MEMO# 30793

July 21, 2017

European Commission Publishes Proposal for a Pan-European Personal Pension Product; Input Requested

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July 21, 2017 TO: ICI Global EU Capital Markets Union Task Force
ICI Global Regulated Funds Committee
ICI Global Retirement Savings Committee
International Operations Advisory Committee
Pension Committee
Pension Operations Advisory Committee RE: European Commission Publishes Proposal for a Pan-European Personal Pension Product; Input Requested

On 29 June, following a consultation[1] and a hearing, the European Commission published a proposed regulation for a new voluntary pan-European Personal Pension Product (PEPP) to complement existing national pension products and offer European citizens additional opportunities to save for retirement, while bolstering the Commission's plan for a Capital Markets Union.[2] The proposal will now be considered by the European Parliament and the Council. Although the proposal itself does not regulate the PEPP tax treatment, the Commission published a recommendation to Member States to grant PEPPs the same tax treatment as applies to similar existing national products.[3] The Commission also published a study on the feasibility of a European personal pension framework (which it had commissioned from a third party).[4]

ICI Global's Initial Analysis and Next Steps

The PEPP proposal is a positive development towards creating a pan-European pension market, for which we have advocated for several years (including in ICI Global's response to the Commission's consultation[5]). Once authorised by the European Insurance and Occupational Pensions Authority (EIOPA), PEPPs would be available on a cross-border basis, facilitating EU citizens' uninterrupted pension savings during moves between Member States. The cross-border feature also would allow providers to create broader pools of assets to contribute to economies of scale and more efficient asset management.

As we also advocated, the proposal attempts to strike the right balance between standardisation of certain features, while permitting some flexibility in the PEPP design. As proposed, the following requirements would be standardised:

- Authorisation
- Distribution (including required disclosures)
- High-level investment principles for investment options
- Switching providers and cross-border portability.

At the same time, PEPP providers would have some flexibility in designing investment and pay-out options. As already noted, the proposal does not attempt to harmonise the pension tax regimes.

While we generally support the direction of the proposal, in our view, some provisions require further work to make this pension product an effective pension savings vehicle. For example, we anticipate that we will engage with stakeholders about investment rules for PEPP savers and specifically regarding a default investment option, which appears to require “recoup[ment] of the capital invested.” We believe that a default investment option should not require capital recoupment; rather, it should be a diversified investment option (such as a lifecycle fund), and we plan to continue to advocate for this outcome.

We are currently developing a list of questions and issues regarding the proposal and our advocacy strategy for reachout efforts to relevant stakeholders. We encourage you to contact the undersigned if you are interested in this project.

PEPP Proposal Overview

The proposal sets out relevant definitions (Chapter I) and lays out rules on —

- Authorisation (Chapter II)
- Cross-border provision and portability (Chapter III)
- Distribution and disclosure requirements (Chapter IV)
- Investment rules for the accumulation phase (Chapter V)
- Investor protection, including out of court redress (Chapter VI)
- Switching between PEPP providers (Chapter VII)
- Decumulation phase (Chapter VIII)
- Supervision, including roles of national authorities and EIOPA (Chapter IX); and
- Sanctions (Chapter X)

We address some of the provisions below.

PEPP definition

A PEPP means “a long-term savings personal pension product, which is provided under an agreed PEPP scheme by a regulated financial undertaking authorised under Union law to manage collective or individual investments or savings, and subscribed to voluntarily by an individual PEPP saver in view of retirement, with no or strictly limited redeemability.”

Authorisation

EIOPA is the single EU authority that would authorise PEPPs’ manufacturing and distribution. Special authorisation rules would apply for financial undertakings that do not manufacture PEPPs but would be interested in PEPPs’ distribution.

Cross-Border Portability

The proposal envisions that, within 3 years, PEPP providers would be able to offer portability between all Member States, *i.e.*, PEPP savers would be able to contribute to the same PEPP upon moving to a new EU country.   Upon a PEPP saver's request, a PEPP provider would create a "compartment" within a PEPP account to accommodate rules of a particular Member State.

Distribution

Distribution rules will depend on the type of PEPP providers and distributors: investment firms must distribute PEPP in accordance with MiFID II and this regulation; and insurance firms in accordance with the insurance directive and this regulation. All others would operate under this regulation.

Disclosure Requirements

- Pre-contractual stage: a PEPP key information document, containing certain information required by KID and also PEPP-specific information, including information on investments' past performance covering a minimum of 5 years and information on the cost structure. The proposal tasks the European Supervisory Authorities with developing technical standards for this disclosure requirement to ensure consistent application.
- During the contract: a personalised PEPP benefit statement, with specified key information *(e.g.*, information on pension benefit projections, accumulated capital, past performance, breakdown of costs, and information on the PEPP provider). EIOPA is tasked with developing technical standards for this requirement. PEPP savers must receive information on the payout options "during the pre-retirement phase." Providers must also periodically provide payout information for those in the pay-out stage.

Electronic distribution is the default option for the required information; however, a PEPP saver can receive, free of charge, the required information "on another durable medium."

PEPP providers are required to report to national authorities with information necessary for their supervision responsibilities.

Advice

For PEPP distributors who are not "investment companies" or "insurance distributors," the proposal explicitly addresses "advice" and "standards for sales where no advice is given." The implication of these rules to investment companies is not immediately clear.

Investment Rules

PEPP providers are able to offer up to five investment options, and one of the options must be a default investment option. Options may also include alternative investment options.

PEPP savers must select an investment option, which they can change once every five years.

PEPP providers must invest PEPP assets in accordance with the "prudent person" rule. All investment options shall be designed on the basis of proven "risk-mitigation techniques which shall ensure sufficient protection for PEPP savers." Special rules apply for default investment options and alternative investment options.

For a default investment option, Article 37 provides:

1. The default investment option shall ensure capital protection for the PEPP saver, on the basis of a risk-mitigation technique that results in a safe investment strategy.
2. Capital protection shall allow the PEPP saver to recoup the capital invested.

Article 39 empowers the Commission to adopt a delegated act specifying "the risk-mitigation technique to ensure capital protection under the default investment option."

Switching Between Providers

PEPP savers may switch PEPP providers no more frequently than once every five years. The proposal sets out detailed procedures for the switching process. The total fees of a transferring PEPP provider related to the closing of the account are capped to 1.5% of the transferring balance. Most other fees in connection with switching, including of the receiving provider, must be reasonable "and in line with the actual costs of that PEPP provider" for a particular service.

Decumulation Phase

The PEPP conditions related to the decumulation phase (e.g., retirement age) are determined by Member States, unless they are specified by this regulation. This deference also applies to redemption conditions for hardships.

The proposal allows PEPP providers to offer any of the following pay-out options: annuities, lump sum, drawdown payments, and combinations thereof. A PEPP saver can change their payout choice every five years during the accumulation stage.

Delegated Acts

The Commission has the power to adopt delegated acts in the areas of:

- Conflicts of interest
- Inducements
- Selling PEPPs with and without advice
- Product oversight and governance requirements
- Provision of information during the contract term; and
- Reporting to national authorities and investment options.

Anna Driggs
Associate Chief Counsel, Retirement Policy

endnotes

[1] *See* http://ec.europa.eu/finance/consultations/2016/personal-pension-framework/index_en.htm. For ICI Global's response to the Commission's July 27 2017 consultation on a Potential EU Personal Pension Framework, *see* https://ec.europa.eu/eusurvey/publication/personal-pension-framework-2016-stakeholders; *also see* Memorandum to ICI Global Capital Markets Union Task Force, ICI Global Regulated Funds Committee No. 52-16, ICI Global Retirement Savings Committee, and International

Committee No. 42-16 [30159], dated 23 August 2016.

[2] The text of the proposal is available at https://ec.europa.eu/info/publications/170629-personal-pension-products_en. The Commission's PEPP web site also includes FAQs and other helpful links, including to EIOPA's earlier technical advice on the development of an EU single market for personal pension products.

[3] The Recommendation to Member States is *available at* https://ec.europa.eu/info/sites/info/files/170629-personal-pensions-recommendation_en.pdf.

[4] A study, along with the executive summary, is *available at* https://ec.europa.eu/info/publications/170629-personal-pension-products_en.

[5] For ICI Global's response to the Commission's July 27 2017 consultation on a Potential EU Personal Pension Framework, *see* https://ec.europa.eu/eusurvey/publication/personal-pension-framework-2016-stakeholders; *also see* Memorandum to ICI Global Capital Markets Union Task Force, ICI Global Regulated Funds Committee No. 52-16, ICI Global Retirement Savings Committee, and International Committee No. 42-16 [30159], dated 23 August 2016.
