MEMO# 29227

August 5, 2015

EIOPA's Consultation on a Standardised Pan-European Personal Pension Product; Call Scheduled for 8 September

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TO: ICI GLOBAL REGULATED FUNDS COMMITTEE No. 45-15
ICI GLOBAL RETIREMENT SAVINGS COMMITTEE
ICI GLOBAL CAPITAL MARKETS UNION TASK FORCE RE: EIOPA'S CONSULTATION ON A STANDARDISED PAN-EUROPEAN PERSONAL PENSION PRODUCT; CALL SCHEDULED FOR 8 SEPTEMBER

We are hosting a member conference call on 8 September at 8 a.m. EST/13:00 BST to discuss a consultation paper published by the European Insurance and Occupational Pensions Authority (EIOPA) On the Creation of a Standardised Pan-European Personal Pension Product (PEPP). [1] The comments on the consultation are due to EIOPA by 5 October. [2]

On our call, we would like to discuss which elements of the consultation we should comment on, as EIOPA requires responses to specific questions.

Call Information

Date and time: 8 September at 8 a.m. EST/13:00 BST For callers outside US: To Be Announced For callers in US: To Be Announced Passcode: To Be Announced
If you plan to participate on the call, please register by sending an email to adriggs@ici.org.

Background on the Consultation

EIOPA issued the consultation in response to the European Commission's Call for Advice to EIOPA "On the Development of an EU Single Market for Personal Pensions Products (PPPs)". [3] The Commission's call for advice follows the earlier EIOPA report [4] and seeks further EIOPA advice, particularly on the cross-border, prudential regulation and consumer protection measures required to develop an EU-wide framework for the activities and supervision of PPPs.

The scope of the consultation correlates with the Commission's exploration of a standardised personal pension product in the Green Paper on the Capital Market Union. [5] (ICI Global's response to the CMU Green Paper expressed support for developing a pan-

European personal pension product that may involve the standardisation of various aspects of retirement saving. [6])

Following the receipt of the EIOPA response, the Commission will examine "whether a legislative initiative for PPPs is necessary, and if so, which measures should be proposed."

Consultation Overview

The policy objective for PEPPs is to encourage more EU citizens to save for retirement by creating an internal European PEPP market through a creation of a simple, transparent, cost-effective, trustworthy, and well-governed product. The scope of the consultation is limited to creating a new "2nd regime" regarding a pan-European personal pension products (or PEPPs) that would be in addition to the national regimes of the 28 EU member states. The PEPP should be a long duration retirement product, clearly distinguishable from a regular investment product, but it would be sold on a retail basis, with a "passport" allowing distribution in all EU countries.

The consultation lays out a mix of requirements for the provider and for the product. We describe the proposed requirements below, along with the corresponding 21 consultation questions. The complete list of the questions is included in the Appendix to this Memorandum.

Provider Requirements

(i) A stand-alone authorisation regime for PEPP providers.

EIOPA wants to ensure a diversity of PEPP providers, but without creating a double authorisation regime. Accordingly, it proposes a stand-alone authorisation regime so that those providers that are already authorised under EU sectoral legislation (e.g., Solvency II, CRD IV, IORP and/or MiFID) could offer PEPPs, as well as those providers that are not yet authorised by any EU Directive. To activate the product passport, providers that are already authorised by the EU sectoral legislation would need to receive an "equivalence assessment" with PEPP requirements through the competent authority of the home Member State.

(ii) Structural principles regarding the need for PEPP providers to have sufficient financial resources.

(iii) Designation of competent authorities responsible for authorisation and supervision.

Member States will need to designate authorities that will authorise and supervise PEPP providers.

(iv) Effective conduct of business regulations.

EIOPA Question 1: Do stakeholders think there is a need for a standlone authorisation requirement or would existing Union law sufficiently cover all potential PEPP providers, including those who would issue PEPPs but who are not already authorised by another existing authorisation regime?

Standardisation of the National Rules

Recognizing that national rules for existing PPPs differ widely, EIOPA proposes standardising PEPP investment rules across EU to ensure a high minimum standard of consumer protection and product quality. (We discuss the investment rules in the Mandatory PEPP

Features section, below)

At this time, EIOPA does not recommend standardising national rules regarding:

- requirement to provide minimum return guarantees
- retirement age
- decumulation practices, and
- mandatory advice

No conclusion has been reached whether to standardise a requirement prohibiting pre-retirement withdrawals. EIOPA has asked whether the PEPP should contain a cap on costs and charges.

EIOPA Question 19: What do stakeholders think of requiring a cap on the level of costs and charges of PEPPs, or a cap on individual components of costs and charges?

EIOPA Question 2: Do stakeholders agree that a highly prescriptive 2nd regime [with respect to product characteristics and the rules for providers] will achieve the policy objectives of ensuring a high minimum standard of consumer protection and encouraging more EU citizens to save for an adequate retirement income?

No conclusion has been reached whether to standardise a requirement prohibiting pre-retirement withdrawals. EIOPA has asked whether the PEPP should contain a cap on costs and charges.

Potential Challenges for Introducing a 2nd Regime

To ensure the proposal properly mitigates risks, and results in good outcomes for consumers, EIOPA has identified the following potential challenges:

- the correct level of standardatisation at the EU level
- the risk of regulatory arbitrage between the EU regime and national rules
- capability of a 2nd regime to interact with national regimes in a way that improves the PEPP holder experience (e.g., product transfer) and ensures competitiveness on costs between national PPP and PEPP providers.

EIOPA Question 3: Do stakeholders agree that EIOPA has identified the correct challenges associated with introducing a 2nd regime? If so, how might these challenges be overcome? If not, what do stakeholders believe might be other challenges associated with introduction of a 2nd regime?

Mandatory PEPP Features (Investment Rules, Distribution Channels, Product Characteristics, Disclosure and Conduct of Business Requirements)

(i) All PEPP providers must adhere to the high level investment policy principles:

- Investments must be appropriate to the defined level of security, quality and profitability of the portfolio as a whole.
- Investments must be selected with the most efficient liquidity profile over the longer term, including, as appropriate, infrastructure and other similarly illiquid investments.
- All assets should be invested in the best interest of the PEPP holders.
- The use of derivatives should be possible to reduce risk or facilitate efficient portfolio management.

- Assets should be properly diversified.
- Investments in assets by the same issuer shall not expose the portfolio to excessive risk concentration.

(ii) The number of investment options offered in a PEPP must be limited, for instance, to five. PEPP holders should not make individual selections of equities, bonds or other assets.

EIOPA Question 5: Do stakeholders agree to limit the number of investment options, e.g., to five?

(iii) At least one of PEPP's investment options must not require that the PEPP holder make any further investment decisions. This option must include a life-cycling strategy with an element of de-risking.

(iv) If a PEPP contains more than one investment option, one of them must be a default, clearly recognisable as such. The default should be the investment option the PEPP provider deems best suited for the average PEPP holder.

(v) PEPPs must use a de-risking strategy for the default investment option, unless it is a guaranteed product. PEPP providers would be allowed to develop their own de-risking strategies.

(vi) De-risking is not required if an investment option contains a guarantee.

EIOPA Question 6: Do stakeholders agree that the default investment option should either be based on a life-cycle strategy with de-risking or be assisted by a guarantee, e.g., a 0% minimum return guarantee?

EIOPA Question 4: Do stakeholders believe that an investment option containing a guarantee, e.g., a % minimum return guarantee, does not in addition require a life-cycling strategy with de-risking?

EIOPA Question 8: Alternatively, would it be better for all investment options to contain either a life-cycling strategy with de-risking or a guarantee?

EIOPA Question 9: Could you elaborate on whether PEPP providers, offering a PEPP with minimum return guarantees, should be subject to one identical solvency regime to back these guarantees or whether it would be sufficient that different, but equivalent, solvency rules apply?

(vii) Options with a de-risking strategy should aim to maximise returns at defined risk levels for that investment option. One goal should be to provide investment returns that outweigh inflation.

EIOPA Question 10: Considering the fact that the PEPP aims to maximize returns outweighing inflation, should retirement savers be allowed to buy a PEPP if the remaining duration of the product is, e.g., only 5 years?

(viii) The provider should have a duty of care concerning the suitability of the investment options. This means that warnings and protections would need to be incorporated into the sales process and at later stages of accumulation for non-default investment options.

EIOPA Question 7: Do stakeholders agree that providers should have a duty of care concerning the suitability of investment options? What should be its extent? The provider should have a duty of care concerning the suitability of the investment options. This means that warnings and protections would need to be incorporated into the sales process and at later stages of accumulation for non-default investment options. Should for example providers prevent switching to high risk investment options close to retirement?

(ix) PEPP holders should be able to switch between PEPP providers free of charges periodically or under specific circumstances. More frequent switching should be permitted, for a charge

EIOPA Question 11: What is stakeholders' view on the desire of PEPP holders on the one hand to have the comfort of knowing they can switch products or providers compared with the desire on the other hand to maintain the benefits of illiquid, long-term investments?

EIOPA Question 12: Under what conditions do stakeholders think that the concepts of periodically switching providers and illiquid, long-term investment are reconcilable?

EIOPA Question 13: What do stakeholders believe is an appropriate interval for switching without incurring additional charges?

(x) PEPP providers must supply pre-contractual disclosures. EIOPA believes that the PRIIP disclosure elements should be used as a starting point, but that further customisation may be required to address features unique to PEPPs as retirement products.

EIOPA Question 14: What do stakeholders think of the proposition that the starting point for disclosure during the pre-contractual phase should be the PRIIPs disclosure elements? Please explain any aspects of these which you believe would be specifically unsuitable for PEPPs?

(xi) EIOPA also proposes detailed and specific disclosure requirements for the accumulation and the pre-retirement stage.

(xii) PEPP providers and distributors should abide by a "duty of care" to act honestly, fairly and professionally in the best interests of the consumer, in common with other directives and best practice in national legislation. Also, all marketing communications should be fair, clear, and not misleading.

(xiii) For internet sales (and EIOPA hopes internet would be widely used for PEPP distribution), EIOPA raises a question whether specific protections (e.g., warnings) are needed when investment options do not incorporate a life-cycle strategy with de-risking or a guarantee. Even when advice is not requested during the sale, the distributor must obtain a financial profile of the customer and their attitude to risk to ensure the PEPP is appropriate in that it will provide the customer with adequate retirement income.

EIOPA Question 15: What do stakeholders think of facilitating sales of PEPPs via the internet? What should be the consumer protection requirements for internet sales?

EIOPA Question 16: Where advice is not given what are the stakeholders views on requiring the distributor to apply an appropriateness test to the sale of a PEPP?

(xiv) Sales professionals must meet appropriate knowledge and ability requirements. A suitable financial qualification along with relevant experience may be needed.

(xv) PEPP providers and distributors must have adequate policies to identify and manage conflicts of interest.

(xiv) PEPP providers must have internal complaint procedures (which should be included in the legal instrument). PEPPs should be covered by national ADR schemes.

EIOPA Question 17 [regarding the Mandatory PEPP Requirements]: What are stakeholders' views on the proposed level of product standardisation? Is the level of the standardisation sufficient bearing in mind the object to achieve critical mass, cost-effectiveness and the delivery of value for money?

Flexible PEPP Features

PEPP providers could consider adding the following PEPP features:

- Capping costs and charges.
- Adding a biometric risk cover.
- Enabling PEPP holders to choose the retirement age.

EIOPA Question 18: With regard to offering biometric risk covers, should providers offering a PEPP with biometric risk cover be subject to identical or equivalent solvency requirements? Please motivate your answer.

EIOPA Question 20: Do stakeholders believe that other flexible elements could be offered by PEPP providers?

Enabling the PEPP holder to choose the form of decumulation required to qualify for beneficial tax treatment in the country of tax residence.

Creating the Internal PEPP Market

EIOPA Question 21: Do stakeholders agree with the concept of a "product passport" comprising notification/registration of PEPPs? If not, what alternative would you suggest?

EIOPA recommends creating a "product passport" system, which would involve a provider authorisation by the Home State Authority and a subsequent notification of the Host State Authority. The notification process could be simplified by creating a centralised EU register where PEPPs would be registered before they could be marketed in another Member State.

Anna Driggs
Associate Chief Counsel - Retirement Policy

Appendix [7]

EIOPA Questions to Stakeholders

1. Do stakeholders think there is a need for a standlone authorisation requirement or would existing Union law sufficiently cover all potential PEPP providers, including those who would issue PEPPs but who are not already authorised by another existing authorisation regime?
2. Do stakeholders agree that a highly prescriptive 2nd regime will achieve the policy objectives of ensuring a high minimum standard of consumer protection and encouraging more EU citizens to save for an adequate retirement income?

3. Do stakeholders agree that EIOPA has identified the correct challenges associated with introducing a 2nd regime? If so, how might these challenges be overcome? If not, what do stakeholders believe might be other challenges associated with introduction of a 2nd regime?
4. Do stakeholders believe that an investment option containing a guarantee, e.g., a % minimum return guarantee, does not in addition require a life-cycling strategy with de-risking?
5. Do stakeholders agree to limit the number of investment options, e.g., to five?
6. Do stakeholders agree that the default investment option should either be based on a life-cycle strategy with de-risking or be assisted by a guarantee, e.g., a 0% minimum return guarantee?
7. Do stakeholders agree that providers should have a duty of care concerning the suitability of investment options? What should be its extent? Should for example providers prevent switching to high risk investment options close to retirement?
8. Alternatively, would it be better for all investment options to contain either a life-cycling strategy with de-risking or a guarantee?
9. Could you elaborate on whether PEPP providers, offering a PEPP with minimum return guarantees, should be subject to one identical solvency regime to back these guarantees or whether it would be sufficient that different, but equivalent, solvency rules apply?
10. Considering the fact that the PEPP aims to maximize returns outweighing inflation, should retirement savers be allowed to buy a PEPP if the remaining duration of the product is, e.g., only 5 years?
11. What is stakeholders' view on the desire of PEPP holders on the one hand to have the comfort of knowing they can switch products or providers compared with the desire on the other hand to maintain the benefits of illiquid, long-term investments?
12. Under what conditions do stakeholders think that the concepts of periodically switching providers and illiquid, long-term investment are reconcilable?
13. What do stakeholders believe is an appropriate interval for switching without incurring additional charges?
14. What do stakeholders think of the proposition that the starting point for disclosure during the pre-contractual phase should be the PRIIPs disclosure elements? Please explain any aspects of these which you believe would be specifically unsuitable for PEPPs?
15. What do stakeholders think of facilitating sales of PEPPs via the internet? What should be the consumer protection requirements for internet sales?
16. Where advice is not given what are the stakeholders views on requiring the distributor to apply an appropriateness test to the sale of a PEPP?
17. What are stakeholders' views on the proposed level of product standardisation? Is the level of the standardisation sufficient bearing in mind the object to achieve critical mass, cost-effectiveness and the delivery of value for money?
18. With regard to offering biometric risk covers should providers offering a PEPP with biometric risk cover be subject to identical or equivalent solvency requirements? Please motivate your answer.
19. What do stakeholders think of requiring a cap on the level of costs and charges of PEPPs, or a cap on individual components of costs and charges?
20. Do stakeholders believe that other flexible elements could be offered by PEPP providers?
21. Do stakeholders agree with the concept of a "product passport" comprising notification/registration of PEPPs? If not, what alternative would you suggest?

endnotes

[1] The EIOPA consultation paper is available at https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-15-006-Consultation-paper-Standardised-Pan-European-Personal-Pension-product.pdf.

[2] EIOPAs also has scheduled a hearing on this consultation and it will take place on 7 September 2015 in Frankfurt, and we plan to attend the hearing on behalf of our membership.

[3] See http://ec.europa.eu/finance/pensions/docs/calls/20140723-call_en.pdf.

[4] In 2012, the Commission requested technical advice on personal pension products from EIOPA. In response, EIOPA created the Task Force on Personal Pensions (TFPP), conducted a three-month public consultation, and also hosted a public event with stakeholders. See https://eiopa.europa.eu/Pages/Working%20Groups/TaskForceOnPersonalPensions.aspx. Based on this work, in February 2014, EIOPA delivered a 120-page report to the Commission, titled: "Towards an EU-single market for personal pensions: An EIOPA Preliminary Report to COM." The Report includes a summary of existing PPPs, applicable regulatory regimes, and also describes possible new product ideas suggested by the commenters. See http://ec.europa.eu/finance/pensions/docs/eiopa/eiopa-preliminary-report_en.pdf.

[5] See Memorandum to ICI Global Capital Markets Union Task Force, ICI Global Steering Committee No. 1-15, ICI Global Regulated Funds Committee No. 5-15, ICI Global Trading & Markets Committee No. 6-15, Fixed-Income Advisory Committee No. 4-15, Equity Markets Advisory Committee No. 1-15, International Committee No. 9-15, International Operations Advisory Committee No 2-15 [28743], dated February 18, 2015.

[6] See Memorandum to Equity Markets Advisory Committee No. 9-15, Fixed Income Advisory Committee No. 13-15, ICI Global Capital Markets Union Task Force, ICI Global Regulated Funds Committee No. 19-15, ICI Global Retirement Savings Committee, ICI Global Tax Committee No. 15-15, ICI Global Steering Committee No. 10-15, ICI Global Trading & Markets Committee No. 22-15, International Committee No. 23-15, International Operations Advisory Committee No. 12-15 [28990], dated May 18, 2015.

[7] See Annex 3 (at page 50) in the Consultation: https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-15-006-Consultation-paper-Standardised-Pan-European-Personal-Pension-product.pdf.