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European Commission’s proposal for a regulation on a Pan-European Personal Pension Product (PEPP)

Position Paper by the EIOPA Occupational Pensions Stakeholder Group

1. Introduction

Personal pension products are long-term savings products with a retirement objective which are usually subscribed on a voluntary basis to provide capital accumulation until retirement and serve as complementary income on retirement. Personal pensions can be offered in different forms such as life insurance products, pension insurance or investment funds. Personal pensions complement state pensions and workplace pensions. They are often referred to as third-pillar pension products.

Personal pensions exist in most of the EU member states. However, there are large differences between Member States and the assets are concentrated primarily in a few Member States, i.e. Belgium, Denmark, Germany, the Netherlands and the UK.[1]

There is no specific EU legal framework on the design, provision and distribution of personal pensions. Personal pension products are currently regulated by national legislation, for instance with rules that can make these products eligible for tax relief or insurance contract law. In general, personal pension providers are currently regulated by national law, although in most cases they fall under EU sectoral law (e.g. Solvency II, UCITS Directive, CRD IV, IORP II).

On 4 July 2016, following several rounds of public consultations and interim reports, EIOPA published its final advice at the request of the European Commission (EC) on the creation of a single market for personal pensions.[2] EIOPA explained that harmonising the rules applicable to current providers of personal pension products (PPPs) would be impossible or at least sub-optimal because all the current national regulations relating to PPPs are currently highly divergent. Instead, EIOPA advocated for the creation of a standardised Pan-European Personal Pension Product (PEPP) with a defined set of regulated, flexible elements.

Following EIOPA's advice, the EC launched a consultation on a possible framework for personal pensions.[3] In its response to the consultation, the OPSG agreed that a European personal pension product based on a set of common and flexible features could generate a number of benefits.[4] For investors, the opening of the personal pensions market to a wider range of providers and distribution channels would offer savers more choice, encourage more competition between market players and lower prices. Furthermore, the portability of the PEPP would make it easier to work across the EU and save in one personal pension product. Providers would benefit from an EU passport to facilitate cross-border distribution and increase efficiency through economies of scale. By offering a pan-European opportunity for long-term investment of pension savings, the PEPP could potentially become a relevant element of the Capital Markets Union (CMU).

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[1] See European Commission Staff Working Document Impact Assessment. Available at: https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-343_en.

[2] EIOPA (European Insurance and Occupational Pensions Authority) (2016), Technical advice on the development of an EU Single Market for personal pension products (PPP), 4 July 2016.

[3] European Commission's Public consultation on a potential EU personal pension framework. Available here: http://ec.europa.eu/finance/consultations/2016/personal-pension-framework/index_en.htm.

[4] OPSG Response to the EC Consultation on Personal Pensions (2016). Available here: https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/personal-pension-framework-2016-stakeholders_OPSG.pdf.

On 29 June 2017 the EC launched its legislative proposal on the PEPP. In support of its initiative, the EC emphasized the CMU objectives and the relatively high level of household savings held in the form of deposits, the fragmentation of the personal pensions market in the EU, the insufficient degree of cross-border provision and portability of personal pensions, and the potential long-term impact on the pension gap.

The OPSG welcomes the EC proposal but wishes to underline that well-developed public and occupational pensions are essential to deliver adequate retirement income in Europe. Furthermore, the OPSG considers that the role of IORPs as long-term investors in capital markets should not be undervalued, as they are currently managing EUR 3.5 trillion of occupational pension assets on behalf of more than 90 million of individuals. Therefore, personal pensions can only be considered as complementary to existing first and second pillar pensions, and the creation of the PEPP should not slow down or reverse the development of occupational pensions across the EU. This is especially relevant in view of the fact that the performance of private pensions in terms of income security, poverty alleviation and social inclusion tends to be less effective than that of first and second pillar pensions, which are not profit oriented and less costly because they do not incur sales and marketing costs.

From this perspective, the OPSG considers that the success of the initiative should be measured in terms of the capacity of the PEPP to encourage more people to save for retirement, without inducing a shift from second pillar to third pillar pension savings. Furthermore, the PEPP should not benefit from a preferential tax treatment or tax loopholes to the detriment of occupational pension schemes.

The OPSG also believes that the PEPP Regulation will most likely produce its expected positive effects only if the issues raised in this document can be addressed. The list of issues should, however, not be considered as exhaustive.

2. Tax treatment of the PEPP

The tax treatment of the PEPP will have a considerable impact on the success of the PEPP at two levels:

- **PEPP uptake at national level:** tax incentives play an important role in encouraging the uptake of pension products. Hence, the success of the PEPP will depend on the tax treatment that Member States will grant to the PEPPs.

- **PEPP portability between EU Member States:** as long as the PEPPs will be subject to different national tax rules, offering the portability service will require knowledge and an understanding of all rules in force across the EU.

PEPP uptake at national level

Tax incentives for PPPs can take different forms across the EU. Some tax incentives may be granted to the contributions paid for PPPs, the investment return of the PPPs and/or the value of the assets accumulated at the time of retirement. Against this background, the European Commission has published a Recommendation to encourage Member States to grant PEPPs the same tax relief as the one granted to national PPPs or to give PEPPs the most favourable tax treatment available to their PEPPs where Member States have more than one type of PPPs.

The OPSG recognizes that potential PEPP savers will compare the tax relief given to the PEPP with the one granted to national PPPs. In the Member States where the tax incentives provided to the PEPP will be insufficiently attractive, the market potential will be very limited. For the PEPP to succeed in bridging the pension gap in a meaningful way, Member States should introduce tax incentives for those on modest incomes during their working lives to save in order to reduce the risk that they fall below the poverty line during their retirement.

Generally speaking, the OPSG also considers that providing some form of tax relief to the PEPP contributions and the investment income in the context of an EET tax regime would increase the attractiveness of the PEPP for savers, in particular for young savers and low income earners. This tax regime has also the advantage of lowering the average taxation rate over the course of a lifetime, as people usually have a lower marginal rate of taxation in retirement than they do when they are working.

PEPP portability between EU Member States

While important, the above considerations ignore the fact that PEPP providers will have to open national compartments to administer Member-State-specific tax rules applied to the PEPP in order to keep track of the implications of the specific tax incentives granted in each Member State.

Providing the portability service under these circumstances would be very challenging for PEPP providers because they would have to know all the details of the tax regimes for PEPPs throughout the EU. This point is dealt with in further details in section 5 below. But the important point to be made here is that a patchwork of complicated tax rules for PEPPs across the EU will limit the cross-border portability of the PEPP.

From that perspective, a TEE system under which PEPP savers would make their contributions to a PEPP out of their net income with the understanding that returns during the accumulation phase and out-payments would not be taxed, would significantly reduce the cost of providing the PEPP portability on a cross-border basis because providers would not have to worry about administering different tax treatments on investment income and at retirement. Hence, this would facilitate the portability of the PEPPs across Member States, increase the availability of PEPPs in all Member States, and reduce costs for the benefit of customers. Furthermore, applying a TEE tax regime for the PEPP should have little, if any, effect on Member States' revenues. Compared to an EET regime, a TEE regime would also eliminate the risk that the PEPP saver moves abroad on retirement, preventing the Member State concerned to levy the tax on retirement. While a TEE regime would substantially reduce the administrative cost of providing this service, other tax regimes could also be administered easily as long as the tax exemptions applied to the contributions and the investment revenues were the same.

Twin objective

The OPSG concurs with the conclusion of the Commission's Impact Assessment that the creation of a specific tax regime for the PEPP granting a specific tax advantage to PEPPs across the EU would be from an economic point of view the most effective approach to facilitate cross-border provision of a

PEPP and to confer full portability to the product. The OPSG also acknowledges that agreeing on a specific tax regime for the PEPP may not be politically feasible in the short term. Taxation remains indeed a national competence and the legal basis for the Regulation (Article 114 of the Treaty on the Functioning of the EU) does not allow to include fiscal provisions in the proposal. This being said, the OPSG believes that this political reality should not prevent a group of Member States to try to converge towards a common tax regime for the PEPP. In negotiating such an agreement, these Member States should find the right balance between the twin objective of fostering the demand for the PEPP, while at the same time minimizing the costs related to the provision, administration and management of the portability service.

3. General provisions (Articles 1-3)

The OPSG agrees that the Regulation should aim at creating a pan-European personal pension product in the form of a "voluntary 2nd regime" that would come in addition to the existing national personal pension regimes. The OPSG notes however that the "2nd regime" concept and term will not easily be comprehensible to pension savers.

The OPSG agrees that the consequences of harmonizing national personal pension regimes would be too far-reaching, difficult to deal with and not desirable due to the heterogeneity in national regimes, which reflects differences in labor and social laws, health service provision, family allowances and in the organisation of the first and second pillar pension systems.

The OPSG considers that the core features of the PEPP should be sufficiently harmonized to create a pan-European product to allow providers to offer the same PEPP across the EU, pool assets effectively and achieve economies of scale.

The OPSG also understands that Member States should be allowed to determine certain aspects of the accumulation and decumulation phases. However, if Member States introduce too many national conditions on matters that are not regulated by the Regulation, this will seriously limit the level of standardisation of the PEPP, create barriers to entry to the PEPP market, and make the portability of the PEPP more difficult. It is also not clear how the PEPP will be able to compete with national PPPs if it is subject to more stringent requirements than existing PPPs.

Finally, the OPSG is concerned that the different layers of compliance characterizing the PEPP's second regime architecture[5] paired with a number of cross references to other pieces of legislations will introduce a level of complexity which will be challenging for the competent supervisory authorities and costly in terms of compliance obligations.

[5]The different layers of compliance include the PEPP regulation, the sectoral EU legislation that will apply to the PEPP and their providers and distributors, the national implementation of these sectoral texts, and the provisions of Member States' laws that will apply to the PEPP.

4. Authorization (Articles 4-10)

Role of EIOPA

Under the EC proposal, EIOPA would be empowered to authorize the PEPPs. The OPSG understands that by carrying this function, EIOPA could contribute to the creation of a true internal market for PEPPs and ensure that high-quality standards are maintained for the PEPP label across the EU. This would also make it easier to solve possible disputes in case of cross-border disagreements. However, in the OPSG's view, this approach also entails the risk of putting in place a complex procedure which would inevitably involve duplication of tasks between EIOPA and the national competent authorities (NCAs).

If it is decided to give EIOPA power to authorise PEPPs, it will be essential that EIOPA mobilize enough resources to undertake this new responsibility.

Moreover, since the ongoing prudential supervision of PEPP providers will remain with the national competent authorities (NCAs), EIOPA and NCAs would have to agree on clear and detailed cooperation procedures to avoid duplication of work and loopholes in the supervision of the PEPPs and their providers. These procedures would also have to clarify the respective responsibilities of EIOPA and NCAs regarding the provisions of national laws that would apply the PEPPs in the case of matters not regulated by the PEPP Regulation.

Role of IORPs

The OPSG takes note that the following financial undertakings that fall under a European sectoral legislation could apply for authorization of a PEPP: credit institutions, insurance undertakings, IORPs, investment firms, investment companies, management companies and alternative investment managers.

Concerning specifically the IORPs, the OPSG notes that Article 6 of the IORP Directive states that "IORP" "*means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:*

(a) individually or collectively between the employer(s) and the employee(s) or their respective representatives, or

(b) with self-employed persons, individually or collectively, in compliance with the law of the home and host Member States,

and which carries out activities directly arising therefrom".

Recital 32 of the IORP Directive also clarifies that "*IORPs are pension institutions with a social purpose that provide financial services. They are responsible for the provision of occupational retirement benefits and should therefore meet certain minimum prudential standards with respect to their activities and conditions of operation, taking into account national rules and traditions. However, such institutions should not be treated as purely financial service providers. Their social* *function and the triangular relationship between the employee, the employer and the IORP should be adequately acknowledged and supported as guiding principles of this Directive*."

In light of these provisions, it is not obvious that IORPs should be allowed to operate as PEPP providers given that the PEPP is a personal pension product which will be based on a contract between an individual saver and an entity on a voluntary basis. Nor does it seem obvious that many IORPs will be interested in offering the PEPP because this would require them to go beyond their triangular relationship with the employee and the employer to develop a commercial supplier-customer relationship.

If, however, the PEPP Regulation confirms that IORPs can provide the PEPP, it will be of the utmost importance for the existing occupational pension provision that the recitals of the Regulation formally confirm that

- the IORP Directive will not need to be amended to allow IORPs to offer the PEPP;
- IORPs offering the PEPP will be able to continue to operate on the basis of the existing rules and regulations that apply to IORPs providing occupational pensions within the framework established by the IORP Directive, and of the specific governance structure under which IORPs operate;
- IORPs will keep a triangular relationship with their members and sponsors.

Finally, if IORPs are authorized to operate as PEPP providers in the personal pensions market, the OPSG considers that it would be unfair that existing PPP providers that have accumulated substantial experience in offering pension schemes for many years, would be prevented from manufacturing and distributing PEPPs, especially at the national level. For this reason, the OPSG agreed that EIOPA could decide whether the Member States' laws under which these PPP providers operate, are equivalent to the rules laid down in the IORP Directive. If so, EIOPA could authorize those providers to operate as PEPP providers. Beforehand, EIOPA and NCAs would need to agree on the criteria that would be used by EIOPA to make the equivalence assessment.

5. Cross-border provision and portability of the PEPP (Articles 11-17)

Opening of national compartments

The OPSG recognizes that the portability of the PEPP is very important as one of the key goals of the initiative is to allow PEPP savers to continue contributing to the same PEPP when moving to another Member State.

The OPSG notes with interest that providers will have to open national compartments to administer Member-State-specific tax rules applied to the PEPP. Presumably, the compartments will be a convenient tool for providers to continue administering the tax obligations related to a PEPP into which a saver has contributed when residing in a Member State before moving to another Member State.

The OPSG considers, however, that the obligation to create national compartments *for each Member State* would be a strong deterrent for providers to enter the PEPP market. Indeed, the vast majority of potential PEPP providers will not have the administrative capacity to offer national compartments for all Member States. Such requirement would trigger enormous cost and investment (in terms of research, training of staff, development of administrative platforms, etc.) that only a small handful of the very largest undertakings will be able to comply with. The OPSG believes that most providers would feel more comfortable to operate in a limited number of Member States considering local demands and needs and/or the knowledge of the market for various reasons (spoken language, taxation rules, local presence and specific local knowledge, etc.). Shall that not be the case, then the risk is high that the PEPP will not be an attractive solution for most EU providers.

Against this background, the OPSG believes that PEPP providers should be free to decide in which Member States they are able to offer the portability service. When they cannot offer a national compartment, they should offer the possibility of switching to another provider operating in the Member State concerned. The OPSG invites EIOPA to investigate other imaginative and effective solutions, to ensure the pan-European character of the PEPP, taking into account the need to keep the cost of the portability service to the lowest possible level.

Finally, the OPSG warns against the implicit assumption that PEPP savers will always be able to continue saving in the same PEPP when they move to another Member State. Given that Member States may require that the PEPP comply with specific rules to benefit from tax incentives, it may be that the saver will have to accept modifications in the PEPP in which s/he saved until then.

On a related topic, the Regulation should also clarify which NCAs will be responsible for the supervision of the national compartments, i.e. each home NCA or the NCAs of the Member States covered by the national compartments.

Transfers between compartments

The OPSG notes with interest that a PEPP saver could ask for the transfer of accumulated assets to consolidate all assets in one compartment. This possibility would certainly help to give the idea of portability its full meaning.

It is not clear however that all Member States will accept without conditions the transfer of assets that may have benefited from tax incentives. The PEPP savers should be fully informed of those conditions. The Regulation should clarify who will be responsible for providing this information. Obviously, PEPP providers could only inform the PEPP savers if they can retrieve the tax obligations linked to transfers between national compartments.

The OPSG believes that EIOPA could play an important role in clarifying and disclosing these obligations.

6. Distribution and information requirements (Articles 18-32)

The OPSG welcomes the proposal that a PEPP should be distributed by different types of institutions (banks and insurers, insurance agents and brokers, investment firms, fund managers, and IORPs) and through a variety of distribution channels. Clearly, PEPP providers should be allowed to choose the distributors with whom they want to cooperate.

The OPSG notes that the different providers and distributors would fall under different distribution regimes, i.e. the insurance distributors would fall under the rules set out in the IDD, investment firms and banks under the rules set out in MiFID II, whereas other PEPP providers and distributors (IORPs and fund managers) would have to comply with all the provisions of the Regulation. Insurance distributors and investment firms would also have to comply with some of those provisions.

The OPSG understands that the EC proposal aims at allowing insurance distributors and investment firms to continue operating under IDD or MiFID II rules to avoid the increase in costs they would face if they had to comply with a full stand-alone distribution regime for the PEPP. The EC proposal has also the advantage of ensuring, insofar as possible, a level playing field between PEPPs and national products sold by the same providers.

This being said, the fact that the different groups of PEPP distributors will fall under different distribution rules may create some confusion in the mind of PEPP savers and affect competition between PEPP distributors. Hence, in the OPSG's view, it will be important that EIOPA monitor closely the impact of the agreed framework on investor protection as well as on the level playing field between PEPP providers on the one hand, and between PEPP and PPP providers, on the other. In undertaking this work, EIOPA should also assess whether the fact that the different PEPP providers would in general comply with different information, solvency and governance requirements, could raise some consumer protection issues.

7. PEPP Key Information Requirements (Articles 23-24)

The OPSG confirms that clear standardized information to potential PEPP savers will be crucial to enable informed choices.

The OPSG agrees that the PRIIPs Key Information Document (KID) could represent a starting point of reference. It should however be adapted and tailored to the very specific features of personal pensions, in particular to their long-term nature. It is also important to keep in mind when designing the PEPP KID that the quality of the information provided matters more than the quantity of information.

As the proposal stands, the PEPP KID would need to incorporate elements already provided for in the PRIIPs KID in addition to pension specific information. This approach raises two fundamental issues:

- Adequacy of information: the PRIIPs regulation covers the packaged retail investment and insurance-based investment products, whereas occupational and personal pension products have been excluded from the scope of the Regulation, in consideration of their peculiarities and objectives. Hence, the methods of calculation of the main PRIIPs indicators (risk indicator, performance scenarios and cost indicator) are inappropriate for personal pension products.

- Overload of information: Adding additional pension-specific information on top of the PRIIPs requirements will not result in a consumer-friendly document. On the contrary, the information overload is likely to prevent savers from making good assessment and appropriate choices.

Without at this stage taking a position on the precise content of the PEPP KID, the OPSG also believes it would be worth considering to structure the document in two parts: one that would focus on non-country specific information and the second one that would provide country-specific information on the Member States where the PEPP is offered, including about the tax implications of saving in a PEPP. This approach would increase transparency on the standardised features of the PEPP and the national requirements.

8. Advice (Articles 25-26)

Situations where advice is required

The OPSG agrees that some savers might be interested in receiving advice prior to a final decision. It is therefore the OPSG's view that potential PEPP savers should always have the possibility to ask for advice if they wish to do so.

These considerations do not mean however that the PEPP Regulation should necessarily introduce mandatory advice, as the need for advice depends on the degree of complexity and riskiness of the product.

Against this background, the OPSG agrees that a PEPP default investment option can be offered without advice, provided that it can be considered as a non-complex and low-risk product.

The same approach should be followed for the alternative investment strategies in the sense that only non-complex and low-risk alternative strategies could be offered without advice.

Whether an investment strategy should be considered non-complex and low-risk could be clarified on the basis of the rules provided in IDD and MiFID II.

A simpler framework in support of default investment options

It is widely recognized that many individuals have difficulties in deciding how to invest their retirement savings. This explains the importance given to the default investment option because those options are precisely designed for individuals who are unable or unwilling to exert choice.

If this premise is accepted, the question arises of how a potential PEPP saver will end up in the default option.

The OPSG considers that the conditions under which a PEPP saver would be offered a default option are rather restrictive. Indeed, according to Article 26 (1), the PEPP saver would have to waive his right to receive advice, and according to Article 26 (2), s/he would have to acknowledge that s/he would not benefit from a level of protection corresponding to the business rules linked to the provision of advice.

It seems that this framework would not induce PEPP savers to opt for the default option.

An alternative approach would be to specify that the PEPP provider or distributor should provide the PEPP saver with objective information about the available investment options, noting that (i) the default option can be offered without advice and (ii) the other options could be provided on the basis of a personalised advice. The PEPP saver should also be informed of the cost of advice.

It could also be specified that a PEPP provider or distributor recommending an investment option other than the default option should explain in writing why the option proposed is more appropriate than the default option.

The OPSG believes that a greater number of PEPP savers would end up in default options under this alternative approach and therefore benefit from a lower cost.

9. Investment rules (Articles 33-39)

Investment rules for PEPP providers

The OPSG fully supports the proposal that PEPP providers invest in accordance with the "prudent person". Indeed, an appropriate level of investment freedom should be given to PEPP providers.

Nonetheless, the OPSG would welcome further clarification on the scope of application of provisions around investment rules set in Article 33 (2). It is not clear why the "*more stringent provision in the relevant sectorial legislation"* should be applicable to the PEPP providers concerned. As the PEPP proposal aims at channelling savings towards long-term investments, the sectoral rules should not necessarily apply, and PEPP providers should be allowed to invest in accordance with the "prudent person" rule and the rules laid down in Article 33 (1).

The OPSG therefore suggests that the EC make an assessment of the rules that should apply and the extent to which these are or are not covered within sectoral rules.

Investment rules for PEPP savers

The OPSG agrees that PEPP providers should only offer a limited number of investment options to PEPP savers, including a default investment option.

As it currently stands, the Proposal is ambiguous on the precise conditions that must satisfy the default option. Whilst Article 37 (1) establishes that "*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*", Article 37 (2) notes that "*capital protection shall allow the PEPP saver to recoup the capital invested",* without however explicitly requiring that the PEPP provider offer a formal guarantee.

The OPSG considers that the obligation imposed on PEPP providers should be clarified to eliminate any risk of misunderstanding, which would have a detrimental effect on consumer confidence. In other words, the level 1 text on "capital protection" should be very clear and not depend on the delegated acts specifying the "risk-mitigation techniques" to be applied for the investment options.

More generally, the level of legal certainty on the obligations of the PEPP providers and the rights of the PEPP savers should be very high to ensure the quality of the PEPP and allow PEPP providers to assess whether they would find it attractive to offer the PEPP.

Features of the default investment option

The OPSG considers that the PEPP default option could take the form of an investment option with either a "capital" guarantee or a de-risking life-cycle investment strategy. The OPSG reached this conclusion on the basis on the following considerations.

- **OPSG views on default option with a capital guarantee**

  As many European citizens are risk averse and tend to value the piece-of-mind offered by financial guarantees, there is a place in the PEPP Regulation for a default investment option offering a capital guarantee.

  A capital guarantee has indeed the advantage of protecting individuals against investment risk, thereby giving them a high degree of certainty over their investment and corresponding retirement wealth accumulation. By ensuring potential PEPP savers that they will not lose money, a capital guarantee has therefore the potential benefit of convincing risk-averse individuals to start saving in a PEPP.

  The capital guarantee can be defined in nominal terms to ensure that the PEPP saver recoup the capital invested, or in real terms to ensure that the PEPP saver benefit from a rate of return (net of fees) at least equal to the average inflation rate.

  A capital guarantee in real terms has a much higher value to savers as it allows to protect the purchasing power of the capital invested in the PEPP. However, the uncertainty about future inflation rates may deter potential providers from offering such type of guarantee because of the risk of failing to generate the guaranteed real rate of return. To address this concern, a capital guarantee specified in real terms could be defined as an objective to be achieved. In the case of a guarantee specified in nominal terms, PEPP savers should be informed that the guarantee does not offer protection against inflation.

  Savers should also be informed about the impact of fees, charges and other expenses on the calculation of the amount of guaranteed capital. It is more transparent and consumer-friendly when this amount is calculated before deduction of all fees, charges and expenses.

  In general, the provider of a capital guarantee chooses to invest in "safe" assets (e.g. government bonds) or to follow a constant proportion portfolio insurance (CPPI) strategy to maintain an exposure to the upside potential of risky assets while protecting the assets against downside risk. Both approaches involve a cost, and this cost has become very high in the current low interest rate environment.

The cost of a capital guarantee also depends on when these guarantees should be provided: at the retirement date only or during the whole accumulation period. As the cost is commensurately greater for guarantees that need to be offered over a short period of time, a capital guarantee that would be offered at the moment of switching providers (every five years after conclusion of the PEPP contract under the proposed Regulation) would be very costly. For this reason, the capital guarantee should be provided at the end of accumulation period to reduce the negative impact of the guarantee on returns. In addition, the PEPP saver should be informed that s/he will not be protected against capital losses if s/he wishes to switch to another PEPP investment option or provider before the end of the accumulation period.

Finally, the fact that the institutions that are naturally entitled to offer minimum guarantees, i.e. the insurance companies, are subject to Solvency II rules, also explains why the cost of guarantee is high. Indeed, the current calibrations of the Solvency II regulatory regime discourage insurers from investing in certain asset classes, such as equities and infrastructure which are on average performing much better over the long term than any other major asset classes.

Against this background, and in particular in view of the expected contribution of the PEPP to the CMU, the OPSG calls for an appropriate reform of the solvency rules for all long-term liabilities of insurers to unlock the possibility of investing in long-term assets such as equities and illiquid assets in order to generate superior returns and reduce the cost of provision of guarantees.

- **OPSG views on de-risking life-cycle investment strategies**

When analysing which types of investment strategies can be considered as well-suited default options for the PEPP, it must be borne in mind that the main goal of the PEPP as a pension product is to provide an additional source of retirement income to PEPP savers.

To achieve this ultimate goal, proper attention should be given to two important elements: the potential return generated by the capital invested and the risk of the investment strategy for the capital invested. If someone considers that the safety of the capital invested should be the first and foremost priority, this person should opt for an investment option with a capital guarantee. If someone considers that retirement saving should generate a certain rate of return, this person should accept to take some investment risk.

Life-cycle investment strategies offer consumers the means to strike a compromise between the objectives of return and capital protection. Indeed, such strategies aim at generating superior returns over the long term by investing most assets in equities for young individuals, and by increasing the proportion of fixed-income assets as the planned retirement approaches. In other words, life-cycle strategies aim at optimizing future retirement income by weighing risks and returns over the accumulation phase, and also over the decumulation phase depending on the decumulation option chosen.

Another key argument for maintaining an equity exposure for a big part of the accumulation years is the fact that most young individuals have a high human capital, i.e. a high expected present value of future labor income and a low level of financial wealth. Hence, the "risk-and-return profile" of their human capital is comparable to a corporate bond-like investment. Even though labor income is risky and not always insurable, the cash flow from human capital (i.e. the labor income) tends to stay positive and relatively stable for most individuals. Because young individuals tend to have most of their total wealth invested in "bond-like investments" (human capital), it is rational that they diversify their wealth towards risky financial assets. When they become older, as the present value of their human capital decreases and their financial wealth increases, a shift from risky equities to bonds is justified. This argument is supported by many articles in the academic literature.

All this being said, the OPSG considers that PEPP savers should be well informed that life-cycle strategies do not guarantee any minimum rate of return.

In addition, because life-cycle strategies can be structured in different ways, EIOPA should advise the EC on the risk-mitigation techniques that could be used by life-cycle strategies to ensure that they are non-complex and low-risk. It would also useful if this analysis could assess how the de-risking investment strategy should be influenced by the average life expectancy of PEPP savers and the choice of the payout option.

Cost and performance of PEPPs

The OPSG recognizes the importance of the impact of accumulated costs and fees on a product like the PEPP that is destined to be kept for a long period of time.

Therefore, the OPSG is in favor of maximum cost transparency disclosure to enable consumers taking the costs and associated charges of the PEPP when deciding which PEPP to invest in. Given the holding period of a pension product, information on the past performance should be provided to potential PEPP savers for a much longer period than five years where the investment option has been operating for more than five years.

On a related point, it is unclear why PEPP providers should only offer one cost-effective investment option to PEPP savers, as suggested in Article 38. The OPSG considers that all investment options, including the default option, should be cost-effective.

Against this background, the OPSG welcomes the EC request to EIOPA to issue recurrent reports on the cost and past performance of personal pension products.

The OPSG considers that EIOPA should include the PEPP in its analysis, and take into account all fees impacting the net performance of PEPPs as well as the impact of inflation.

EIOPA should also analyse the evolution of the net performance of PEPPs and the consumers' fee sensitivity with a view to making recommendations to encourage more competition between providers and ensure in particular that the default investment options are cost effective. Considering the broad range of eligible providers, due consideration of distinctive features (such as the provision of guarantees and the coverage against additional biometric risks) must be given when performing this analysis.

EIOPA should also investigate the extent to which the administration of national compartments, the different layers of legislation surrounding the PEPP, the accepted rules for switching and informing PEPP savers will increase the costs of the PEPP and reduce its attractiveness compared to national PPPs. On the basis of this analysis, EIOPA should develop proposals to increase efficiency in managing cross-border PEPPs.

Choice of a mix of investment options

The OPSG considers that the Regulation should not include the provision of Article 35 according to which "*the PEPP saver shall opt for an investment option upon conclusion of the PEPP contract*".

There is indeed no reason why a PEPP saver should not be allowed to choose a mix of options and ask that 50% of the contributions be invested in the default option and the rest in one or several other investment options.

10. Investor protection (Articles 41-44)

Same risks, same rules

As a general comment, the OPSG is of the view that the diversity of eligible providers might create the risk that levels of protection for PEPP savers will vary, depending on the provider. It is therefore important to ensure that the same level of protection is offered to all PEPP savers, regardless the type of providers.

In this context, the OPSG is of the opinion that the "same risks, same rules" principle should apply to ensure a level-playing field between all providers offering PEPPs with minimum return guarantees and/or biometric risk coverage.

The OPSG agrees that PEPP providers should be allowed to offer PEPPs with an option ensuring the coverage of the risk of biometric risks, i.e. risks linked to longevity, disability and death. However, considering that the PEPP has an explicit retirement objective with a view to providing an income on retirement, annuities can play an effective role to enhance the adequacy of retirement income because they offer protection against longevity risk. This consideration is particularly relevant where the public pension regime do not provide sufficient regular pension payments. At the same time, the OPSG considers that personal situations of individuals and national practices differ. Hence, flexibility on pay-out options would result as the best solution.

11. Switching of PEPP providers (Articles 45-50)

The OPSG considers that the frequency with which PEPP savers should be allowed to switch providers, should be fixed in light of two different objectives: on the one hand, the need to give providers enough flexibility to manage long-term investment in non-liquid assets to enable future pensioners to benefit from higher returns in the long term, without fearing sudden large withdrawals, and on the other hand, the importance of giving PEPP savers the possibility of switching when a provider is underperforming.

The OPSG accepts the EC proposal to allow PEPP savers to switch provider no more frequently than once every five years, while recognizing the difficulty of determining objectively what would be the perfect compromise between the two aforementioned individually desirable objectives.

12. Decumulation phase (Articles 51-52)

The OPSG takes note of the fact that PEPP providers will have the choice of proposing different types of decumulation, through annuities, lump sums, regular withdrawals or a combination of different options. It is unclear however why PEPP savers should necessarily chose a specific payout option upon conclusion of a PEPP contract, especially if they are far from retirement.

Finally, the OPSG wishes to highlight that introducing the possibilities of switching providers during the decumulation phase as foreseen in Recital 47 and reconsidering the choice of the pay-out option during the decumulation phase as foreseen in Article 52 (2), would make it impossible to provide annuities. Since annuities provide a stream of payments for as long as the pensioner lives, such product requires indeed the pooling of longevity risks as well as a long-term horizon for providers to manage investments.

The PEPP Regulation should therefore explicitly recognize that a PEPP saver having chosen an annuity when reaching retirement age, will not be able to switch towards another form of pay-out options afterwards.

It is also important to acknowledge that the possibilities of switching from one type of pay-out option to another may be restricted in some Member States, in particular where tax incentives are granted on contributions and/or investments depending on the choice of the pay-out option.