

**PEPP****5th Political Trilogue****10:00-11:50, 13 December 2018, Strasbourg****PRESIDENCY FLASH NOTE**

Martin Ramharter led for the Presidency. ECON Committee Chair Roberto Gualtieri and the Rapporteur Sophie in 't Veld led for the EP (Shadow Rapporteur Brian Hayes (EPP-IE) was also present). Nathalie Berger led for the Commission.

**The co-legislators reached a provisional political agreement.****Agenda point 2: Authorisation**

**A provisional agreement on the matters related to registration and eligible providers was reached: The wording of the Council's negotiating mandate is kept for: PEPP Contract (Article 3a, lines 170–177 & 179–183), Registration (Article 4, lines 184–187), Eligible PEPP providers (Article 5, lines 192, 196), Registration process (Article 5, lines 197–214), Conditions for Registration (Article 6, lines 215–225), Deregistration (Article 6a, lines 226–237), Designation and conversion (Article 7, lines 238–241), FOS/FOE (Article 11 and 11a, lines 255–269), Home and host powers (Article 11b, lines 270–276), and Opening of new sub-accounts/compartments (Article 17, lines 305–316). In line 187 a clarification is added that supervision of compliance with this Regulation on an ongoing basis shall be carried out in accordance with Chapter IX. Line 210 clarifies that EIOPA shall not be responsible nor be held liable for a decision for registration by a competent authority. The Council wording on NCA product intervention powers is maintained (Articles 54a and 54b, lines 806-823). A new Article 54c introduces product intervention powers for EIOPA based on the wording of the PRIIP-Regulation. In line 912a a review clause on the registration of PEPPs is introduced.**

- Mr Gualtieri stressed that the EP is stretching towards the main points of Council text in order to reach an agreement.
- With regard to the introduction of EIOPA product intervention powers, Mr Gualtieri emphasised that it is important that EIOPA can intervene if there is a PEPP saver protection concern with respect to the long-term pension nature of the product. The Presidency replied that this is already the case since the term ‘PEPP saver’ implies that their long-term interests have to be taken into account. It was, however, agreed to clarify this by adding “*including with respect to the long-term retirement nature of the product*” after “*PEPP saver protection concern*” in the new Article 54c(3)(a). The Commission supported this clarification.
- Regarding the proposed Article 54c(3)(b), which stipulates that EIOPA can only intervene if “*regulatory requirements under Union law that are applicable to PEPP do not address the*

*threat*”, Mr Gualtieri expressed concerns that this would practically prevent EIOPA from intervening. The Commission proposed to delete point (b). The Presidency convinced the EP and the Commission that the concerns are not justified. Regulatory requirements under Union law that are applicable to PEPP, such as MiFID II or IDD, might not be sufficient to protect the particular concerns of PEPP savers, especially due to the long-term nature of the PEPP. MiFID II and IDD investor protection rules are not tailor-made for retirement products and therefore, in cases where these rules are not sufficient, the PEPP regulation comes into play. It was therefore concluded that Article 54c(3)(b) should be kept.

- Mr Gualtieri also doubted whether the introduction of product intervention powers would give any new powers to EIOPA, asserting that EIOPA would already have these powers according to Article 9 of the EIOPA-Regulation. The Commission explained that, in order to make use of the powers conferred on it in the EIOPA-Regulation, a corresponding provision is needed in the PEPP Regulation. The Commission promised to draft a recital that would clarify this point.
- Moreover, Mr Gualtieri asked why there is a need for a delegated act. The Commission explained that the DA is necessary for making the product intervention powers operational. It was agreed to add “*including with respect to the long-term retirement nature of the product*” after “*PEPP saver protection concern*” in the new Article 54c(9).
- Provisionally, a package including the Council’s text on matters related to registration and eligible providers and a new Article on EIOPA product intervention powers was agreed (cf. Annex on agenda item 2, which, however, does not yet contain the above-mentioned amendments).

### **Agenda point 3: Decumulation**

**Regarding the decumulation phase, the EP dropped its red line of mandatory annuities for certain types of Basic PEPPs and of introducing limitations to lump-sum payments. Instead, the Council’s wording is kept. PEPP providers can therefore in principle decide on the type of out-payments they offer. However, Member States can incentivise certain forms of out-payments, including by setting quantitative limits on certain forms of out-payments (Article 52). In exchange for that, it was agreed to introduce mandatory advice in Article 25, including a retirement-related demands-and-needs test and the provision of pension benefit projections before conclusion of a PEPP contract. At the start of the decumulation phase the provider shall offer retirement planning and advice on out-payments.**

- Following a request for clarification with regard to the “wake-up call” in Article 30 by the Rapporteur, the Presidency explained that it is important to receive information about the upcoming decumulation phase two months before the points in time when PEPP savers can modify their form of out-payment (one year before and at the start of the decumulation phase).
- Regarding the wording on advice at the start of the decumulation phase on the optimal form of out-payments, it was agreed to clarify that no advice has to be provided if the contract contains only one out-payment option.

- Mr Gualtieri stated that it is important to keep line 682 of the EP text. PEPP savers should receive information on whether there is guarantee or not. The impact of a guarantee on risks and return should be explained. The Presidency stated that information on guarantees is already included in the PEPP-KID. Moreover, the compromise package clarifies that advice must be provided on the optimal investment option. Mr Gualtieri noted that advice on the investment option might not be enough as the investment option of the Basic PEPP could be either with or without a guarantee. The Commission said that the information required by the EP in line 682 should be kept but should be moved to the Article on advice. The EP and the Presidency agreed to the proposal, the latter adding that references would have to be adapted.
- Provisionally, a package on advice and decumulation was agreed (cf. Annex on agenda item 3, which, however, does not yet contain the above mentioned amendments).

#### **Agenda point 4: Cost cap**

**The Rapporteur stressed that introducing a cost cap of 1% for the Basic PEPP is crucial for all the political parties in order to have an overall agreement. The Presidency provisionally agreed to this but only after the EP made the concession of introducing the following amendments: In order to ensure a level playing field between different PEPP providers and different types of PEPPs, an RTS will define which types of costs and fees are covered by the cap. Furthermore, the fee cap will be reviewed regularly and will be adapted by a DA which takes into account the actual level and changes in the actual level of costs and fees and the impact on the availability of PEPPs.**

- Mr Gualtieri stated that with regard to the RTS it would be particularly important to clarify whether the costs of the provision of annuities or annual draw-down payments until a particular age as well as the costs of the provision of a guarantee are included in the costs and fees covered by the cost cap. Mr Gualtieri proposed to add on the criteria being taken into account according to Article 37(3): *“in particular out-payments in form of long-term annuities or annual drawdowns until at least the age corresponding with the average life expectancy of the saver. EIOPA shall also assess the peculiar nature of the capital protection with specific regard to the capital guarantee.”* The Presidency accepted this wording, but saw a need for a recital to clarify that this could mean that certain costs related to annuities and guarantees should be excluded in order to create a level playing field. The EP agreed to that proposal. Furthermore, it was agreed that the other ESAs will only be consulted *‘where applicable’*.
- Moreover, it was proposed that the cost cap should be reviewed every two years taking into account the actual level and changes in the actual level of costs and fees and the impact on the availability of PEPPs. In the light of this review, the Commission could adopt delegated acts to amend the percentage value of the cost cap. Following advice from the Council Legal Service, in order to ensure that this provision is legally sound and to properly frame the empowerment, the Presidency proposed to limit the changes the Commission could make to a fee cap to not

higher than 5%. Mr Gualtieri was strongly opposed to this limit arguing that this would lead to the fee cap moving to that threshold. It was therefore agreed to define additional criteria at level 1 to properly frame the empowerment instead of setting a maximum cost cap of 5%.

- Provisionally, a package on the Basic PEPP was agreed (cf. Annex on agenda item 4, which, however, does not yet contain the above-mentioned amendments).
- In view of the definition of capital, which, according to the wording of all parties to the trilogue, refers to amounts investible after deduction of costs and fees, the Presidency raised concerns that this could lower standards in some Member States. The Presidency therefore proposed to include a Member State option in Article 52 to require PEPP providers “*to ensure that at the beginning of the decumulation phase at least the paid contributions are available for the payout phase and used for the provision of services*”. Mr Gualtieri expressed sympathy for such a solution before Mr Hayes and the Rapporteur stressed that this would create an un-level playing field and constitute an infringement of the principle of the single market, preventing the pooling of assets of the PEPP savers. In view of that the proposal for an amendment was rejected.
- As regards the definition of capital in line 149, the EP dropped the position of including investment returns. Instead the Council’s wording is kept.

#### **Agenda point 5: Stand alone KID**

- Mr Gualtieri raised concerns that having a separate KID for the Basic PEPP and a KID for the alternative investment options could be confusing for PEPP customers who must be able to compare products. Therefore, he proposed to have one stand-alone KID. The Commission was in favour of a separate KID for the Basic PEPP. The Presidency added that it is important that PEPP customers, especially the less financially literate, do not get confused when receiving one PEPP-KID with all investment options that might have different levels of risk. In view of Mr Gualtieri’s insistence on providing potential PEPP savers with full information, it was agreed that PEPP providers must hand out separate PEPP-KIDs for the Basic PEPP and the PEPP-KID on the alternative investment options.
- As regards the number of investment options, it was agreed that PEPP providers can offer up to six alternative investment options. This basically maintains the Commission proposal and the Council’s position containing a number of five in order to create a simple product.

#### **Agenda point 6: Other political issues**

- The EP and the Council, acknowledging the pan-European character of the PEPP, agreed on introducing a minimum number of two sub-accounts after a transition period of three years.
- Other political issues were agreed in principle and delegated to the technical level, including:
  - Applicable distribution regime: References are made to IDD or MiFID II depending on the type of provider
  - Past performance is included in the pre-contractual information.

- Pension-benefit projections are based on RTS. However, in order to allow comparison with national pension products, MS may require providers to provide PEPP savers additionally with pension-benefit statements based on assumptions determined by Member States.
- Clarification that ESG factors have to be taken into account within the prudent person principle.
- The use of the terms 'sub-account' and 'basic PEPP'.
- Acknowledging Member States' prerogative on taxes, the reference to 'possible' incentives in the definition of sub-accounts will be kept.

### **Next steps**

The Member States will be informed on the provisional political agreement reached in the 5<sup>th</sup> Trilogue during a Council Working Party on 18 December 2018 at 17:00.