of Article 42 should be moved to Chapter V Section III (Other aspects of the accumulation phase) of the Regulation. Otherwise, the rules on investor protection vis-à-vis the provider (investor protection) and protection of individual risks by taking out insurance (individual risk insurance) would be mixed up.

Article 49 (5): Protection of PEPP savers against financial loss

The definition of capital protection should be aligned with Article 37.

Article 56: Settlement of disagreements between competent authorities in cross-border situations

The references in Article 56 should be reviewed as some do not seem to be correct, e.g. in Article 56 (4).