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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL on a pan-European Personal Pension Product (PEPP)  
- Presidency compromise proposal

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Delegations will find below a third Presidency compromise text on the abovementioned proposal. With respect to the previous Presidency compromise proposal (document ST 8098/1/18 REV 1), the new text introduced for the second and third compromise proposal is marked in **underlined bold** and deletions are indicated in ~~striketrough~~.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on a pan-European Personal Pension Product (PEPP)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) EU households are amongst the highest savers in the world, but the bulk of these savings are held in bank accounts with short maturities. More investment into capital markets can help meet the challenges posed by population ageing and low interest rates.
- (2) Personal pensions are important in linking long-term savers with long-term investment opportunities. A larger, European market for personal pensions will support the supply of funds for institutional investors and investment into the real economy.

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<sup>1</sup> OJ C, p..

- (3) Currently, the functioning of the internal market for personal pensions is impeded by the high degree of fragmentation between national markets and the limited degree of portability of personal pension products. This can result in difficulties for individuals to make use of their basic freedoms. For instance, they may be prevented from taking up a job or retiring in another Member State. In addition, the possibility for providers to use the freedom of establishment and the freedom to provide services is hampered by the lack of standardisation of existing personal pension products.
- (4) The Capital Markets Union (CMU) will help mobilise capital in Europe and channel it to all companies, including small and medium enterprises, infrastructure and long term sustainable projects that need it to expand and create jobs. One of the main objectives of the CMU is to increase investment and choices for retail investors by putting European savings to better use.
- (5) As announced in the Commission's Action Plan on building a CMU<sup>2</sup>, in September 2015, "the Commission will assess the case for a policy framework to establish a successful European market for simple, efficient and competitive personal pensions, and determine whether EU legislation is required to underpin this market."
- (6) In its Resolution of 19 January 2016<sup>3</sup>, the European Parliament stressed that "an environment must be fostered that stimulates financial product innovation, creating more diversity and benefits for the real economy and providing enhanced incentives for investments, and that may also contribute to the delivery of adequate, safe and sustainable pensions, such as, for example, the development of a pan-European Pension Product (PEPP), with a simple transparent design".

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<sup>2</sup> Action Plan on Building a Capital Markets Union, European Commission, 30 September 2015 (COM(2015) 468 final).

<sup>3</sup> European Parliament, Resolution of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union, 2015/2106(INI), point 20.

- (7) In its conclusions of 28 June 2016<sup>4</sup>, the European Council called for "swift and determined progress to ensure easier access to finance for business and to support investment in the real economy by moving forward with the Capital Markets Union agenda".
- (8) In its Communication of 14 September 2016 Capital Markets Union – Accelerating Reform<sup>5</sup>, the Commission announced that it "will consider proposals for a simple, efficient and competitive EU personal pension product [...] Options under consideration include a possible legislative proposal which could be tabled in 2017."
- (9) In its Communication Mid-Term Review of the Capital Markets Union Action Plan<sup>6</sup>, the Commission announced "a legislative proposal on a pan-European Personal Pension Product (PEPP) by end June 2017. This will lay the foundations for a safer, more cost-efficient and transparent market in affordable and voluntary personal pension savings that can be managed on a pan-European scale. It will meet the needs of people wishing to enhance the adequacy of their retirement savings, address the demographical challenge, complement the existing pension products and schemes, and support the cost-efficiency of personal pensions by offering good opportunities for long-term investment of pension savings".
- (10) Among personal pension products, the development of a PEPP will contribute to increasing choices for retirement saving and establish an EU market for PEPP providers. It will provide households with better options to meet their retirement goals.

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<sup>4</sup> European Council Conclusions of 28 June 2016, EUCO 26/16, point 11.

<sup>5</sup> COM(2016) 601 final, p. 4.

<sup>6</sup> COM(2017) 292 final, p. 6.

- (11) A legislative framework for a PEPP will lay the foundations for a successful market in affordable and voluntary retirement-related investments that can be managed on a pan-European scale. By complementing the existing pension products and schemes, it will contribute to meeting the needs of people wishing to enhance the adequacy of their retirement savings, addressing the demographical challenge and providing a powerful new source of private capital for long-term investment. This framework will not replace or harmonise existing national personal pension products or schemes and is without prejudice to the existing occupational pension products or schemes.
- (11a) PEPP is an individual non-occupational pension product subscribed ~~to~~ voluntarily by an individual PEPP saver in view of retirement.
- (12) The Regulation harmonises a set of core features for the PEPP, which concern key elements such as distribution, investment policy, provider switching, or cross-border provision and portability. The harmonisation of these core features will improve the level playing field for personal pension providers at large and help boost the completion of the CMU and the integration of the internal market for personal pensions. It will lead to the creation of a largely standardised pan-European product, available in all Member States, empowering consumers to make full use of the internal market by transferring their pension rights abroad and offering a broader choice between different types of providers, including in a cross-border way. As a result of fewer barriers to the provision of pension services across borders, a pan-European Personal Pension Product will increase competition between providers on a pan-European basis and create economies of scale that should benefit savers.

(13) Article 114 TFEU allows the adoption of acts both in the shape of Regulations or Directives. The adoption of a Regulation has been preferred as it would become directly applicable in all Member States. Therefore, a Regulation would allow a quicker uptake of the PEPP and contribute more rapidly to address the need for more pension savings and investments in the CMU context. Since this Regulation is harmonising the core features of the PEPPs, they do not have to be subject to specific national rules, so a Regulation appears better suited than a Directive in this case. On the contrary, the features which are out of the scope of the Regulation (e.g. accumulation phase conditions) are subject to national rules.

(13a) This Regulation should lay down uniform rules on the registration, ~~manufacturing~~provision, distribution and supervision of PEPP. PEPP should be subject to the provisions in this Regulation, relevant sectorial EU legislation as well as the corresponding delegated and implementing acts. In addition, the laws adopted by Member States in implementation of EU sectorial legislation apply. If not already covered by this Regulation or by sectorial EU legislation, the respective laws of Member States apply. PEPP is also subject to the contract concluded between the PEPP saver and the PEPP provider. There is a set of key characteristics of the product that should be included in the content of the PEPP contract. This Regulation should be without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and applicable law. This Regulation should also be without prejudice to national contractual, social, labour and tax law.

**(13b) This Regulation should make clear that the PEPP contract concluded between the PEPP saver and the PEPP provider has to comply with all applicable rules. Moreover, the PEPP contract should set the rights and obligations of the parties and include a set of key characteristics of the product. It should also be clarified that an independent savers association may conclude a PEPP contract on behalf of a group of PEPP savers who are its members.**

- (14) PEPP providers should have access to the whole Union market with one single product registration granted authorisation issued by the European Insurance and Occupational Pensions Authority ("EIOPA"), on the basis of a single set of rules.

In order to market a product under the designation "PEPP," applicant PEPP providers shall apply for registration to their competent authorities. Competent authorities should take a decision for registration if the applicant PEPP provider has provided all the necessary information and if suitable arrangements to comply with the requirements of this Regulation are in place. After a decision for registration has been taken by competent authorities they should notify EIOPA accordingly to register the PEPP provider and the PEPP in the central register. Such registration should be valid across the entire Union.

In order to ensure effective supervision of compliance with the uniform requirements laid down in this Regulation, any subsequent modifications to the information and documents provided in the registration procedure should be immediately notified to the competent authorities.

- (14a) A central public register should be created by EIOPA level to contain information about the PEPP that have been registered and could be provided and distributed in the Union, as well as about the PEPP providers and a list of Member States in which they provide or distribute PEPP. In case where for some Member States the PEPP providers are not providing or distributing PEPP but have opened sub-accounts in order to ensure the portability for their clients, in the register there should be also information for the sub-accounts opened.

- (~~14a~~**14b**) The way in which institutions for occupational retirement provision (IORPs) are organised and regulated varies significantly between Member States. In some Member States these institutions are only allowed to carry out occupational pension activities whereas in other Member States they are allowed to carry out occupational and personal pension activities. This has not only lead to different organisational structures of IORPs but is also accompanied by different supervision on national level. In particular, prudential supervision of IORPs which are authorised to provide occupational and personal pension activities is broader than of those IORPs which only carry out occupational pension activities. In order not to jeopardise financial stability and to take into account the different organisational structure and supervision, only those IORPs should be allowed to provide PEPPs which, pursuant to national law, are authorised and adequately supervised to provide personal pension products. Moreover and to further safeguard financial stability, all assets and liabilities corresponding to PEPP provision business should be ring-fenced, without any possibility to transfer them to the other retirement provision business of the institution.
- (15) The single PEPP passport will ensure the creation of a single market for PEPP.
- (15a) When providing PEPP as collective investment management UCITS management companies, alternative investment fund managers and IORPs ~~shall~~ **should** create a designated PEPP fund that is targeted only to PEPP savers. **UCITS management companies and alternative investment fund managers could also manage PEPP as individual investment.**
- (15b) PEPP providers should be able to distribute only the products that they have manufactured and PEPP distributors are entitled to distribute PEPP which they have not manufactured. PEPP distributors should distribute only those products for which they have the knowledge and competence in accordance with the relevant sectorial legislation. PEPP which have been manufactured by insurance undertakings could be distributed only by insurance intermediaries.

- (15c) Advice should be given to PEPP savers by PEPP providers and PEPP distributors prior to the conclusion of the PEPP contract. Only for the default investment option there should be a possibility for the PEPP saver to waive the advice. In this case an assessment of the saver's knowledge and experience should be made and no execution-only should be possible taking into account the long term nature of the product and the limited redeemability.
- [(16) In order to ensure a high quality of service and effective consumer protection, home and host Member States should closely cooperate in the enforcement of the obligations set out in this Regulation. Where PEPP providers and PEPP distributors pursue business in different Member States under the freedom to provide services, the competent authorities of the home Member State should be responsible for ensuring compliance with the obligations set out in this Regulation, because of their closer links with the PEPP provider. In order to ensure fair sharing of responsibilities between the competent authorities from the home and the host Member States, if the competent authorities of a host Member State become aware of any breaches of obligations occurring within their territory, they should inform the competent authorities of the home Member State which should then be obliged to take the appropriate measures. Moreover, the competent authorities of the host Member State should be entitled to intervene if the home Member State fails to take appropriate measures or if the measures taken are insufficient.
- (17) In the case of the establishment of a branch or a permanent presence in another Member State, it is appropriate to distribute responsibility for enforcement between home and host Member States. While responsibility for compliance with obligations affecting the business as a whole – such as the rules on professional requirements – should remain with the competent authorities of the home Member State under the same regime as in the case of provision of services, the competent authorities of the host Member State should assume responsibility for enforcing the rules on information requirements and conduct of business with regard to the services provided within their territory.

However, where the competent authorities of a host Member State become aware of any breaches of obligations occurring within their territory with respect to which this Regulation does not confer responsibility on the host Member State, a close cooperation demands that that authorities inform the competent authorities of the home Member State so that the latter take the appropriate measures. Such is the case in particular as regards breaches of the rules on good repute, professional knowledge and competence requirements. Moreover, in view of protecting consumers, the competent authorities of the host Member State should be entitled to intervene if the home Member State fails to take appropriate measures or if the measures taken are insufficient.

- (18) The competent authorities of the Member States should have at their disposal all means necessary to ensure the orderly pursuit of business by PEPP providers and PEPP distributors throughout the Union, whether pursued in accordance with the freedom of establishment or the freedom to provide services. In order to ensure the effectiveness of supervision, all actions taken by the competent authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of a particular provider or distributor, regardless of the importance of the provider or distributor concerned for the overall financial stability of the market.
- (19) The pan-European dimension of the PEPP can be developed not only at the level of the provider, through the possibilities for its cross-border activity, but also at the level of the PEPP saver – through the portability of the PEPP and the switching service, thus contributing to the safeguarding of personal pension rights of persons exercising their right to free movement under Articles 21 and 45 TFEU. Portability involves the PEPP saver changing residence to another Member State without changing PEPP providers, whereas the switching of PEPP providers does not necessarily involve a change of residence. ]

- (20) A PEPP should comprise national sub-accounts, each of them accommodating personal pension product features allowing that contributions to the PEPP **or out-payments** qualify for incentives if available in the Member States in relation to which a sub-account is made available by PEPP provider. **The sub-account has a function to keep record of the contributions made during the accumulation period and the out-payments received during the decumulation period in compliance with the legislation of the Member State for which the sub-account has been opened for.** At the level of the individual PEPP saver, a first sub-account should be created upon opening of a PEPP.
- (21) ~~In order to allow a smooth transition for PEPP providers, the obligation to ensure the opening of sub-accounts for all Member States should apply five years after the entry into force of this Regulation. Upon launching a PEPP, the **PEPP** provider should provide information on which sub-accounts are immediately available, in order to avoid a possible misleading of PEPP savers. If a PEPP saver moves to another Member State and if no sub-account for that Member State is available, the PEPP provider should make it possible for the PEPP saver to switch **free of charge** to another PEPP provider which provides a sub-account for that Member State. The PEPP saver could also continue to contribute to the sub-account where contributions were made before changing the residence. ~~In this case no national incentives will be available and the PEPP provider should keep information as to the incentives provided to the date of change of residence.~~~~

- (22) Taking into account the nature of the pension product established and the administrative burden involved, PEPP providers and PEPP distributors should provide clear and adequate information to potential PEPP savers and PEPP beneficiaries to support their decision-making about their retirement. For the same reason, PEPP providers and PEPP distributors should equally ensure a high level of transparency throughout the various phases of a product including pre-enrolment, membership (including pre-retirement) and post-retirement. In particular, information concerning accrued pension entitlements, projected levels of PEPP retirement benefits, risks and guarantees, and costs should be given. Where projected levels of PEPP retirement benefits are based on economic scenarios, that information should also include an unfavourable scenario, which should be extreme but realistic.
- (23) Before joining a PEPP, potential PEPP savers should be given all the necessary information to make an informed choice.
- (24) In order to ensure optimal product transparency, PEPP manufacturers should draw up the PEPP key information document for the PEPPs that they manufacture before the product can be distributed to PEPP savers. They should also be responsible for the accuracy of the PEPP key information document. The PEPP key information document should replace and adapt the key information document for packaged retail and insurance-based investment products under Regulation (EU) No 1286/2014 of the European Parliament and of the Council<sup>7</sup> which would not have to be provided for PEPP. A stand-alone key information document should be drawn up for the default investment option. When the provider offers alternative investment options it is up to the provider to decide if to provide a generic KID which could also contain references to other documents or to provide standalone KID for every alternative investment option.

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<sup>7</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9.12.2014, p. 1.

- (25) In order to ensure widespread dissemination and availability of PEPP key information documents, this Regulation should provide for publication by the PEPP provider of PEPP key information documents on its website. **The PEPP provider should publish PEPP key information document for each Member State where the PEPP is distributed under the freedom to provide services or the freedom of establishment containing the specific information for the conditions related to accumulation and to the decumulation phase for that Member State.**
- (26) Pension product calculators are already being developed at national level. However, in order for the calculators to be as useful as possible to consumers, they should cover the costs and fees charged by the various PEPP manufacturers, together with any further costs or fees charged by intermediaries or other parts of the investment chain not already included by the PEPP manufacturers.
- (27) The details of the information to be included in the PEPP key information document and the presentation of this information should be further harmonised through regulatory technical standards, taking into account existing and ongoing research into consumer behaviour, including results from testing the effectiveness of different ways of presenting information with consumers. The details of the information to be included in the PEPP key information document and the presentation of this information should be further harmonised through regulatory technical standards, taking into account existing and ongoing research into consumer behaviour, including results from testing the effectiveness of different ways of presenting information with consumers. EIOPA shall, after having consulted the other ESAs where appropriate, develop draft regulatory technical standards specifying the details of the presentation, including the length and the content of the information to be included in the PEPP key information document, the methodology underpinning the presentation of risk and reward of the PEPP and the methodology for the calculation of costs, including the specification of summary indicators.

When developing the draft regulatory technical standards, EIOPA shall take into account the underlying elements of the PEPP and the long-term nature of the product. Before submitting the draft regulatory technical standards to Commission ~~EIOPA~~-consumer testing and industry testing with real data should take place.

- (28) The PEPP key information document should be clearly distinguishable and separate from any marketing communications.
- (29) PEPP providers should draw up a Pension Benefit Statement addressed to PEPP savers, in order to present them with key personal and generic data about the PEPP and to ensure continuous information on it. The Pension Benefit Statement should be clear and comprehensive and should contain relevant and appropriate information to facilitate the understanding of pension entitlements over time and across pension products and serve labour mobility.
- (30) PEPP providers should inform PEPP savers two years before the possible start of decumulation about the possibility to change their pay-out options. Where more than one sub-account have been opened the PEPP saver should be informed two years before the possible start of decumulation for **the pay-out options for** each sub-account. Where the retirement benefit is not paid out as a lifetime annuity, members approaching retirement should receive information about the benefit payment products available, in order to facilitate financial planning for retirement.
- (31) During the phase when retirement benefits are paid, PEPP beneficiaries should continue to receive information on their benefits and corresponding pay-out options. This is particularly important when a significant level of investment risk is borne by PEPP beneficiaries in the pay-out phase. PEPP beneficiaries should also be informed of any reduction in the level of benefits due, prior to the application of any such reduction, after a decision which will result in a reduction has been taken. As a matter of best practice, PEPP providers are recommended to consult PEPP beneficiaries in advance of any such decision.

- (32) In order to protect adequately the rights of PEPP savers and PEPP beneficiaries, PEPP providers should be able to opt for an asset allocation that suits the precise nature and duration of their liabilities. Therefore, efficient supervision is required as well as an approach to investment rules that allows PEPP providers sufficient flexibility to decide on the most secure and efficient investment policy, while obliging them to act prudently. Compliance with the prudent person rule therefore requires an investment policy geared to the customers' structure of the individual PEPP provider.
- (33) By setting the prudent person rule as the underlying principle for capital investment and making it possible for PEPP providers to operate across borders, the redirection of savings into the sector of personal retirement provision is encouraged, thereby contributing to economic and social progress.
- (34) This Regulation should ensure an appropriate level of investment freedom for PEPP providers. As very long-term investors with low liquidity risks, PEPP providers are in a position to contribute to the development of the CMU by investing in non-liquid assets such as shares and in other instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities (MTFs) or organised trading facilities (OTFs) within prudent limits. They can also benefit from the advantages of international diversification. Investments in shares in currencies other than those of the liabilities and in other instruments that have a long-term economic profile and are not traded on regulated markets, MTFs or OTFs should therefore not be restricted, in line with the prudent person rule so as to protect the interest of PEPP savers and PEPP beneficiaries, except on prudential grounds.

- (35) In the context of deepening the CMU, the understanding of what constitutes instruments with a long-term economic profile is broad. Such instruments are non-transferable securities and therefore do not have access to the liquidity of secondary markets. They often require fixed term commitments which restrict their marketability and should be understood to include participation and debt instruments in, and loans provided to, non-listed undertakings. Non-listed undertakings include infrastructure projects, unlisted companies seeking growth, real estate or other assets that could be suitable for long term investment purposes. Low carbon and climate resilient infrastructure projects are often non-listed assets and rely on long term credits for project financing. Considering the long-term nature of their liabilities, PEPP providers are encouraged to allocate a sufficient part of their asset portfolio to sustainable investments in the real economy with long-term economic benefits, in particular to infrastructure projects and corporates.
- (36) Environmental, social and governance factors, as referred to in the United Nations-supported Principles for Responsible Investment, are important for the investment policy and risk management systems of PEPP providers. PEPP providers should be encouraged to consider such factors in investment decisions and to take into account how they form part of their risk management system.
- (37) In ensuring compliance with their obligation to develop an investment policy in accordance with the prudent person rule, PEPP providers should be prevented from investing in high-risk and non-cooperative jurisdictions identified by the Financial Action Task Force.

- (38) In view of the long-term retirement objective of the PEPP, the investment options granted to the PEPP savers should be framed, covering the elements which allow investors to make an investment decision, including the number of investment options they can choose from. After the initial choice made upon the subscription of a PEPP, the PEPP saver should have the possibility to modify this choice at reasonable intervals (after a minimum of five years from the subscription of a PEPP or in case of subsequent modification, from the most recent modification of the investment option), so that sufficient stability is offered to providers for their long-term investment strategy whilst at the same time investor protection is ensured. However, the PEPP providers might allow PEPP savers to modify the chosen pay-out option more frequently.
- (39) PEPP providers should offer a default investment option to the PEPP savers which could take the form of either an investment strategy directed at ensuring the capital protection on the basis of a proven risk-mitigation technique, or can take the form of a guarantee on the capital invested. The investment strategy directed at ensuring the capital protection could be a conservative investment strategy or a life-cycle strategy which progressively reduces the overall risk exposure over time. Guarantees provided under the default investment option should at least cover the contributions during the accumulation phase after deduction of all fees and charges. Guarantees could also cover the fees and charges and could provide for full or partial coverage of inflation. Guarantee on the capital invested should be due at the start of the decumulation phase and ~~through~~ during the ~~entire~~-decumulation phase, where applicable.
- (40) The competent authorities should exercise their powers having as their prime objectives the protection of the rights of PEPP savers and PEPP beneficiaries and the stability and soundness of PEPP providers.

- (41) PEPP providers which are providing PEPP as collective investment ~~management~~ **undertaking** should appoint a depositary in relation to the safe-keeping of the designated PEPP fund's assets. Designated PEPP funds which will be established as UCITS have the necessary safeguards in this respect as detailed rules for the depositaries are set out in Directive 2009/65/EC. Designated PEPP funds which will be established as AIFs also need additional relevant safeguards in relation to the entity acting as **a** depositary and its functions as currently the rules set out in relation to the depositary in Directive 2011/61/EC are targeted to funds marketed only to professional investors (with the exception of ELTIFs under Regulation (EU) 2015/760, marketed to retail investors). The sectorial legislation applicable to institutions for occupational retirement provision does not require appointment of a depositary in all cases. In order to harmonise the regimes for all types of designated PEPP funds and to ensure the highest level of investor protection in relation to the safekeeping of assets, the Regulation require all PEPP providers providing PEPP as collective investment management to follow the rules of Directive 2009/65/EC.
- (42) Transparency of costs and fees is essential to develop PEPP savers' trust and allow them to make informed choices. Accordingly, the use of non-transparent pricing methods should be prohibited.
- (43) In order to fulfil the objectives set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the conditions for the exercise of intervention powers by EIOPA and the competent authorities. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (44) (deleted)
- (45) Without prejudice to the right of PEPP customers to bring action in the courts, easily accessible, adequate, independent, impartial, transparent and effective alternative dispute resolution (ADR) procedures should be established between PEPP providers or PEPP distributors and PEPP customers for resolving disputes arising from the rights and obligations set out in this Regulation.
- (46) With a view to establishing an efficient and effective dispute resolution procedure, PEPP providers and PEPP distributors should put in place an effective complaints procedure that can be followed by their customers before the dispute is referred to be resolved in an ADR procedure or before a court. The complaints procedure should contain short and clearly defined timeframes within which the PEPP provider or PEPP distributor should reply to a complaint. ADR entities should have sufficient capacity to engage in an adequate and efficient way in cross-border cooperation with regard to disputes concerning rights and obligations pursuant to this Regulation.
- (47) In order to find better conditions for their investments, thus also stimulating the competition among PEPP providers, PEPP savers should have the right to switch to a different provider located in the same or another Member State during the accumulation phase, through a clear, quick and safe procedure. For the forms of out-payments other than lifetime annuities, the switching should be provided also during the decumulation phase.

- (47a) During the switching service the transfer of assets in kind could be possible only where the PEPP provider manages individual investments. In the case of collective investment management, the switching of assets in kind would not be possible as there is no separation of assets for every PEPP saver. Only in case of individual management offered by investment firms (or other eligible provider holding an additional license) there could be a possibility for the PEPP saver to choose whether to transfer the assets in the PEPP account in kind or the corresponding amounts. In that respect the possibility to transfer assets should be valid only when the switching takes place directly between providers managing individual investments. A written consent of the receiving provider is needed in this case.
- (48) The switching process should be straightforward for the PEPP saver. Accordingly, the receiving PEPP provider should be responsible for initiating and managing the process on behalf of the PEPP saver and upon his request. PEPP providers should be able to use additional means, such as a technical solution, on a voluntary basis when establishing the switching service.
- (49) The PEPP provider shall inform the PEPP saver of all the steps of the procedure necessary to complete the switching, in order to enable the PEPP saver to make an informed decision about the switching service.
- (50) The cooperation of the transferring PEPP provider is necessary in order for the switching to be successful. Therefore, the receiving PEPP provider should be provided by the transferring PEPP provider with all the information necessary to reinstate the payments on the other PEPP account. However, such information should not exceed what is necessary in order to carry out the switching.
- (51) (deleted)

- (52) PEPP savers should not be subject to financial losses, including charges and interest, caused by any mistakes made by either of the PEPP providers involved in the switching process. In particular, PEPP savers should not bear any financial loss deriving from the payment of additional fees, interest or other charges as well as fines, penalties or any other type of financial detriment due to delay in the execution of the switching. **As capital protection should be ensured at the start of the decumulation phase and during the decumulation phase, where applicable, the transferring PEPP provider should not be obliged to ensure the capital protection at the moment of switching.** ~~When switching from PEPP with default investment option the PEPP saver should bear the risk of financial loss. The capital protection of the default investment option should not be consumed at the moment of switching.~~
- (52a) PEPP saver should have the possibility to make an informed decision before switching. The receiving PEPP provider should comply with all the distribution and information requirements, including the provision of PEPP KID, advice and adequate information regarding the costs related to the switching and the possible negative implications on the capital protection when a PEPP with default investment option is being switched. **Costs for the switching applied by the transferring PEPP provider should be kept to an amount that does not constitute an obstacle to mobility.**
- (53) PEPP savers should be given the freedom to decide upon subscription of a PEPP and when opening a new sub-account about their pay-out choice (annuities, lump sum, or other) in the decumulation phase, but with a possibility to revise their choice two years before starting decumulation, ~~and~~ **and at the moment of switching**, in order to be able to best adapt their pay-out choice to their needs when they near retirement. If the PEPP provider makes available more than one form of out-payments, the PEPP saver could choose a different pay-out option for each sub-account opened in his PEPP account.

- (54) PEPP providers should be allowed to make available to PEPP savers a wide range of decumulation options. This approach would achieve the goal of enhanced take-up of the PEPP through increased flexibility and choice for PEPP savers. It would allow providers to design their PEPPs in the most cost-effective way. It is coherent with other EU policies and politically feasible, as it preserves enough flexibility for Member States to decide about which decumulation options they wish to encourage.
- (55) Full transparency on costs and fees related to the investment in a PEPP should be guaranteed. A level-playing field between providers would be established, whilst ensuring consumer protection. Comparative information would be available between different products, thus incentivising competitive pricing.
- (56) Although the ongoing supervision of PEPP providers is to be exercised by the respective national competent authorities, EIOPA should coordinate the supervision with regards to PEPPs, in order to guarantee the application of a unified supervisory methodology, contributing in this way to the pan-European nature of the pension product.
- (57) EIOPA should cooperate with national competent authorities and facilitate cooperation between them. In this respect, EIOPA should play a role in the power of national competent authorities to apply supervisory measures by providing evidence about PEPP-related infringements. EIOPA should also provide binding mediation in the event of disagreement between competent authorities in cross-border situations.
- (58) In order to ensure compliance with the provisions of this Regulation by financial undertakings that manufacture PEPPs, as well as by financial undertakings and persons that distribute PEPPs, and to ensure that they are subject to similar treatment across the Union, administrative sanctions and other measures which are effective, proportionate and dissuasive should be provided.

- (59) In line with the Commission Communication of 8 December 2010 "Reinforcing sanctioning regimes in the financial services sector"<sup>8</sup> and in order to ensure that the requirements of this Regulation are fulfilled, it is important that Member States take necessary steps to ensure that infringements of this Regulation are subject to appropriate administrative penalties and measures.
- (60) Although Member States may lay down rules for administrative and criminal penalties for the same infringements, Member States should not be required to lay down rules for administrative penalties for the infringements of this Regulation which are subject to national criminal law. However, the maintenance of criminal penalties instead of administrative penalties for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.
- (61) Competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the actual or potential profits, and to be dissuasive even for larger financial undertakings and their managers.
- (62) In order to ensure a consistent application of sanctions across the Union, the competent authorities should take into account all relevant circumstances when determining the type of administrative sanctions or other measures and the level of administrative pecuniary sanctions.

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<sup>8</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Reinforcing sanctioning regimes in the financial services sector", 8 December 2010, COM(2010) 716 final.

- (63) In order to ensure that decisions on breaches and penalties by competent authorities have a dissuasive effect on the public at large and to strengthen consumer protection by warning them about PEPPs distributed in infringement of this Regulation, those decisions should be published, provided that the time period for lodging an appeal has passed and no appeal was lodged, unless such disclosure jeopardises the stability of financial markets or an ongoing investigation.
- (64) In order to detect potential breaches, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms, to enable reporting of potential or actual breaches.
- (65) This Regulation should be without prejudice to any provisions in the laws of Member States in respect of criminal offences.
- (66) Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>9</sup> and any exchange or transmission of information by the ESAs should be undertaken in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>10</sup>.

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<sup>9</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>10</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (67) ~~Tax incentives can take different forms and play an important role in encouraging the take-up of personal pension products in a number of Member States. In many Member States the contributions paid for personal pension products qualify for some form of tax relief, be it explicit or implicit.~~
- (68) This Regulation should not be understood as obliging Member States to apply to PEPPs the same tax rules as they would apply to personal pension products under their national laws.
- (69) (deleted)
- (70) An evaluation of this Regulation is to be carried out, inter alia, by assessing market developments, such as the emergence of new types of PEPPs, as well as developments in other areas of Union law and the experiences of Member States.
- (71) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union, in particular the right to the protection of personal data, the right to property, the freedom to conduct a business, the principle of equality between men and women and the principle of a high level of consumer protection.
- (72) Since the objectives of this Regulation, namely to enhance PEPP saver protection and improve PEPP saver confidence in PEPPs, including where those products are distributed cross-border, cannot be sufficiently achieved by the Member States but can rather, by reason of its effects, be better achieved at Union level the Union may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### **Subject matter**

This Regulation lays down uniform rules on the ~~authorisation~~registration, manufacturing, distribution and supervision of personal pension products that are distributed in the Union under the designation "pan-European Personal Pension product" or "PEPP".

### *Article 2*

#### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) "personal pension product" means a product which:
  - (a) is based on a contract between an individual saver and an entity on a voluntary basis;
  - (b) has an explicit retirement objective;
  - (c) provides for capital accumulation until retirement with only limited possibilities for early withdrawal before retirement;
  - (d) provides an income on retirement;
  - (e) is not an occupational pension product;**

- (2) "pan-European Personal Pension Product (PEPP)" means a long-term savings personal pension product, which is offered by a PEPP provider or PEPP distributor and subscribed to voluntarily by an individual PEPP saver in view of retirement, with no or strictly limited redeemability and which is registered in accordance with this regulation;
- (3) "PEPP saver" means a natural person who subscribes to a PEPP with a PEPP provider;
  - (a) (deleted)
  - (b) (deleted)
- (4) (deleted)
- (5) "PEPP account" means a personal pension account held in the name of a PEPP saver or a PEPP beneficiary which is used for the recording of transactions allowing the PEPP saver to contribute periodically sums towards his retirement and the PEPP beneficiary to receive his retirement benefits;
- (6) "PEPP provision" means the manufacturing and distribution of a PEPP;
- (7) "PEPP beneficiary" means a person receiving PEPP retirement benefits;
- (8) "PEPP distribution" means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts for providing a PEPP, of concluding such contracts, or of assisting in the administration and performance of such contracts, including the provision of information concerning one or more pension contracts in accordance with criteria selected by PEPP customers through a website or other media and the compilation of a pension product ranking list, including price and product comparison, or a discount on the price of a pension contract, when the PEPP customer is able to directly or indirectly conclude a pension contract using a website or other media;

- (9) "PEPP retirement benefits" means benefits paid by reference to reaching, or the expectation of reaching, retirement. These benefits may take the form of payments for life, payments made for a temporary period, a lump sum, or any combination thereof;
- (10) "accumulation phase" means the period during which assets (in-payments) are accumulated in a PEPP account and normally runs until the age at which the PEPP beneficiary may start decumulating the PEPP;
- (11) "decumulation phase" means the period during which assets accumulated in a PEPP account are drawn upon to fund retirement or other income requirements;
- (12) "annuity" means a sum payable at specific intervals over a period, such as the PEPP beneficiary's life or a certain number of years, in return for an investment;
- (13) "drawdown payments" means the possibility for the PEPP beneficiaries to draw discretionary amounts, up to a certain limit on a periodic basis;
- (14) "provider of a PEPP" or "PEPP provider" means a financial undertaking authorised to manufacture a PEPP and to distribute it;
- (15) "PEPP distributor" means a financial undertaking authorised to distribute PEPPs not manufactured by it, as well as an insurance intermediary;
- (16) "durable medium" means any instrument which:
- (a) enables a PEPP customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
  - (b) allows the unchanged reproduction of the information stored;

(17) "competent authorities" of the PEPP providers means the national authorities designated by each Member State to supervise PEPP providers~~according to the relevant sectorial legislation referred to in Article 5(1);~~

(18) "home Member State of the PEPP provider" means the Member State in which the PEPP provider ~~or PEPP distributor~~ has its registered office;

**(18a) "home Member State of the PEPP distributor" means:**

**(a) where the distributor is a natural person, the Member State in which his or her residence is situated;**

**(b) where the distributor is a legal person, the Member State in which its registered office is situated or, where the distributor under its national law has no registered office, the Member State in which its head office is situated;**

(19) "host Member State of the PEPP provider" means a Member State, other than the home Member State, ~~in which;~~

**(a) in which a ~~the~~ PEPP provider provides ~~or distributes~~ PEPP under the freedom to provide services or the freedom of establishment;**

**(b) for which the PEPP provider has opened a sub-account for that Member State without pursuing activity under the freedom to provide services or the freedom of establishment.**

**(19a) "host Member State of the PEPP distributor" means a Member State, other than the home Member State, in which the PEPP distributor distributes PEPP under the freedom to provide services or the freedom of establishment.** ~~of PEPP distributor distributes PEPP;~~

- (20) "sub-account" means a national section which is opened within each individual PEPP account, and which corresponds to the legal requirements and conditions for using possible incentives fixed at national level for investing in a PEPP by the Member State of the PEPP saver's residence. Accordingly, an individual may be a PEPP saver or a PEPP beneficiary in each sub-account, depending on the respective legal requirements for the accumulation and decumulation phases;
- (21) "capital" means aggregate capital contributions, calculated on the basis of amounts investible after deduction of all fees, charges and expenses that are directly or indirectly borne by investors;
- (22) "financial instrument" means those instruments specified in Section C of Annex I of Directive 2014/65/EU<sup>11</sup>;
- (23) "depository" means an institution charged with the safe-keeping of assets and oversight of compliance with the fund rules and applicable law;
- (24) (deleted)
- (25) "risk mitigation techniques" means techniques for a systematic reduction in the extent of exposure to a risk and/or the likelihood of its occurrence;
- (25a) "biometric risks" mean risks linked to longevity, disability or death;
- (26) "switching providers" means, upon a PEPP saver's request, transferring from one PEPP provider to another any positive balance from one PEPP account to the other and closing the former PEPP account;

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<sup>11</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 12.6.2014, p. 349).

- (27) "advice" means the provision of a personal recommendation to a PEPP customer, either upon his request or at the initiative of the PEPP provider or PEPP distributor, in respect of one or more contracts for subscribing a PEPP;
- (28) "PEPP customer" means a PEPP saver, a prospective PEPP saver and/or a PEPP beneficiary;
- (29) "designated PEPP fund" means a pension fund, an undertaking for collective investment in transferable securities (UCITS) or an alternative investment fund (AIF), **including investment compartments thereof, where applicable**, organised by a PEPP provider as referred to in points (c), (e) or (f) of Article 5(1) respectively, the units or shares of which can be subscribed only by PEPP savers in the context of a PEPP.

### *Article 3*

#### **Applicable rules**

PEPP shall be subject to:

- (a) this Regulation,
- (b) relevant sectorial Union legislation as well as the corresponding delegated and implementing acts,
- (c) the provisions of laws adopted by Member States in implementation of relevant sectorial Union legislation and implementation of measures relating specifically to the PEPP;
- (d) other provisions of Member States' laws which apply to the PEPP.

Article 3a

PEPP contract

- 1. The PEPP contract between a PEPP saver and a PEPP provider shall lay down the specific provisions for the PEPP in accordance with the applicable rules mentioned in Article 3.**
  
- 2. The PEPP contract shall in particular include the following:**
  - (a) description of the default investment option as referred to in Article 37, including information on the guarantee on the capital invested or the investment strategy directed at ensuring the capital protection;**
  
  - (b) description of the alternative investment options as referred to in Article 34(2), where applicable;**
  
  - (c) the conditions related to the modification of the investment option as referred to in Article 36;**
  
  - (d) where the PEPP offers biometric risk coverage, details of this coverage, including the circumstances that would trigger it;**
  
  - (e) description of the PEPP retirement benefits, in particular the possible forms of out-payments and the right to change the form of out-payment as referred to in Article 52;**

(f) conditions related to the portability service as referred to in Articles 12-15;

(g) conditions related to the switching service as referred to in Articles 45-48;

(h) conditions related to the accumulation phase for the sub-account corresponding to the Member State of residence of the PEPP saver as referred to in Article 40;

(i) conditions related to the decumulation phase for the sub-account corresponding to the Member State of residence of the PEPP saver as referred to in Article 51.

3. A PEPP contract may also be concluded by an independent savers association, on behalf of a group of PEPP savers who are its members. This independent savers association shall provide all product information to the PEPP savers.

## CHAPTER II

### ~~AUTHORISATION~~ REGISTRATION

#### *Article 4*

#### Registration~~Authorisation~~

1. A PEPP may only be ~~manufactured~~ provided and distributed in the Union where it has been ~~registered~~ authorised by EIOPA in the central public register kept by EIOPA in accordance with Article 10 ~~this Regulation~~.

2. **Registration** Authorisation of a PEPP shall be valid in all Member States. It entitles the **PEPP provider** authorisation holder to **provide** manufacture and distribute the PEPP **and PEPP distributor to distribute the PEPP** ~~as registered~~ authorised by EIOPA **in the central register referred to in Article 10**.

#### *Article 5*

#### **Application for registration of a PEPP**

1. Only the following financial undertakings authorised under Union law to manage collective or individual investments or savings may apply for registration of a PEPP:
- (a) credit institutions authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council<sup>12</sup>;
  - (b) insurance undertakings authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council<sup>13</sup>, engaged in direct life insurance according to Article 2(3) and Annex II of Directive 2009/138/EC;

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<sup>12</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>13</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- (c) institutions for occupational retirement provision (“IORP”) authorised **or registered** in accordance with Directive 2016/2341/EU of the European Parliament and of the Council<sup>14</sup> which, pursuant to national law, are authorised and ~~adequately~~ supervised to provide personal pension products. In that case, all assets and liabilities corresponding to PEPP provision business shall be ring-fenced, without any possibility to transfer them to the other retirement provision business of the institution;
- (d) investment firms authorised in accordance with Directive 2014/65/EU, engaged in portfolio management;
- (e) investment companies or management companies authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council<sup>15</sup>;
- (f) EU alternative investment fund ("AIF") managers authorised in accordance with Directive 2011/61/EU of the European Parliament and of the Council<sup>16</sup>.

2. Financial undertakings listed in paragraph 1 shall submit their applications for registration of a PEPP to their competent authorities. The application shall include the following:

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<sup>14</sup> Directive 2016/2341/EU of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (OJ L 354, 23.12.2016, p. 37).

<sup>15</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32).

<sup>16</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (a) -standard contract terms to be proposed to PEPP savers **as referred to in Article 3a;**
- (b) information on the identity of the applicant;
- (c) (deleted)
- (d) information on arrangements regarding portfolio and risk management and administration with regard to the PEPP, including contractual arrangements referred to in Articles 14(1a), 37(3) and 42(3);
- (e) (deleted)
- (f) a list of Member States where the applicant PEPP provider intends to market the PEPP, where applicable;
- (g) information on the identity of the depository, if applicable;
- (h) PEPP **key information document as referred to in Article 23;**~~KID~~.
- (i) (deleted)
- (j) PEPP Benefit Statement as referred to in Article 28;**
- (k) a list of Members States for which the applicant PEPP provider will be able to ensure immediately the opening of a sub-account.**

3. ~~Standard contract terms shall include at least the following:~~

- ~~(a) information on the default investment option as referred to in Article 37, including information on the guarantee on the capital invested or the investment strategy directed at preserving the invested capital~~
- ~~(b) information on alternative investment options as referred in Article 34 (2), where applicable;~~

- ~~(c) — information on the conditions to modify the investment option as referred to in Article 36;~~
  - ~~(d) — where the PEPP offers biometric risk coverage, details of this coverage, including the circumstances that would trigger them;~~
  - ~~(e) — a description of the PEPP retirement benefits, in particular the possible forms of out-payments and the right to change the form of out-payment as referred to in Article 52;~~
  - ~~(f) — information on the portability service;~~
  - ~~(g) — information on the switching service;~~
  - ~~(h) — categories of costs and total aggregate costs expressed in percentage terms and in monetary terms where applicable;~~
  - ~~(i) — information whether the product is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme;~~
  - ~~(j) — conditions related to the accumulation phase for the sub-account corresponding to the Member State of residence of the PEPP saver;~~
  - ~~(k) — conditions related to the decumulation phase, including where applicable conditions for redemption in case of particular hardship for the sub-account corresponding to the Member State of residence of the PEPP saver.~~
4. The competent authorities shall assess whether the application referred to in paragraph 2 is complete within 10 working days of receipt of the application. ~~If the application is not complete,~~ the competent authorities shall set a time limit by which the applicant is to provide additional information, **if the application is not complete**. After the application is considered to be complete, the competent authorities shall notify the applicant accordingly.

5. Within two months from the date of the submission of the complete application under paragraph 4 the competent authorities shall **take a decision for registration only if** assess ~~whether the applicant complies with the requirements of the Regulation.~~ **the proposed PEPP meets all the requirements of this Regulation and the applicant PEPP provider complies with the applicable rules as set out in Article 3.**

**5a. Within five working days of taking a decision for registration of the PEPP** ~~After positive assessment~~ competent authorities shall ~~communicate~~ **to EIOPA the decision as well as** the information and documents referred to in points (a), (b), (f), ~~and (h),~~ **(j) and (k)** of paragraph 2, ~~to EIOPA~~ **and shall inform the applicant PEPP provider accordingly** and ~~enclose a confirmation that the applicant is eligible to provide PEPP according to paragraph 4.~~

In case ~~the assessment is negative,~~ the competent authorities **refuse to grant registration** ~~they~~ shall issue a reasoned decision which shall be subject to the right to appeal.

6. In the event that there is more than one competent authority for a specific type of financial undertakings referred to in paragraph 1 in a Member State, that Member State shall designate a single competent authority for each type of undertaking referred to in paragraph 1 to be responsible for ~~communication with EIOPA in relation to the registration procedure~~ **and for the communication with EIOPA.**

~~-Any subsequent~~ **modifications** ~~changes to~~ **the** information and documents provided in the application referred to in paragraph 2 shall be immediately notified to the competent authorities. Where modifications are in relation to the information and documents referred to in points (a), (b), (f), ~~and (h),~~ **(j) and (k)** of paragraph 2, they shall be **communicated** ~~transmitted~~ to EIOPA without undue delay.

7. Financial undertakings referred to in points (c), (e) and (f) of paragraph 1, when providing PEPP under management of collective investments or savings, shall create **one or more** designated PEPP funds.

In case where a designated PEPP fund shall be created for the provision of PEPP, the information and documents required for the authorisation **or registration** of the fund in accordance with the relevant sectorial legislation shall be enclosed in the application for registration referred to in paragraph 2.

The **decision for authorisation or registration of the designated PEPP fund** procedure and time limits for granting authorisation of the designated PEPP fund shall be **taken** in accordance with the relevant sectorial legislation **and within the time limit as referred to in paragraph 5**. In this case, the competent authority shall communicate to EIOPA without undue delay the information and documents referred to in paragraph 5, second subparagraph after it has granted the authorisation of the designated PEPP fund.

The authorisation **or registration** of the designated PEPP fund shall be effective as from the date of the registration of the PEPP in the central register **as** referred to in Article 10.

~~By way of derogation from paragraph 5, when an authorisation of a designated PEPP fund is required, the assessment whether the applicant complies with the requirements of the Regulation shall be done in respecting the time limits for granting authorisation of the designated PEPP fund.~~

3. (deleted)
4. (deleted)
5. (deleted)

Article 6

**Conditions for Registration of a PEPPs**

1. Within **five working days** ~~one month~~ from the date of communication of **the decision for registration as well as** the information and documents in accordance with Article 5(5), EIOPA shall ~~verify that the standard contract terms as referred to in Article 5(3) and the PEPP key information document complies with the requirements of this Regulation~~ **register the PEPP in the Central public register as referred to in Article 10 and shall notify the competent authorities accordingly without undue delay.**
  - (a) (deleted);
  - (b) (deleted);
  - (c) (deleted);
  - (d) (deleted).
2. **Within two working days after receiving the notification for the registration of the PEPP as referred to in paragraph 1 competent authorities shall inform the applicant PEPP provider accordingly.** ~~EIOPA may request from competent authorities clarification as regards the information and documents provided in accordance with Article 5(5).~~
3. **The PEPP provider may provide and distribute the PEPP and the PEPP distributor may distribute the PEPP as from the date of the registration of the PEPP in the central public register as referred to in Article 10** ~~EIOPA shall notify to the competent authorities the decision to register PEPP or to refuse to register PEPP. In case of a refusal EIOPA shall give full reasons for such a refusal.~~
4. ~~Competent authorities shall communicate the EIOPA decision without undue delay to the applicant.~~

*Article 6a*

**Conditions for ~~Withdrawal of~~ deregistration of a PEPP**

1. ~~EIOPA shall withdraw the registration of a PEPP on the basis of the information provided by the competent authorities authorities that:~~ **The competent authorities shall issue a decision for deregistration of the PEPP when:**
- (a) ~~the PEPP provider does not make use of the registration within 12 months or expressly renounces the registration;~~
  - (b) ~~the PEPP provider has obtained the registration by making false statements or by any other irregular means;~~
  - (c) ~~the PEPP provider has seriously or systematically infringed the provisions of this Regulation; or~~
  - (d) ~~the authorisation of the PEPP provider has been withdrawn.~~ **the PEPP provider or the PEPP no longer meets the conditions under which registration was granted;**
- 1a. Within two working days after taking a decision for deregistration -of the PEPP the competent authorities shall communicate it to EIOPA and shall inform the PEPP provider accordingly.**
- 1b. Within two working days after receiving the notification of the decision for deregistration as referred to in paragraph 1a EIOPA shall deregister the PEPP and shall notify the competent authorities accordingly.**
- 1c. Within two working days after receiving the notification for the deregistration of the PEPP as referred to in paragraph 1b, including the date of the deregistration, competent authorities shall notify the PEPP provider accordingly.**

**1d. The PEPP provider shall no longer provide and distribute the PEPP and the PEPP distributor shall no longer distribute the PEPP as from the date of the deregistration of the PEPP in the central public register as referred to in Article 10.**

2. ~~When any of the circumstances referred to in points (a) to (c) of paragraph 1 exist, before the registration is withdrawn, competent authorities shall ensure that the PEPP provider notifies all PEPP savers that by way of derogation from Article 45 (2), they will be able to switch to another PEPP provider within a sufficient time limit set by the competent authorities.~~
3. ~~In case when the competent authorities initiate a procedure for withdrawal of the authorisation of a PEPP provider, they shall notify EIOPA without undue delay.~~
4. Where EIOPA has received information regarding the existence of one of the circumstances referred to in points ~~(a)~~ **(ab)** ~~to~~ **or** (c) of paragraph 1, in accordance with the duty of cooperation between competent authorities and EIOPA referred to in Article 55, EIOPA shall request the competent authorities **of the PEPP provider** to verify the existence of such circumstances and the competent authorities shall submit to EIOPA their findings and the corresponding information.
5. Before **taking a decision** ~~withdrawing the~~ **for** ~~deregistration of a~~ **the** PEPP the competent authorities and EIOPA shall **give their best efforts to** ensure that the PEPP savers interests are safeguarded.

*Article 7*

**Designation**

1. The designation "PEPP" or "pan-European Personal Pension Product" in relation to a personal pension product may only be used where the personal pension product has been registered by EIOPA to be distributed under the designation "PEPP" in accordance with this Regulation.
2. (deleted)
3. (deleted)

*Article 8*

**Distribution of PEPP**

1. Financial undertakings referred to in Article 5(1) may distribute PEPP which they have manufactured.
2. Insurance intermediaries registered in accordance with Directive 2016/97/EU of the European Parliament and of the Council<sup>17</sup> and investment firms authorised in accordance with Directive 2014/65/EU for the provision of investment advice as defined in point 4 of Article 4 (1) of Directive 2014/65/EU are entitled to distribute PEPP which they have not manufactured.

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<sup>17</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

*Article 9*

**Prudential regime applicable to different types of providers**

PEPP providers and PEPP distributors shall comply at all times with the provisions of this Regulation, as well as with the relevant prudential regime applicable to them in accordance with the legislative acts referred to in Article 5(1) and Article 8(2).

*Article 9a*

**Publication of national provisions**

1. Competent authorities shall make public and keep up to date the texts of **the** national laws, regulations and administrative provisions governing the conditions related to the accumulation phase as referred to in Article 40 and the conditions related to the decumulation phase as referred to in Article 51.  
**The publication provided for in the first subparagraph shall be sufficient to enable a comparison of the conditions related to the accumulation phase and the conditions related to the decumulation phase as determined by the different Member States.**
2. The texts referred to in paragraph 1 ~~shall~~ **can** be published at the website of ~~one~~ **all** competent authorities **in a Member State or at the website of one competent authority** and the other competent authorities **in the Member State** shall have the possibility to fulfil their obligation by publishing and maintaining **on their website** a hyperlink to those texts at the website of this competent authority.
3. **The publication of paragraph 1 will only be for informational purposes and do not create legal obligations.**

~~3. EIOPA shall, after having consulted the other ESAs, develop draft implementing technical standards to determine the format and structure for the publication of the information referred to in paragraph 1.~~

~~EIOPA shall submit those draft implementing technical standards to the Commission by (within 9 months after the entry into force of this Regulation).~~

~~Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.~~

#### *-Article 10*

### **Central public register**

1. EIOPA shall keep a central public register identifying each PEPP registered under this Regulation, the provider of this PEPP, ~~and the competent authorities of the PEPP provider,~~ **a list of Member States in which the PEPP provider is providing or distributing the PEPP, and a list of Member States for which a sub-account has been opened without the PEPP provider pursuing activity under the freedom to provide services or the freedom of establishment.** The register shall be made publicly available in electronic format.
2. Competent authorities shall send to EIOPA the hyperlinks to the texts published in accordance with Article 9a (1) by [the date of application of this Regulation].
3. EIOPA shall publish and maintain in the central public register referred to in paragraph 1 the hyperlinks referred to in paragraph 2.

# CHAPTER III

## CROSS-BORDER PROVISION AND PORTABILITY OF PEPP

### SECTION I

#### FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

##### *Article 11*

#### **Exercise of the freedom to provide services and freedom of establishment by PEPP providers and PEPP distributors**

1. PEPP providers may provide and PEPP distributors may distribute PEPPs within the territory of a host Member State under the freedom to provide services or the freedom of establishment, provided they do so in compliance with the relevant rules and procedures established by or under the Union legislative acts applicable to them as referred to in points (a), (b), (d) (e) and (f) Article 5(1) or in Article 8(2) **and after opening of a sub-account for this host Member State in accordance with Article 17.**
2. IORPs as referred to in point (c) of Article 5(1) shall comply with the rules set out in Article 11a.
3. **Where** AIF managers as referred to in point (f) of Article 5 (1) of this Regulation **are providing PEPP as collective management they shall be able to market the units or shares of the designated PEPP fund or funds to PEPP savers in other Member States upon notification in accordance** shall comply with the rules set out in Article 32 of Directive 2011/61/EU. ~~By derogation from Articles 32 and 43 of Directive 2011/61/EU, AIF managers as referred to in point (f) Article 5(1) of this Regulation shall be able to distribute PEPP to PEPP savers in any host Member State.~~

4. ~~In addition to the information that the PEPP providers communicate to their competent authorities of the home Member State according to relevant rules and procedures established by or under the Union legislative acts applicable to them as referred to in points (a), (b), (d), (e) and (f) of Article 5 (1) or in Article 8(2), they shall also provide the standard contract terms referred to in point (a) of Article 5 (2) and the PEPP key information document containing specific requirements for the sub-account corresponding to the host Member State in accordance to point (g) of Article 23c(3)(g).~~

#### *Article 11a*

#### **Exercise of the freedom to provide services by IORPs**

1. **PEPP providers** IORPs as referred to in point (c) **and point (f)** of Article 5(1) which intend to provide or distribute PEPP to PEPP savers within the territory of a host Member State for the first time under the freedom to provide services shall communicate the following information and documents to the competent authorities of their home Member State:
  - (a) the name ~~and~~; address **of the PEPP provider**; ~~and, where applicable, the registration number of the IORP~~;
  - (b) the Member State in which the IORP **PEPP provider** intends to provide or distribute PEPP to PEPP savers;
  - (c) ~~the standard contract terms referred to in point (a) of Article 5 (2)~~;
  - (d) ~~the PEPP key information document containing specific requirements for the sub-account corresponding to the host Member State in accordance to point (g) of Article 23c(3).~~

2. The competent authorities of the home Member State shall ~~verify whether the information and documents are complete and~~ transmit them the information within 10 working days of the date of receipt to the host Member State together with a confirmation that the ~~IORP~~ PEPP provider referred to in paragraph 1 complies with the requirements set out in ~~point (c) of Article 5(1)~~. The information ~~and documents are~~ is communicated to the competent authority of the host Member State unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure in relation to the provision of PEPP or the financial situation of the ~~IORP~~ PEPP provider as referred to in point (c) of Article 5(1).

Where the competent authority of the home Member State refuse to communicate the information ~~and documents~~ to the competent authority of the host Member State it shall give reasons for such refusal to the ~~IORP~~ PEPP provider concerned within one month of receiving all the information and documents. The refusal or any failure to reply shall be subject to the right to appeal to the courts in the ~~IORP's~~ PEPP provider's home Member State.

3. The competent authorities of the host Member State shall without delay acknowledge the receipt of the information ~~and documents~~ referred to in paragraph 1. The competent authority of the home Member State shall then inform the PEPP provider ~~IORP~~ that the information has been received by the competent authority of the host Member State and that the ~~IORP~~ PEPP provider can start the provision of PEPP to PEPP savers in that Member State.
4. In the event of a change in any of the information ~~and documents~~ referred to in paragraph 1, the ~~IORP~~ PEPP provider shall notify that change to the competent authorities of the home Member State at least one month before implementing the change. The competent authorities of the home Member State shall inform the competent authorities of the host Member State about the change as soon as possible and no later than one month from receipt of the notification.

5. Host Member States may, for the purposes of this procedure, designate other competent authorities than those referred to in Article 2 (17) in order to exercise the powers conferred to the host competent authorities. They shall inform the Commission and EIOPA, indicating any division of those duties.

*Article 11b*

**Powers of the competent authorities of the host Member States**

1. Where the competent authority of the host Member State have reason to consider that an IORP referred to in point (c) of Article 5(1) PEPP is distributed acting within its territory under the freedom of provision of services is or a sub-account for that Member State ~~the PEPP provider has opened a sub-account has been opened for this Member State~~ in breach of any obligations resulting from this Regulation as referred to in Article 3, it shall refer its findings to the competent authority of the home Member State of the PEPP provider or the PEPP distributor.
2. After assessing the information received pursuant to paragraph 1, the competent authorities of the home Member State shall, where applicable, take at the earliest opportunity appropriate measures to remedy the situation. They shall inform the competent authorities of the host Member State of any such measures.

3. Where, despite the measures taken by the competent authorities of the home Member State or because such measures prove to be inadequate or are lacking, the **PEPP provider or the PEPP distributor continues to distribute the PEPP** ~~IORP persists in acting~~ in a manner that is clearly detrimental to the interests of host Member State's PEPP savers or to the orderly functioning of the market for pension products in that Member State, the competent authorities of the host Member State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing the ~~IORP~~ **PEPP provider or the PEPP distributor** from continuing to carry on new business **the distribution of PEPP** within its territory.

In addition, the competent authorities of the home Member State or the competent authorities of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

4. Paragraphs 1 to 3 shall not affect the power of the host Member State to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed within its territory, in situations where immediate action is strictly necessary in order to protect the rights of consumers in the host Member States, and where equivalent measures of the home Member State are inadequate or lacking, or in cases where the irregularities are contrary to national legal provisions protecting the general good, in so far as strictly necessary. In such situations, host Member States shall have the possibility of preventing the IORP from carrying on new business within their territory.
5. Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the IORP in a well-reasoned document and notified to the competent authorities of the home Member State, to EIOPA without undue delay.

## **SECTION II**

### **PORTABILITY**

#### *Article 12*

##### **The portability service**

1. The portability service allows PEPP savers to continue contributing to the PEPP which they have already contracted with its provider, while changing their domicile by moving to another Member State.
2. In case of using the portability service, PEPP savers are entitled to retain all advantages and incentives granted by the PEPP provider and connected with continuous investment in the PEPP.

#### *Article 13*

##### **Provision of the portability service**

1. PEPP providers shall provide the portability service to PEPP savers holding a PEPP account with them and requesting this service.
2. When proposing a PEPP, the PEPP provider or PEPP distributor shall provide potential PEPP savers with information on which sub-accounts are immediately available.
- ~~3. Five years at the latest after the entry into application of this Regulation, each PEPP provider shall ensure that sub-accounts could be opened at PEPP saver's request for each Member State.~~

*Article 14*

**Sub-accounts of the PEPP**

1. PEPP providers shall ensure that ~~when within each individual PEPP account~~ a new sub-account **is opened within each individual PEPP account** ~~could be opened~~ **it shall**, corresponding to the legal requirements and conditions for using incentives fixed at national level for the PEPP by the Member State to which the PEPP saver moves.
- 1a. PEPP providers may also ensure compliance with the requirements referred to in the first subparagraph through delegation of this function, in whole or in part, to a third entity.

Having regard to the scope of the functions to be delegated, the entity to which the functions will be delegated shall be qualified and capable of undertaking the functions in question. The PEPP provider shall enter into a written agreement with the entity. The agreement shall be legally enforceable and shall clearly define the rights and obligations of the PEPP provider and the entity. Delegation of functions shall be done by PEPP providers in compliance with the relevant rules and procedures for delegation and outsourcing established by or under the Union legislative acts applicable to them as referred to in Article 5(1). Notwithstanding this arrangement, the PEPP provider shall remain liable for its responsibilities under this section.

2. (deleted)
3. (deleted)

*Article 15*

**Opening of a new sub-account**

1. Immediately after being informed about the PEPP saver's change of residence, the PEPP provider shall inform the PEPP saver about the possibility to open a new sub-account within the PEPP saver's PEPP account and about the timeframe within which such a sub-account could be opened. The PEPP provider shall provide the PEPP saver with complete information free of charge for the conditions related to the accumulation phase and for the decumulation phase for the sub-account corresponding to the new Member State of residence of the PEPP saver.
  
2. If the PEPP saver intends to make use of the possibility to open a sub-account, the PEPP saver shall send to the PEPP provider a request, which shall include the following information:
  - (a) the PEPP saver's new Member State of residence;
  
  - (b) the date from which the contributions should be directed to the newly-opened sub-account;
  
  - (c) any relevant information about other conditions for the PEPP.
  
- ~~2a. The PEPP saver may continue contributing to the last sub-account opened. In this case the legal requirements shall remain unchanged. However, the PEPP saver shall no longer receive any national incentives because of the change of residence.~~

3. Where the ~~PEPP saver changes its residence before the deadline referred to in Article 13(3) by moving to a Member State for which the PEPP provider is still not able to ensure the opening of a sub-account, the PEPP saver shall be able:~~
- (a) to switch PEPP provider **free of charge** notwithstanding the provisions of Articles 45(2); or
  - (b) to continue contributing to the last sub-account opened. In this case the legal requirements shall remain unchanged. ~~However, the PEPP saver shall no longer receive any incentives because of the change of the residence.~~
4. The new sub-account shall be opened by amending the PEPP contract between the PEPP saver and the PEPP provider and signing an annex to it, in compliance with the applicable contract law. The date of opening shall be defined in the contract or, in the absence of such stipulation, the new sub-account shall be deemed opened at the date of signing the annex to the contract.

*Article 16*

(deleted)

*Article 17*

**Provision of information on portability to the ~~national~~ competent authorities**

- 1.** The PEPP provider **wishing to open a sub-account for a host Member State** shall notify its ~~the~~ **competent authorities of the home Member State** and ~~the host competent authorities~~ about opening new sub-accounts for other Member States for the first time.

- 2. The PEPP provider shall include in the notification the following information and documents:**
- (a) standard contract terms as referred to in Article 3a, including the annex for the new sub-account;**
  - (b) the PEPP key information document, containing the specific requirements for the sub-account corresponding to new sub-account in accordance with Article 23c(3)(g);**
  - (c) the PEPP Benefit Statement as referred to in Article 28;**
  - (d) information about contractual arrangements as referred to in Articles 14(1a), where applicable;**
  - (e) information and documents in relation to the designated PEPP fund, where applicable.**
- 3. The competent authorities of the home Member State shall verify whether documentation provided is complete and transmit it within 10 working days of the date of receipt of the complete documentation to the competent authorities of the host Member State.**
- 4. The competent authorities of the host Member State shall without delay acknowledge the receipt of the information and documents referred to in paragraph 2.**
- 5. The competent authority of the home Member State shall then inform the PEPP provider that the information has been received by the competent authority of the host Member State and that the PEPP provider can open the sub-account for that Member State.**

**6. In the event of a change in any of the information and documents referred to in paragraph 2, the PEPP provider shall notify that change to the competent authorities of the home Member State at least one month before implementing the change. The competent authorities of the home Member State shall inform the competent authorities of the host Member State about the change as soon as possible and no later than one month from receipt of the notification.**

## **-CHAPTER IV DISTRIBUTION AND INFORMATION REQUIREMENTS**

### **SECTION I GENERAL PROVISIONS**

#### *Article 18*

#### **General principle**

When carrying out distribution activities for PEPPs, PEPP providers and PEPP distributors shall always act honestly, fairly and professionally in accordance with the best interests of their customers.

## *Article 19*

### **Distribution regime applicable to different types of PEPP providers and PEPP distributors**

For the distribution of PEPPs, the different types of PEPP providers and PEPP distributors shall comply with the following rules:

- (a) insurance undertakings as referred to in point (b) of Article 5(1) of this Regulation and insurance intermediaries as referred to in Article 8 (2) of this Regulation shall comply with the applicable national legislation giving effect to the rules set out in Chapters V and VI of Directive (EU) 2016/97, with the exception of Article 30 (3) of that Directive for the distribution of insurance-based investment products with any directly applicable Union legislation adopted under those rules with respect to the distribution of such products and with the provisions of Articles ~~18, 19~~, 21, 23-23h, 25, 26 (1) and 27 to 32 of this Chapter;
- (b) investment firms as referred to in Article 8 (2) shall comply with the applicable national legislation giving effect to the rules on marketing and distribution of financial instruments set out in the first subparagraph of Article 16(3) of Directive 2014/65/EU, in Articles 23, 24 and 25 of that Directive, with the exception of Article 25 (4) of that Directive, with any directly applicable Union legislation adopted under those provisions, and with the provisions of Articles ~~18, 19~~, 21, 23-23h, 25, 26 (1) and 27 to 32 of this Chapter;
- (c) all other PEPP providers and PEPP distributors shall comply with the applicable national legislation giving effect to the rules on marketing and distribution of financial instruments set out in Articles 23, 24 and 25 of Directive 2014/65/EU, with the exception of Article 25 (4) of that Directive, with any directly applicable Union legislation adopted under those provisions and with the provisions of this Chapter.

*Article 20*

(deleted)

*Article 21*

**Electronic distribution and other durable mediums**

All documents and information under this Chapter shall be provided to PEPP customers electronically, provided that the PEPP customer is enabled to store such information in a way accessible for future reference and for a period of time adequate for the purposes of the information and that the tool allows the unchanged reproduction of the information stored. Upon request, PEPP providers and PEPP distributors shall provide free of charge those documents and information also on another durable medium, including paper. PEPP customers shall be informed about their right to request a paper copy free of charge.

*Article 22*

**Product oversight and governance requirements**

1. PEPP providers shall maintain, operate and review a process for the approval of each PEPP, or significant adaptations of an existing PEPP, before it is distributed to PEPP customers.

The product approval process shall be proportionate and appropriate to the nature of the PEPP.

The product approval process shall specify an identified target market for each PEPP, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and take reasonable steps to ensure that the PEPP is distributed to the identified target market.

The PEPP provider shall understand and regularly review the PEPPs it provides, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the PEPPs remain consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

PEPP providers shall make available to PEPP distributors all appropriate information on the PEPP and the product approval process, including the identified target market of the PEPP.

PEPP distributors shall have in place adequate arrangements to obtain the information referred to in the fifth subparagraph and to understand the characteristics and identified target market of each PEPP.

2. The policies, processes and arrangements referred to in this Article shall be without prejudice to all other requirements under or applying by virtue of this Regulation including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

## **SECTION II**

### **PRE-CONTRACTUAL INFORMATION**

#### *Article 23*

#### **PEPP key information document**

1. Before a PEPP is proposed to PEPP savers, the PEPP provider shall draw up for that product a PEPP key information document in accordance with the requirements of this Section and shall publish the document on its website.

*Article 23a*

**Principles governing the PEPP key information document**

1. The PEPP key information document shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. It shall provide key information and shall be consistent with any binding contractual documents, with the relevant parts of the offer documents and with the terms and conditions of the PEPP.
2. The PEPP key information document shall be a stand-alone document, clearly separate from marketing materials. It shall not contain cross-references to marketing materials. It may contain cross-references to other documents, but only where such cross-references are related to the information required to be included in the PEPP key information document by this Regulation.

A separate key information document shall be drawn up for the default investment option.

3. By way of derogation from paragraph 2, where a PEPP provider offers to the PEPP saver a range of alternative investment options such that all information required in Article 23c(3) regarding those underlying investment options cannot be provided within a single, concise, stand-alone key information document, PEPP providers shall produce one of the following:
  - (a) a stand-alone key information document for each underlying alternative investment option;
  - (b) a generic key information document providing at least a generic description of the underlying investment options and stating where and how more detailed pre-contractual information relating to the investment products backing the underlying investment options can be found.

4. Without prejudice to Article 21, the PEPP key information document shall be drawn up as a short document written in a concise manner, in principle in an electronic format. It shall:
  - (a) be presented and laid out in a way that is easy to read, using characters of readable size;
  - (b) focus on the key information that PEPP savers need;
  - (c) be clearly expressed and written in language and a style that facilitate the understanding of the information and, in particular, in language that is clear, succinct and comprehensible.
5. Where colours are used in the PEPP key information document, they shall not diminish the comprehensibility of the information if the PEPP key information document is printed or photocopied in black and white.
6. Where the corporate branding or logo of the PEPP provider or the group to which it belongs is used in the PEPP key information document, it shall not distract the PEPP saver from the information contained in the document or obscure the text.

#### *Article 23b*

#### **Language of the PEPP key information document**

1. The PEPP key information document shall be written in the official languages, or in one of the official languages, used in the part of the Member State where the PEPP is distributed, or in another language accepted by the competent authorities of that Member State, or where it has been written in a different language, it shall be translated into one of these languages.

The translation shall faithfully and accurately reflect the content of the original PEPP key information document.

2. If a PEPP is promoted in a Member State through marketing documents written in one or more official languages of that Member State, the PEPP key information document shall at least be written in the corresponding official languages.

*Article 23c*

**Content of the PEPP key information document**

1. The title 'PEPP Key Information Document' shall appear prominently at the top of the first page of the PEPP key information document.

The PEPP key information document shall be presented in the sequence laid down in paragraphs 2 and 3.

2. An explanatory statement shall appear directly underneath the title of the PEPP key information document. It shall read:

‘This document provides you with key information about this PEPP. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this PEPP and to help you compare it with other PEPPs.’

3. The PEPP key information document shall contain the following information:
  - (a) at the beginning of the document: the name of the PEPP, the identity and contact details of the PEPP provider, information about the competent authority of the PEPP provider, the registration number of the PEPP in the register of EIOPA and the date of the document;
  - (b) a statement which shall read: ‘You are about to purchase a retirement product which is a long-term product with limited redeemability which cannot be terminated at any time.’

- (c) under a section titled ‘What is this product?’: the nature and main features of the PEPP, including:
- (i) its long-term investment objectives and the means for achieving them, in particular whether the objectives are achieved by means of direct or indirect exposure to the underlying investment assets, including a description of the underlying instruments or reference values, including a specification of the markets the PEPP provider invests in, as well as an explanation of how the return is determined;
  - (ii) a description of the type of PEPP saver to whom the PEPP is intended to be marketed, in particular in terms of the PEPP saver's ability to bear investment loss and the investment horizon;
  - (iii) a description of the default investment option for the PEPP and the alternative investment options where applicable;
  - (iv) a statement as to whether the default investment option or any alternative investment option provides a guarantee on the capital invested or takes the form of an investment strategy directed at ensuring the capital protection;
  - (v) a description of the PEPP retirement benefits, in particular the possible forms of out-payments and, if the PEPP provider proposes several forms of out-payments to the PEPP saver, the right to change the form of out-payment as referred to in Article 52(2a);
  - (vi) where the PEPP offers biometric risk coverage: details of this coverage, including the circumstances that would trigger them;

- (vii) general information on the portability service, including a reference to the central public register referred to in Article 10 where information for the conditions for the accumulation phase and the decumulation phase determined by Member States in accordance with Article 40 and Article 51 is contained;
  - (viii) when the key information document is provided before the deadline referred to in Article 13(3), information on the specific sub-accounts available and on the PEPP saver's rights referred to in Article 15 (3);
  - (ix) general information about the PEPP saver's right to switch and the right to receive information about the switching service as referred to in Article 50;
  - (x) general information on the conditions for modification of the chosen investment option referred to in Article 36;
  - (xi) available information related to the performance of the investment policy in terms of environmental, social and governance factors;
  - (xii) the law applicable to the PEPP where the parties do not have a free choice of law or, where the parties are free to choose the applicable law, the law that the PEPP provider proposes to choose.
- (d) under a section titled 'What are the risks and what could I get in return?': a brief description of the risk-reward profile comprising the following elements:
- (i) a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the PEPP and which are not adequately captured by the summary risk indicator;

- (ii) the possible maximum loss of invested capital, including information on:
    - whether the PEPP saver can lose all invested capital, or
    - whether the PEPP saver bears the risk of incurring additional financial commitments or obligations;
  - (iii) appropriate performance scenarios and the assumptions on which they are based;
  - (iv) where applicable, information on conditions for returns to PEPP savers or built-in performance caps;
  - (v) a statement that the tax legislation of the PEPP saver's Member State of residence may have an impact on the actual payout;
  - (vi) a statement on the consequences for the PEPP saver of early redemption of the PEPP;
  - (vii) a statement on the consequences for the PEPP saver if the PEPP saver stops contributing to the PEPP;
- (e) under a section titled ‘What happens if [the name of the PEPP provider] is unable to pay out?’: a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and, if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not;
- (f) under a section titled ‘What are the costs?’: the costs associated with an investment in the PEPP, comprising both the direct and the indirect costs to be borne by the PEPP saver, including one-off and recurring costs, presented by means of summary indicators of these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, where applicable, to show the compound effects of the total costs on the investment.

The PEPP key information document shall include a clear indication that the PEPP provider or PEPP distributor will provide information detailing any cost of distribution that is not already included in the costs specified above, so as to enable the PEPP saver to understand the cumulative effect that these aggregate costs have on the return of the investment;

- (g) under a section "What are the specific requirements for the sub-account corresponding to my Member State of residence?":
  - (i) under a sub-section: "Requirements for the accumulation phase":
    - a short description of the conditions for the accumulation phase, in particular those determined by the Member State of residence of the PEPP saver in accordance with Article 40, with particular regard, where applicable, to any age limit for starting the accumulation phase
  - (ii) under a sub-section: "Requirements for the decumulation phase"
    - a short description of the conditions for the decumulation phase, in particular those determined by the Member State of residence of the PEPP saver in accordance with Article 51, with particular regard to the minimum age for starting decumulation and, where applicable, the conditions for redemption in case of particular hardship.
- (h) under a section titled 'How can I complain?': information about how and to whom a PEPP saver can make a complaint about the product or the conduct of the PEPP provider or distributor.

2. (deleted)

3. (deleted)

4. In addition to the PEPP key information document, PEPP providers and PEPP distributors shall provide potential PEPP savers with references to publicly available financial reports of the PEPP provider and, where applicable, to publicly available financial reports of the **designated** PEPP fund/scheme.
5. **In addition to the PEPP key information document, where in accordance with the investment option being offered the potential PEPP saver bears investment risk,** Potential PEPP savers shall also be provided with information **shall also be provided** on the past performance of investments related to the PEPP covering a minimum of ten years, or, in cases where the PEPP has been provided for fewer than ten years, covering all the years that the PEPP has been provided, as well as with information on the structure of costs borne by PEPP savers and PEPP beneficiaries. Information on past performance shall include a statement that past performance is not indicative of future performance.
6. ~~In order to ensure consistent application of this Article,~~ EIOPA shall, after having consulted the other ESAs where appropriate, and after conducting consumer **testing and** industry testing, develop draft regulatory technical standards specifying:
- (a) the details of the presentation, including the form and length of the document, and the content of each of the elements of information referred to in paragraphs 3 and 5;
  - (b) the methodology underpinning the presentation of risk and reward as referred to in points (d) (i) and (iv) of paragraph 3; and
  - (c) the methodology for the calculation of costs, including the specification of summary indicators, as referred to in point (f) of paragraph 3.

When developing the draft regulatory technical standards EIOPA shall take into account the underlying elements of the PEPP and the long-term nature of the product as well as PEPP savers' capabilities in such a way as to allow the PEPP savers to select between different investment options or to make use of other options provided for by the PEPP, including in cases where this selection can be made at different points in time or can be changed in the future.

~~The ESAs~~ **EIOPA** shall submit those draft ~~implementing~~ **regulatory** technical standards to the Commission by **within 9 months after the entry into force of the Regulation.**

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10-14 of Regulation (EU) No 1094/2010.

#### *Article 23d*

### **Marketing communications**

Marketing communications that contain specific information relating to the PEPP shall not include any statement that contradicts the information contained in the PEPP key information document or diminishes the significance of the PEPP key information document. Marketing communications shall indicate that a PEPP key information document is available and supply information on how and from where to obtain it, including the PEPP provider's website.

#### *Article 23e*

### **PEPP key information document revision**

1. The PEPP provider shall review the information contained in the PEPP key information document at least annually and shall promptly revise the document where the review indicates that changes need to be made. The revised version shall be made available promptly.

2. In order to ensure consistent application of this Article, EIOPA shall, after having consulted the other ESAs where appropriate, and after consumer testing, develop draft regulatory technical standards specifying the conditions under which the PEPP key information document must be revised.

EIOPA shall submit those draft regulatory technical standards to the Commission **within 9 months after the entry into force of the Regulation**.by [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

#### *Article 23f*

#### **Civil liabilities**

1. The PEPP provider shall not incur civil liability solely on the basis of the PEPP key information document, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements laid down in Article 23c.
2. A PEPP saver who demonstrates loss resulting from reliance on a PEPP key information document under the circumstances referred to in paragraph 1, when subscribing a PEPP for which that PEPP key information document was produced, may claim damages from the PEPP provider for that loss in accordance with national law.
3. Elements such as ‘loss’ or ‘damages’ as referred to in paragraph 2 which are not defined shall be interpreted and applied in accordance with the applicable national law as determined by the relevant rules of private international law.
4. This Article does not exclude further civil liability claims in accordance with national law.
5. The obligations under this Article shall not be limited or waived by contractual clauses.

*Article 23g*

**PEPP covering biometric risks**

Where the PEPP key information document concerns a PEPP covering biometric risks, the PEPP provider's obligations under this section shall be only towards the PEPP saver and not towards a PEPP beneficiary.

*Article 23h*

**Provision of PEPP key information document**

1. A PEPP provider or distributor shall provide potential PEPP savers with the PEPP key information document free of charge and in good time before those PEPP savers are bound by any contract or offer relating to that PEPP.

In case the PEPP provider is providing alternative investment options, the PEPP key information documents for all investment options shall be provided to potential PEPP savers.

2. A PEPP provider or distributor may satisfy the requirements of paragraph 1 by providing the PEPP key information document to a person with written authority to make investment decisions on behalf of the PEPP saver in respect of transactions concluded under that written authority.
3. In order to ensure consistent application of this Article, EIOPA shall, after having consulted the other ESAs where appropriate, develop draft regulatory technical standards specifying the conditions for fulfilling the requirement to provide the PEPP key information document as laid down in paragraph 1.

EIOPA shall submit those draft regulatory technical standards to the Commission **within 9 months after the entry into force of the Regulation** by 31 December [...].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

*Article 24*

*(deleted)*

### **SECTION III**

#### **ADVICE AND STANDARDS FOR SALES WHERE NO ADVICE IS GIVEN**

*Article 25*

##### **Provision of advice**

1. (deleted)
2. The PEPP providers ~~and~~ **or** PEPP distributors shall provide advice to the PEPP saver prior to the conclusion of the PEPP contract.

**When providing advice the PEPP provider or PEPP distributor referred to in Article 19(c) of this Regulation shall ask the PEPP saver to provide information regarding that person's knowledge and experience in the investment filed relevant to the PEPP offered or demanded and that person's financial situation including his ability to bear losses, and his investment objectives including his risk tolerance so as to enable the PEPP provider or PEPP distributor to recommend to the saver one or more PEPPs that are suitable for that person and, in particular, are in accordance with his risk tolerance and ability to bear losses.**

3. (deleted)
4. (deleted)
5. (deleted)

### *Article 26*

#### **Concluding a contract for a PEPP without advice**

1. -By way of derogation of Article 25, the PEPP saver may waive his right to receive advice in relation to concluding a contract for the default investment option.
2. Where the PEPP saver waives his right to receive advice, PEPP providers or PEPP distributors referred to in Article 19(c) of this Regulation shall, when carrying out PEPP distribution activities, ask the PEPP saver or potential PEPP saver to provide information regarding that person's knowledge and experience in the investment field relevant to the PEPP offered or demanded so as to enable the PEPP providers or PEPP distributors to assess whether the PEPP envisaged is appropriate for the PEPP saver.

Where the PEPP provider or PEPP distributor referred to in Article 19(c) of this Regulation considers, on the basis of the information received under the first subparagraph, that the product is not appropriate for the PEPP saver or potential PEPP saver, the PEPP provider or PEPP distributor shall warn the PEPP saver or potential PEPP saver to that effect. That warning may be provided in a standardised format.

Where PEPP savers or potential PEPP savers do not provide the information referred to in the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the PEPP provider or PEPP distributor shall warn them that it is not in a position to determine whether the PEPP envisaged is appropriate for them. That warning may be provided in a standardised format.

## **SECTION IV**

### **INFORMATION DURING THE TERM OF THE CONTRACT**

#### *Article 27*

#### **General provisions**

1. PEPP providers shall draw up a concise personalised document to be provided during the accumulation phase containing key information for each PEPP saver taking into consideration the specific nature of national pension systems and of relevant national social, labour and tax law (“PEPP Benefit Statement”). The title of the document shall contain the words “PEPP Benefit Statement”.
2. The date to which the information in the PEPP Benefit Statement refers to shall be stated prominently.
  - 2a. The information contained in the PEPP Benefit Statement shall be accurate and up-to-date.
  - 2b. The PEPP Benefit Statement shall be made available to each PEPP saver annually.
  - 2c. Any material change to the information contained in the PEPP Benefit Statement compared to the previous statement shall be clearly indicated.
3. In addition, the PEPP saver shall be kept informed throughout the term of the contract of any change concerning the following information:
  - (a) the standard contract terms;
  - (b) the name of the PEPP provider’s undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract;

- (c) (deleted)
- (d) information on how the investment policy takes into account environmental, social and governance factors.

*Article 28*

**PEPP Benefit Statement**

1. The PEPP Benefit Statement shall include, at least, the following key information for PEPP savers:
  - (a) personal details of the PEPP saver and the minimum age at which the PEPP saver may start decumulation **for any sub-account in the PEPP account**;
  - (aa) the name of the PEPP provider, its contact address and identification of the PEPP contract;
  - (b) the Member State in which the PEPP provider is authorised or registered and the names of the competent authorities;
  - (ba) information on pension benefit projections based on the minimum age for decumulation referred to in point (a), and a disclaimer that those projections may differ from the final value of the benefits received. If the pension benefit projections are based on economic scenarios, that information shall also include a best estimate scenario and an unfavourable scenario, taking into consideration the specific nature of the PEPP contract;
  - (bc) ~~where applicable, information on accrued entitlements;~~
  - (bd) information on the contributions paid by the PEPP saver or any third party into the PEPP contract, over the last 12 months;

- (be) a breakdown of the costs deducted by the PEPP provider over the last 12 months, indicating the costs of administration, the costs of safekeeping of assets, the costs related to portfolio transactions and other costs, as well as an estimation of the impact of the costs on the final benefits; such costs should be expressed both in nominal terms and as a percentage of contributions;
- (c) where applicable, the nature and the mechanism of guarantee or risk mitigation technique used **to ensure** ~~aimed at preserving the capital~~ **protection**. This information could be provided as a hyperlink to the PEPP key information document as referred to **in** Article 23;
- (ca) where applicable, information on the number and value of units corresponding to the PEPP saver's contributions over the last 12 months;
- (cb) information on the total amount in the PEPP account of the PEPP saver on the date of the statement as referred to in Article 27(2);
- (d) **where in accordance with the chosen investment option the PEPP saver bears investment risk, the saver shall also be provided with** information on the past performance of the PEPP saver's investment option ~~presented in a chart~~ covering performance of a minimum of ten years or, in cases where the PEPP has been provided for less than ten years, covering all the years for which the PEPP has been provided. Information on past performance shall be accompanied by the statement "past performance is not indicative of future ~~results~~**performance**";
- (e) for PEPP accounts with more than one sub-account, information in the PEPP Benefit Statement shall be provided as break-down for all existing sub-accounts.

- 1a. In the year preceding the periods as referred to in Article 52 (2a) in the PEPP Benefit Statement shall also be included information about the possibility for the PEPP saver to modify the form of out-payments in accordance with Article ~~52 (2a)~~<sup>36</sup>.
2. Member States shall set out rules to determine the assumptions on pension benefit projections referred to in point (a) of paragraph 1. Those rules shall be applied by PEPP providers to determine, where relevant, the annual rate of nominal investment returns, the annual rate of inflation and the trend of future wages.
3. (deleted)

*Article 29*

**Supplementary information**

1. The PEPP Benefit Statement shall specify where and how to obtain supplementary information including:
  - (a) further practical information about the PEPP saver's rights and options with regard to investment, decumulation, switching service and portability service provided under the PEPP;
  - (b) information on the annual public reports of the PEPP provider, taking into account each PEPP provided by that provider;
  - (c) a written statement of the PEPP provider's investment-policy principles, containing at least such matters as the investment risk measurement methods, the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of PEPP liabilities, as well as how the investment policy takes environmental, social and governance factors into account;

- (d) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of PEPP provider and the duration of the annuity;
- (e) information on the level of benefits, in case of redemption before the minimum decumulation age referred to in point (a) of Article 28(1) in case of particular hardship, where applicable.

2. (deleted)

3. EIOPA, after consulting ESAs, where appropriate, and after consumer testing, shall develop draft implementing technical standards specifying the details of the presentation of the information referred to in Article 28 and in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission ~~by ...~~ [within 9 months after the entry into force of the Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

### *Article 30*

#### **Information to be given to PEPP beneficiaries during the decumulation phase**

1. (deleted)

During the decumulation phase, PEPP providers shall provide annually PEPP beneficiaries with information about the benefits due and the corresponding decumulation options.

Where the saver continues to make contributions or to bear investment risk, the provider shall continue providing PEPP Benefit Statement containing the relevant information.

~~Where applicable, PEPP providers shall inform PEPP beneficiaries without any delay after a final decision has been taken resulting in any reduction of the level of benefits due, and three months before that decision is implemented. PEPP beneficiaries shall receive appropriate information in this regard.~~

#### *Article 31*

##### **Information to be given on request to PEPP savers and PEPP beneficiaries**

At the request of a PEPP saver or a PEPP beneficiary or their representatives, the PEPP provider shall provide supplementary information referred to in Article 29(1) and supplementary information about the assumptions used to generate the projections referred to in point (ba) of Article 28(1).

- (a) (deleted);
- (b) (deleted);
- (c) (deleted)

## **SECTION V REPORTING TO NATIONAL AUTHORITIES**

#### *Article 32*

##### **General provisions**

1. PEPP providers shall submit to the competent authorities the information which is necessary for the purposes of supervision in addition to the information provided under the relevant sectorial legislation. That information shall include at least the information necessary to carry out the following activities when performing a supervisory review process:

- (a) to assess the system of governance applied by the PEPP providers, the business they are pursuing, the valuation principles applied for solvency purposes, where applicable, the risks faced and the risk-management systems, and their capital structure, needs and management;
  - (b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.
2. The competent authorities, in addition to the powers conferred to them according to national legislation, shall have the following powers:
- (a) to determine the nature, the scope and the format of the information referred to in paragraph 1 which they require PEPP providers to submit at the following points in time:
    - (i) at predefined periods;
    - (ii) upon occurrence of predefined events;
    - (iii) during enquiries regarding the situation of a PEPP provider;
  - (b) to obtain from the PEPP providers any information regarding contracts which are held by PEPP providers or regarding contracts which are entered into with third parties; and
  - (c) to require information from external experts, such as auditors and actuaries. \_\_\_\_\_
3. The information referred to in paragraphs 1 and 2 shall comprise the following:
- (a) qualitative or quantitative elements, or any appropriate combination thereof;
  - (b) historic, current or prospective elements, or any appropriate combination thereof;
  - (c) data from internal or external sources, or any appropriate combination thereof.

4. The information referred to in paragraphs 1 and 2 shall:
- (a) reflect the nature, scale and complexity of the business of the PEPP provider concerned, and in particular the risks inherent in that business;
  - (b) be accessible, complete in all material respects, comparable and consistent over time;
  - (c) be relevant, reliable and comprehensible.

**4a. PEPP providers shall submit to the competent authorities annually the following information:**

- (a) for which Member States the PEPP provider has opened sub-accounts;**
  - (b) number of notifications in accordance with Article 15(1) received from PEPP savers that have changed their residence;**
  - (c) number of requests for opening a sub-account in accordance with Article 15 (2);**
  - (d) number of requests from PEPP savers for switching in accordance with Article 15(3)(a);**
  - (e) number of requests from PEPP savers for switching in accordance with Article 45 (2).**
5. PEPP providers shall have appropriate systems and structures in place to fulfil the requirements laid down in paragraphs 1 to 4a as well as a written policy, approved by the administrative, management or supervisory body of the PEPP provider, ensuring the ongoing appropriateness of the information submitted.
6. Upon request to the competent authorities, EIOPA shall have access to the information submitted by PEPP providers to carry out the duties assigned to it by this Regulation.

**6a. Where PEPP sub-accounts are entitled to advantages and incentives the PEPP provider shall submit to the relevant national authority all information necessary for providing or reclaiming advantages or incentives received in relation to the continuous investment in the PEPP sub-account.**

7. EIOPA, after consulting national competent authorities and after industry testing, shall develop draft implementing technical standards regarding the format of supervisory reporting.

EIOPA shall submit those draft implementing technical standards to the Commission ~~by ...~~ [within 9 months after the entry into force of the Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

## **CHAPTER V ACCUMULATION PHASE**

### **SECTION I INVESTMENT RULES FOR PEPP PROVIDERS**

#### *Article 33*

#### **Investment rules**

1. PEPP providers shall invest in accordance with the "prudent person" rule and in particular in accordance with the following rules:

- (a) the assets shall be invested in the best long-term interests of PEPP savers as a whole. In the case of a potential conflict of interest, a PEPP provider, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of PEPP savers;
- (b) the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- (c) the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must ~~in any event~~ be kept to prudent levels;
- (d) investment in derivative instruments shall be possible insofar as such instruments contribute to a reduction in investment risks or facilitate efficient portfolio management. Those instruments shall be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of a PEPP provider's assets. PEPP providers shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;
- (e) the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose a PEPP provider to excessive risk concentration;
- (f) the assets shall not be invested in a high-risk and non-cooperative jurisdiction identified by the Financial Action Task Force;
- (g) the PEPP provider shall not expose himself to risks stemming from excessive leverage and excessive maturity transformation.

2. The rules set out in points (a) to (g) of paragraph 1 apply only to the extent that there is no more stringent provision in the relevant sectorial legislation applicable to the PEPP provider.

## **SECTION II**

### **INVESTMENT OPTIONS FOR PEPP SAVERS**

#### *Article 34*

##### **General provisions**

1. PEPP providers shall offer up to five investment options to PEPP savers.
2. The investment options shall include a default investment option and may include alternative investment options.
3. All investment options shall be designed by PEPP providers on the basis of risk-mitigation techniques which shall ensure sufficient protection for PEPP savers.

#### *Article 35*

##### **Choice of investment option by the PEPP saver**

The PEPP saver shall opt for an investment option upon conclusion of the PEPP contract.

*Article 36*

**Conditions for modification of the chosen investment option**

1. If the PEPP provider provides alternative investment options, the PEPP saver, while accumulating in the PEPP, shall be able to opt for a different investment option after a minimum of five years from the conclusion of the PEPP contract and, in case of subsequent changes, after five years from the most recent change of the investment option. The PEPP provider may allow the PEPP saver to modify the chosen investment option more frequently.
2. The modification of the investment option shall be free of charge for the PEPP saver.

*Article 37*

**Default investment option**

1. The default investment option shall take the form of either an investment strategy directed at ensuring the capital protection of the saver, on the basis of a ~~proven~~-risk-mitigation technique, or a guarantee on the capital ~~invested~~ which shall be due at the start of decumulation phase **and during the decumulation phase, where applicable.**
2. Provision of guarantees on the capital invested shall be subject to the relevant sectorial legislation applicable to the PEPP provider.
3. PEPP providers referred to in Article 5(1)(c), (d), (e) and (f) may offer PEPPs with a guarantee on the capital ~~invested~~, by cooperating with credit institutions or insurance undertakings that can provide such guarantees according to the sectorial legislation applicable to them. The latter shall be fully liable for the guarantee on the capital ~~invested~~.

*Article 38*

(deleted)

*Article 39*

**Risk mitigation techniques**

1. All risk mitigation techniques, whether applied under the default investment option or for the alternative investment options, shall be sound, robust and prudent in order to ensure sufficient protection for PEPP savers.
2. The level of prudence of the risk mitigation techniques applied for the default investment option shall be consistent with the objective to ensure capital protection.

The level of prudence of the risk mitigation techniques applied for the alternative investment options shall be consistent with the risk profile of the corresponding investment option.

3. **EIOPA shall, in coordination with the other ESAs, taking into account the various types of PEPP and their specific features, as well as the various types of PEPP providers and the differences between their prudential regime, develop draft regulatory technical standards specifying the minimum criteria that asset liability management strategies have to satisfy to ensure the required level of prudence referred to in paragraph 2 for the following techniques:**

**(a) risk-mitigation techniques to be applied for the default investment option;**

**(b) risk-mitigation techniques to be applied for the alternative investment options.**

**EIOPA shall submit those draft regulatory technical standards to the Commission within [9 months after the entry into force of the Regulation].**

**Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10-14 of Regulation (EU) No 1094/2010.**

### **SECTION III**

#### **OTHER ASPECTS OF THE ACCUMULATION PHASE**

##### *Article 40*

##### **Conditions related to the accumulation phase**

1. The PEPP conditions related to the accumulation phase shall be determined by Member States unless they are specified in this Regulation.
2. Such conditions may include in particular age limits for starting the accumulation phase, minimum duration of the accumulation phase, maximum and minimum amount of in-payments and their continuity, as well as conditions for redemption before the minimum age for decumulation in case of particular hardship.

## CHAPTER VI

### INVESTOR PROTECTION

#### *Article 41*

##### **Depositary**

1. Where the PEPP provider referred to in points (c), (e) and (f) of Article 5(1) provides PEPP as collective investment management and a designated PEPP fund is created, it shall appoint one or more depositaries for the safe-keeping of assets and oversight duties.
2. For the appointment of the depositary, the execution of its tasks in relation to the safekeeping of assets and the liability of the depositary **and for the oversight duties of the depositary**, Chapter IV of Directive 2009/65/EC shall be applied accordingly.
3. (deleted)
4. (deleted)

#### *Article 42*

##### **Coverage of biometric risks**

1. PEPP providers may offer PEPPs with an option ensuring the coverage of the biometric risks.
2. Provision of the coverage of the biometric risks shall be subject to the relevant sectorial legislation applicable to the PEPP provider. The coverage of biometric risks may vary from sub-account to sub-account.

3. PEPP providers referred to in Article 5(1)(a), (c), (d), (e) and (f) may offer PEPP with an option ensuring the coverage of biometric risks. In that case, the coverage shall be granted by cooperating with insurance undertakings that can cover these risks according to the sectorial legislation applicable to them. The insurance undertaking shall be fully liable for the coverage of biometric risks.

### *Article 43*

### **Complaints**

1. PEPP providers and PEPP distributors shall put in place and apply adequate and effective procedures for the settlement of complaints lodged by PEPP customers concerning their rights and obligations under this Regulation.
2. Those procedures shall be applied in every Member State where the PEPP provider or PEPP distributor offers its services and shall be available in an official language of the relevant Member State as chosen by the PEPP customer, or in another language if agreed between the PEPP provider or PEPP distributor and the PEPP customer.
3. PEPP providers and PEPP distributors shall make every possible effort to reply, either electronically or in another durable medium in accordance with Article 21, to the PEPP customers' complaints. The reply shall address all points raised, within an adequate timeframe and at the latest within 15 business days of receipt of the complaint. In exceptional situations, if the answer cannot be given within 15 business days for reasons beyond the control of the PEPP provider or PEPP distributor, it shall be required to send a holding reply, clearly indicating the reasons for a delay in answering to the complaint and specifying the deadline by which the PEPP customer will receive the final reply. In any event, the deadline for receiving the final reply shall not exceed 35 business days.
4. PEPP providers and PEPP distributors shall inform the PEPP customer about at least one alternative dispute resolution (ADR) entity which is competent to deal with disputes concerning PEPP customers' rights and obligations under this Regulation.

5. The information on the procedures referred to in paragraph 1 shall be mentioned in a clear, comprehensive and easily accessible way on the website of the PEPP provider or PEPP distributor, at the branch, and in the general terms and conditions of the contract between the PEPP provider or PEPP distributor and the PEPP customer. It shall specify how further information on the ADR entity concerned and on the conditions for using it can be accessed.
6. The competent authorities shall set up procedures which allow PEPP customers and other interested parties, including consumer associations, to submit complaints to the competent authorities with regard to PEPP providers' and PEPP distributors' alleged infringements of this Regulation. In all cases, complainants shall receive replies.

#### *Article 44*

#### **Out-of-court redress**

1. Adequate, independent, impartial, transparent and effective ADR procedures for the settlement of disputes between PEPP customers and PEPP providers or PEPP distributors concerning the rights and obligations arising under this Regulation shall be established in accordance with Directive 2013/11/EU of the European Parliament and the Council<sup>18</sup>, using existing competent bodies where appropriate. Such ADR procedures shall be applicable, and the relevant ADR body's competence shall effectively extend, to PEPP providers or PEPP distributors against whom the procedures are initiated.
2. The bodies referred to in paragraph 1 shall cooperate effectively for the resolution of cross-border disputes concerning rights and obligations arising under this Regulation.

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<sup>18</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.6.2013, p. 63.

## CHAPTER VII

### SWITCHING OF PEPP PROVIDERS

#### *Article 45*

##### **Provision of the switching service**

1. PEPP providers shall provide a switching service transferring, upon a request of the PEPP saver, any positive balance from a PEPP account held with the transferring provider to a new PEPP account opened with the receiving provider, with closing the former PEPP account, by transferring the sub-account structure of the former PEPP account including **a copy of** all possible information and reporting requirements connected to the sub-accounts.

The PEPP saver may request to switch to a PEPP provider established in the same Member State (domestic switching) or in different Member State (cross-border switching). The PEPP saver may exercise the right to switch providers during the accumulation and the decumulation phase of the PEPP.

- 1a. Notwithstanding the provisions of the previous paragraph, during the decumulation phase, PEPP providers shall provide the switching service for PEPPs, where savers are receiving outpayments in the form other than that in the form of lifetime annuities.
2. The PEPP saver may switch PEPP providers after a minimum of five years from the conclusion of the PEPP contract, and, in case of subsequent switching, after five years from the most recent switching, without prejudice to Article 15 (3)(a). The PEPP provider may allow the PEPP saver to switch PEPP providers more frequently.
3. In case the switching is between PEPP providers managing individual investments, PEPP saver may choose to transfer assets in kind or corresponding amounts. In all other cases of switching, only transfer of amounts shall be allowed.

A written consent of the receiving PEPP provider shall be required if a transfer of assets in kind is requested by the PEPP saver.

#### *Article 46*

#### **The switching service**

1. At the request of the PEPP saver, after the PEPP saver has made an informed decision based on the information received from the PEPP providers as defined in Article 50, the switching service shall be initiated by the receiving PEPP provider. The switching service shall at least comply with paragraphs 2 to ~~56~~ of this Article.
2. The request from the PEPP saver shall be drawn up in an official language of the Member State where the switching service is being initiated or in any other language agreed between the parties.

**In the written request** ~~While requesting the switching service, the PEPP saver shall be allowed to give his **specific** consent to the performance by the transferring PEPP provider of each of the tasks referred to in paragraph 3 and **shall** to give his **specific** consent to the performance by the receiving PEPP provider of each of the tasks referred to in paragraph ~~56~~.~~

While requesting the switching service, the PEPP saver shall be allowed to specify the date from which payments are to be executed to the PEPP account opened with the receiving Member States may require the request from the PEPP saver to be in writing and that a copy of the accepted request be provided to the PEPP saver.

3. Within five working days from the request referred to in paragraph 2, the receiving PEPP provider shall request the transferring PEPP provider to carry out the following tasks, if provided **for in** the PEPP saver's request:

- (0a) provide the PEPP saver and the receiving provider free of charge with a PEPP Benefit Statement for the period from the date of the last drawn up PEPP Benefit Statement to the date of the request;
  - (a) transmit to the receiving PEPP provider and, if specifically requested by the PEPP saver, to the PEPP saver, a list of the existing assets that are being switched in the case of transfer in kind as referred to in Article 45 (3);
  - (b) (deleted)
  - (c) (deleted)
4. Upon receipt of a request from the receiving PEPP provider, the transferring PEPP provider shall carry out the following tasks:
- (0a) send within five working days from the request referred to in paragraph 3 to the PEPP saver and to the receiving PEPP provider the PEPP Benefit Statement referred to in point (0a) of paragraph 3;
  - (a) send within five working days from the request referred to in paragraph 3 to the receiving PEPP provider the information referred to in point (a) paragraph 3, where applicable;
  - (b) stop accepting incoming payments on the PEPP account with effect from the date specified by the PEPP saver;
  - (c) transfer the remaining positive balance from the PEPP account to the new PEPP account opened with the receiving PEPP provider on the date specified by the PEPP saver;

- (d) close the PEPP account on the date specified by the PEPP saver if the PEPP saver has no outstanding obligations. The transferring PEPP provider shall immediately inform the PEPP saver where such outstanding obligations prevent the PEPP saver's account from being closed.

Where a transfer of assets in kind has been requested by the PEPP saver in accordance with Article 45 (3) the date for the transfer specified by the PEPP saver shall be agreed upon with the receiving PEPP provider.

5. Within five working days of receipt of the information referred to in paragraph 3, the receiving PEPP provider shall, as and if provided in the request and to the extent that the information provided by the transferring PEPP provider or the PEPP saver enables the receiving PEPP provider to do so, carry out the following tasks:
  - (a) make any necessary preparations to accept incoming payments and accept them with effect from the date specified by the PEPP saver;
  - (b) inform payers specified by the PEPP saver of the details of the PEPP saver's PEPP account with the receiving PEPP provider and transmit to the payers a copy of the PEPP saver's accepted request.

If the receiving PEPP provider does not have all the information it needs to inform the payers as referred to in point (b) of the first subparagraph, it shall ask the PEPP saver or the transferring PEPP provider to provide the missing information.

Where the PEPP saver chooses to personally provide the information referred to in point (b) of the first subparagraph to the payers rather than provide specific consent in accordance with paragraph 2 to the receiving PEPP provider to do so, the receiving PEPP provider shall provide the PEPP saver with standard letters providing details of the PEPP account and the starting date specified by the PEPP saver within the deadline referred to in the first subparagraph.

*Article 47*

(deleted)

*Article 48*

**Fees and charges connected with the switching service**

1. PEPP savers shall be able to access free of charge their personal information held either by the transferring or by the receiving PEPP provider.
2. The transferring PEPP provider shall provide the information requested by the receiving PEPP provider pursuant to point (a) of Article 46(4) without charging the PEPP saver or the receiving PEPP provider.
3. The total fees and charges applied by the transferring PEPP provider to the PEPP saver for the closure of the PEPP account held with it shall be limited to the actual administrative ~~and transaction costs and shall not exceed 1 % of the positive balance to be transferred to the receiving~~ **incurred by the** PEPP provider. The transferring PEPP provider shall not charge any additional fees or charges to the receiving PEPP provider.
4. Fees and charges, if any, applied by the receiving PEPP provider to the PEPP saver for any service provided under Article 46, other than those referred to in paragraphs 1, 2 and 3 of this Article, shall be limited to the actual administrative and transaction costs of that PEPP provider.

*Article 49*

**Protection of PEPP savers against financial loss**

1. Any financial loss, including fees, charges and interest, incurred by the PEPP saver and resulting directly from the non-compliance of a PEPP provider involved in the switching process with its obligations under Article 46 shall be refunded by that PEPP provider without delay.
2. Liability under paragraph 1 shall not apply in cases of abnormal and unforeseeable circumstances beyond the control of the PEPP provider pleading for the application of those circumstances, the consequences of which would have been unavoidable despite all efforts to the contrary, or where a PEPP provider is bound by other legal obligations covered by Union or national legislative acts.
3. Liability under paragraph 1 shall be established in accordance with the legal requirements applicable at national level.
4. The PEPP saver shall bear the costs and any risk of financial loss connected with the redemption in kind of the assets held in the PEPP account for the sake of their transfer from the transferring PEPP provider to the receiving PEPP provider as referred to in Article 45 (3).
5. ~~Capital protection ensured by the default investment option as referred to in Article 37 shall not be consumed at the moment of switching. In the case of switching of a PEPP with default investment option the PEPP saver shall bear the risk of financial loss.~~ **The transferring PEPP provider shall not be obliged to ensure capital protection at the moment of switching.**

*Article 50*

**Information about the switching service**

1. PEPP providers shall give to PEPP savers the following information about the switching service in order to provide the PEPP saver with sufficient time to make an informed decision:
  - (a) the roles of the transferring and receiving PEPP provider for each step of the switching process, as indicated in Article 46;
  - (b) the time-frame for completion of the respective steps;
  - (c) the fees and charges charged for the switching process;
  - (d) the possible implications of the switching, in particular **on the capital protection** when the PEPP saver has opted for default investment option;
  - (e) an information about the possibility for a transfer of assets in kind, if applicable.

The receiving PEPP provider shall comply with the requirements of Chapter IV.

PEPP providers shall also give to PEPP savers other information, including, where applicable, the information necessary for the identification of the deposit guarantee scheme, investor-compensation scheme or insurance protection scheme within the Union of which the PEPP provider is a member.

2. The information referred to in paragraph 1 shall be available in electronic form on the PEPP provider's website at all times, shall be made available free of charge on paper or another durable medium at the PEPP provider's premises, and shall be provided to PEPP savers on request.

## **CHAPTER VIII**

### **DECUMULATION PHASE**

#### *Article 51*

##### **Conditions related to the decumulation phase**

1. The PEPP conditions related to the decumulation phase shall be determined by Member States unless they are specified in this Regulation.
2. Such conditions may include in particular the setting of the minimum age for decumulation of a maximum period before reaching the retirement age for joining a PEPP, as well as conditions for redemption in case of particular hardship.

#### *Article 52*

##### **Forms of out-payments**

1. PEPP providers may make available to PEPP savers one or more of the following forms of out-payments:
  - (a) annuities;
  - (b) lump sum;
  - (c) drawdown payments;
  - (d) combinations of the above forms.
2. PEPP savers shall choose the form of out-payments for the decumulation phase when they conclude a PEPP contract and when they request an opening of a new sub-account. Out-payments may differ from sub-account to sub-account.

2a. If the PEPP provider provides different forms of out-payments, the PEPP saver shall be allowed to modify the form of out-payments of each opened sub-account:

(a) (deleted)

(b) two years before the start of the decumulation phase;

(c) at the start of the decumulation phase;

**(d) at the moment of switching; -**

The modification of the form of out-payments shall be free of charge for the PEPP saver.

2b. Without prejudice to paragraphs 1 and 2a as well as to Article 51, Member States may adopt measures to privilege particular forms of out-payments. Such measures may include quantitative limits for lump sum payments to further encourage the other forms of out-payments in paragraph 1. Such quantitative limits shall only apply to the out-payments corresponding to the capital accumulated in the PEPP sub-account linked to the Member State whose legislation provides for quantitative limits on lump sums.

2c. Upon reception of a PEPP saver's request to change his form of out-payments, the PEPP provider shall provide the PEPP saver with information in a clear and understandable format about the financial implications of such change on the PEPP saver or PEPP beneficiary, in particular as regards any impact on the national incentives that might apply to the existing sub-accounts of the PEPP saver's PEPP.

3. Member states may specify conditions under which advantages and incentives granted shall be repaid to them.

## **CHAPTER IX**

### **SUPERVISION**

#### *Article 53*

##### **Supervision by the competent authorities and monitoring by EIOPA**

1. The competent authorities of the PEPP provider shall supervise compliance with this Regulation on an ongoing basis. They shall also be responsible for supervising compliance with the obligations set out in the rules or instruments of incorporation of the PEPP provider, and the adequacy of its arrangements and organisation with the tasks to be fulfilled when providing a PEPP.
2. EIOPA and competent authorities shall monitor pension products established or distributed in the territory of the Union to verify that they do not use the designation "PEPP" or suggest that they are a PEPP unless they are registered under, and comply with, this Regulation.
3. (deleted)

#### *Article 54*

##### **Powers of competent authorities**

Each Member State shall ensure that the competent authorities have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.

Article 54a

Product intervention powers

**1. A competent authority may prohibit or restrict in or from its Member State the marketing or distribution of a PEPP under the following conditions:**

- (a) the competent authority is satisfied to have reasonable grounds that the PEPP gives rise to significant saver's protection concerns or poses a risk to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system within at least one Member State;**
- (b) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of PEPP savers concerned and the likely effect of the action on PEPP savers who have contracted this product;**
- (c) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action; and**
- (d) the action does not have a discriminatory effect on services or activities provided from another Member State.**

**Where the conditions set out in the first subparagraph are fulfilled, the competent authority may impose the prohibition or restriction on a precautionary basis before a PEPP has been marketed or distributed to PEPP savers. A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority.**

- 2. The competent authority shall not impose a prohibition or restriction under this Article unless, not less than one month before the measure is intended to take effect, it has notified all other competent authorities involved and EIOPA in writing or through another medium agreed between the authorities of the details of:**
- (a) the PEPP to which the proposed action relates;**
  - (b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and**
  - (c) the evidence upon which it has based its decision and upon which it has reasonable grounds to believe that each of the conditions in paragraph 1 are met.**
- 3. The competent authority shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. That notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 1 are met. The prohibition or restriction shall only apply in relation to action taken after the publication of the notice.**
- 4. The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 12 no longer apply.**

**Article 54b**

**Facilitation and coordination**

- 1. EIOPA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 54a. In particular EIOPA shall ensure that action taken by a competent authority is justified and proportionate and that, where appropriate, a consistent approach is taken by competent authorities.**

- 2. After receiving notification under Article 54a of any action that is to be imposed under that Article, EIOPA shall adopt an opinion on whether the prohibition or restriction is justified and proportionate. If EIOPA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall state this in its opinion. The opinion shall be published on EIOPA's website.**
- 3. Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by EIOPA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.**

#### *Article 55*

#### **Cooperation between competent authorities and with EIOPA**

1. EIOPA and the competent authorities of the PEPP provider or the PEPP distributor shall cooperate with each other and exchange information for the purpose of carrying out their duties under this Regulation.
2. The competent authorities shall cooperate with each other in accordance with Regulation 575/2013/EU of the European Parliament and of the Council<sup>19</sup>, Directive 2009/138/EC, Directive 2016/2341/EU, Directive 2014/65/EU, Directive 2009/65/EC, Directive 2011/61/EU and Directive 2016/97/EU.
3. The competent authorities and EIOPA shall cooperate with each other for the purpose of carrying out their respective duties under this Regulation in accordance with Regulation (EU) No 1094/2010.

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<sup>19</sup> ~~Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).~~

4. The competent authorities and EIOPA shall exchange all information and documentation necessary to carry out their respective duties under this Regulation in accordance with Regulation (EU) No 1094/2010, in particular to identify and remedy infringements of this Regulation.
5. In order to ensure consistent application of this Article, EIOPA shall develop draft implementing technical standards specifying the details of the mechanism for cooperation and exchange of information, together with the requirements needed to present the information above in a standardised format allowing for comparison.

EIOPA shall submit those draft implementing technical standards to the Commission ~~by ...~~  
{within 9 months after the entry into force of the Regulation}.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

*Article 56*

(deleted)

# CHAPTER X

## SANCTIONS

### *Article 57*

#### **Administrative sanctions and remedial measures**

1. Without prejudice to the supervisory powers of competent authorities and to the right for Member States to provide for and impose criminal sanctions, Member States shall lay down rules establishing appropriate administrative sanctions and measures applicable to **at least the** situations **listed in paragraph 2** which constitute an infringement of this Regulation and shall take all necessary measures to ensure that they are implemented. Those administrative sanctions and measures shall be effective, proportionate and dissuasive.

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph for infringements which are subject to criminal sanctions under their national law.

By [eighteen months after **the** entry into force of this Regulation], Member States shall notify the rules referred to in the first and second subparagraph to the Commission and to EIOPA. They shall notify the Commission and EIOPA without delay of any subsequent amendment thereto.

2. Those administrative sanctions and measures shall apply at least to situations where:
  - (a) (deleted);
  - (b) a financial undertaking as referred to in Article 5(1) provides, respectively distributes, products bearing the designation "PEPP" or "pan-European Personal Pension Product" without the required authorisation;

- (c) a PEPP provider ~~has infringed Article 7(3)~~, has not provided the portability service in breach of Article 13 or 14 or the information about that service required under Article 15 and 17, or has failed to meet the requirements and obligations set out in Chapter IV (~~Sections I, Subjection II of Section II, Section III, Section IV and Section V~~), Chapter V, Articles 41 and 43 and Chapter VII;
  - (d) a depositary has failed to fulfil its oversight duties under Article 41;
  - ~~(e) a PEPP provider has failed to meet the requirements and obligations set out in Article 23.~~
- 3. Member States shall, in accordance with national law, provide for competent authorities to have the power to impose at least the following administrative sanctions and measures in relation to the situations referred to in paragraph 2:
- (a) a public statement, which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Article 59;
  - (b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
  - (c) a temporary ban against any member of the financial undertaking's management body or any other natural person, who is held responsible, to exercise management functions in such undertakings;
  - (d) in case of a legal person, maximum administrative fines of at least EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on [*date of entry into force of this Regulation*];

- (e) the maximum administrative fines referred to in point (d) may be of up to 10 % of the total annual turnover according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council<sup>20</sup>, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- (f) in the case of a natural person, maximum administrative fines of at least EUR 700 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on [date of entry into force of this Regulation];
- (g) maximum administrative fines of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (d), (e) and (f).

4. Where the provisions referred to in ~~the~~ paragraph 2 apply to legal persons, the competent authorities shall apply the administrative sanctions and remedial measures set out in paragraph 3 to members of the management body, and to other individuals who under national law are responsible for the infringement.
5. Any decision imposing administrative sanctions or remedial measures set out in the first subparagraph of paragraph 1 and in paragraph 3 shall be properly reasoned and subject to the right of appeal before a tribunal.

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<sup>20</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

6. In the exercise of their powers under the first subparagraph of paragraph 1 and paragraph 3 competent authorities shall cooperate closely to ensure that the administrative sanctions and measures produce the results pursued by this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative sanctions and measures to cross-border cases.

#### *Article 58*

#### **Exercise of the power to impose administrative sanctions and remedial measures**

1. The competent authorities shall exercise the powers to impose administrative sanctions and remedial measures referred to in Article 57 in accordance with their national legal frameworks:
  - (a) directly;
  - (b) in collaboration with other authorities;
  - (c) by application to the competent judicial authorities.
2. The competent authorities, when determining the type and level of an administrative sanction or remedial measure imposed under Article 57(3) and (4), shall take into account all relevant circumstances, including, where appropriate:
  - (a) the materiality, gravity and the duration of the infringement;
  - (b) the degree of responsibility of the natural or legal person responsible for the infringement;
  - (c) the financial strength of the responsible natural or legal person, as indicated in particular by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;

- (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- (e) the losses for third parties caused by the infringement, insofar as they can be determined;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (g) previous infringements by the responsible natural or legal person.

*Article 59*

**Publication of administrative sanctions and remedial measures**

1. The competent authorities shall publish without undue delay on their official websites any decision imposing an administrative sanction or remedial measure for infringement of this Regulation after the addressee of the sanction or measure of the sanction or measure has been notified of that decision.
2. The publication referred to in paragraph 1 shall include information on the type and nature of the infringement and the identity of the persons responsible and the sanctions or measures imposed.
3. Where the publication of the identity, in case of legal persons, or the identity and the personal data, in the case of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication jeopardises the stability of financial markets or an on-going investigation, competent authorities shall either:

- (a) defer the publication of the decision imposing the administrative sanction or remedial measure until the moment where the reasons for non-publication cease to exist; or
- (b) publish the decision imposing the administrative sanction or remedial measure, omitting for a reasonable period of time the identity and personal data of the addressee, if it is envisaged that within that period the reasons for anonymous publication shall cease to exist and provided that such anonymous publication ensures an effective protection of the personal data concerned; or
- (c) not publish at all the decision to impose the administrative sanction or remedial measure in the event that the options set out in points (a) and (b) are considered to be insufficient to ensure:
  - (i) that the stability of financial markets would not be put in jeopardy;
  - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

4. In the case of a decision to publish a sanction or measure on an anonymous basis as referred to in paragraph 3(b), the publication of the relevant data may be postponed. Where a decision imposing an administrative sanction or remedial measure is subject to an appeal before the relevant judicial authorities, competent authorities shall also immediately add on their official website that information and any subsequent information on the outcome of such appeal. Any judicial decision annulling a decision imposing an administrative sanction or a remedial measure shall also be published.

5. The competent authorities shall ensure that any publication referred to in paragraphs 1 to 4 shall remain on their official website for at least five years after its publication. Personal data contained in the publication shall only be kept on the official websites of the competent authorities for the period which is necessary in accordance with the applicable data protection rules.

*Article 60*

**Duty to submit information to EIOPA in relation to sanctions and remedial measures**

1. The competent authorities shall inform EIOPA of all administrative sanctions and other measures imposed but not published in accordance with point (c) of Article 59(3) including any appeal in relation thereto and the outcome thereof.
2. The competent authorities shall provide EIOPA annually with aggregated information regarding all administrative sanctions and remedial measures imposed in accordance with Article 57.

EIOPA shall publish that information in an annual report.

3. Where the competent authorities have disclosed an administrative sanction or other measure to the public, they shall at the same time report that fact to EIOPA.
4. Where Member States have chosen, in accordance with the second subparagraph of Article 57(1), to lay down criminal sanctions for the infringements of this Regulation, their competent authorities shall provide EIOPA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. EIOPA shall publish anonymised data on criminal sanctions imposed in an annual report.
5. Where the competent authority has disclosed administrative sanctions, other administrative measures or criminal sanctions to the public, it shall simultaneously report them to EIOPA.

# CHAPTER XI

## FINAL PROVISIONS

### *Article 61*

#### **Processing of personal data**

With regard to the processing of personal data within the framework of this Regulation, PEPP providers and competent authorities shall carry out their tasks for the purpose of this Regulation in accordance with Regulation (EU) 2016/679. With regard to the processing of personal data by EIOPA within the framework of this Regulation, EIOPA shall comply with Regulation (EC) No 45/2001.

### *Article 62*

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in [Article 24(3), Article 26(3), Article 28(2), Article 32(7) and Article 39] shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of powers referred to in [Article 24(3), Article 26(3), Article 28(2), Article 32(7) and Article 39] may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
  
5. A delegated act adopted pursuant to [Article 24(3), Article 26(3), Article 28(2), Article 32(7) and Article 39] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

### *Article 63*

#### **Evaluation and report**

- 1.** Six years after the entry into application of this Regulation, the Commission shall carry out an evaluation of this Regulation and, after consulting EIOPA and the other ESAs where appropriate, present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

This evaluation shall in particular assess ~~consider the functioning of:~~

- (a) the level of market penetration and the effect of the regulation on pension provision across Europe, including substitution of existing products;**
- (b) the functioning of the registration process;**
- (c) the functioning of ~~the portability, in particular~~ the sub-accounts available to PEPP savers in the European Union;**
- (d) the functioning of the ~~and switching services;~~ including the sub-accounts available to PEPP savers in the European Union**
- (e) ~~and~~ the application of different risk-mitigation techniques used by the PEPP providers;**
- (f) the distribution of PEPP cross border;**
- (g) the provision of information to PEPP savers online.**

- 2. The assessment referred to in point (a) of the second subparagraph of paragraph 1 shall take into account the objective reasons for not opening sub-accounts in certain Member States and assess the progress and effort made by PEPP providers in developing technical solutions for opening sub-accounts.**
- 3.** Where the evaluation identifies important problems with the functioning of the Regulation, the Report should outline how the Commission is intending to address the identified problems, including steps and timings of the potential revision.

*Article 64*

**Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply eighteen months after its entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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