

ESMA response to the Commission Consultation on a potential EU personal pension framework

1. ESMA welcomes the opportunity to respond to the Consultation on a potential EU personal pension framework (hereafter “the Consultation”) given the possible relationship between the potential future framework for these products and the fund management, PRIIPs and MiFID rules.
2. This response should be considered in the broader context of ESMA’s responses to the CMU Green Paper¹ and to the EC Green Paper on Retail Financial Services² which, amongst other aspects, stated ESMA’s interest in the European Commission’s plan to contribute to the assessment of the case for a policy framework for personal pensions.
3. ESMA wishes to share with the Commission some reflections on a number of topics mentioned in the Consultation which appear relevant to ESMA. These reflections have been developed assuming that the potential EU framework for personal pensions could be established as a voluntary 29th/2nd regime.
4. ESMA however takes note of the option of establishing a European personal account³ and wishes to express our willingness to be involved in any further reflections on this option – should this model be further explored – as well as invite the Commission to consider that any chosen model complies with EU investor protection standards, also taking into account ESMA’s views mentioned hereafter, and Commission’s objectives to establish simple, safe personal pension products and to address the current obstacles linked to complexity and lack of understanding from consumers.
5. The recent Communication on Capital Markets Union – Accelerating Reform (14 September 2016) confirmed the high priority of this file and mentioned that options under consideration include a possible legislative proposal which could be tabled in 2017. ESMA supports the Commission’s intention to base its approach on the results of the public consultation and agrees that any initiative in this field should be underpinned by a thorough assessment, both in terms of likely impact and feasibility.

¹ ESMA response to the Commission Green Paper on Building a Capital Markets Union, 21 May 2015.

² ESMA response to the Commission Green Paper on retail financial services, 26 April 2016.

³ The model described by the Commission would offer a broad variety of investment possibilities but no pre-defined investment option.

I. Introduction

6. ESMA fully supports the objective of creating a true Capital Markets Union built on a high level of confidence among customers that their interests will be protected irrespective of where the firm providing the service or product is located in the EU, and on creating certainty for companies when doing business across borders. ESMA stands ready to contribute – for its areas of competence – to the establishment of a framework for simple, efficient and competitive personal pensions.
7. It is also evident that certain regulatory differences may impact the objective of a well-functioning market for personal pensions if consumers' interests are not protected in a similar manner, prompting therefore the EC to consider (bearing in mind the objective of simple, efficient and safe personal pensions which can be confidently relied upon) aligning certain future minimum requirements.

II. ESMA's views on a selection of issues/questions raised in the Consultation

II.1. Product characteristics

Issue

8. One of the options envisaged in the Consultation is the setting up of a voluntary European personal pension product ("PEPP") based on a set of features including transparency and disclosure requirements, investment options, accumulation and decumulation options, guarantees on the product and fees and charges levied. The Consultation envisages the possibility that the legislative framework in the area of asset management could be a source of inspiration for the design of a PEPP. Yet the concrete characteristics of such a product would have to be thoroughly developed.

ESMA's views

9. ESMA agrees that – should the decision to propose a PEPP be taken – the sectoral asset management legislation could prove a useful source of inspiration and elements to be taken into account to design not only the governance requirements relating to the management of PEPPs, but also the product rules. Indeed, on the latter aspect both the UCITS Directive and the ELTIF Regulation (which may be of particular interest in the context of PEPPs given that, by definition, ELTIFs target long-term investments) provide for, inter alia, a comprehensive set of rules on the assets which are eligible as investments for these funds and the diversification of composition that their portfolios have to comply with.
10. At the same time, it should be noted that no EU harmonised rules exist on the manner in which investment funds set up any investment options, accumulation or decumulation options, distribution specificities and guarantees. However, existing

funds' practices or national provisions might provide some source of inspiration on this aspect.

11. Furthermore, ESMA is supportive of the idea of introducing a product passport for the PEPP in order to tackle some of the portability issues mentioned in the Consultation. As already envisaged in the EIOPA technical advice,⁴ the product passport could meaningfully take inspiration from the long-standing marketing passport available for UCITS under the UCITS Directive. A more recent (but similar) example is represented by the passport available under the ELTIF Regulation. Moreover, in tailoring a possible future passport for PEPP, the Commission could also usefully take into account the findings of its recent consultation on the main barriers to the cross-border distribution of investment funds⁵ in order to ensure the implementation of an adequate regime for a smooth marketing of PEPPs across the EU.

II.2. Information to policyholders

Issue

12. The Consultation acknowledges that in order to make well-informed decisions about taking up and maintaining personal pension products, individuals should be appropriately informed of the key features of such products (contributions, guarantees provided, benefits, costs and charges, risks, underlying investment options, etc), in particular in view of the products' long-term nature and inherent complexity. The Consultation refers to several recent pieces of EU financial services legislation about information disclosure requirements, such as PRIIPs, MiFID II and IDD and notes that, in relation to key information to be disclosed, the options range from using existing models such as the PRIIPs KID with some adaptations to designing a more specific set of information requirements. It then refers to EIOPA's recommendation to use the PRIIPs KID as a starting point with some adjustments (for example information related to the choices to be made by savers or options provided, projections and estimations on how investments and related returns accumulate over time) to allow for the specificities of personal pensions to be accommodated.
13. The Consultation also notes that a distinction should be made between information provided before subscribing to a product (pre-contractual information) and information provided to savers during the product's lifetime.

ESMA's views

14. ESMA agrees that the nature, frequency and content of disclosures should be one of the key elements of a potential EU framework for personal pension products. ESMA

⁴ See pages 66-67 of the EIOPA's advice on the development of an EU Single Market for personal pension products (PPP) (EIOPA-16/457).

⁵ Consultation document "CMU action on cross-border distribution of funds (UCITS, AIF, ELTIF, EuVECA and EuSEF) across the EU".

also agrees that both pre-contractual and periodic information are necessary. In ESMA's view recent pieces of legislation (such as PRIIPs, MiFID, IDD) enhance overall transparency and comparability for products and services⁶.

15. With respect to the disclosure of information on products (in particular, risk, rewards and costs), ESMA is of the view that, for the sake of consistency and clarity vis-a-vis retail investors, any deviation as compared to the existing disclosure of the same type of information under the PRIIPs framework should be limited and duly justified. In particular, there should not be types of costs included in the PRIIPs cost indicator that would not be included in the cost disclosure information under the personal pension framework, and the same types of costs should be calculated using the same methodology. Information on rewards should also be consistent with the different performance scenarios disclosed in the PRIIPs KID.
16. Where personal pensions would take the form of investment funds, MiFID disclosure requirements would provide for detailed information on, amongst others, the firms distributing them and their services, the product and the proposed investment strategy (including any associated risks), on costs and charges, and this both ex-ante, in order to allow clients to take investment decisions on an informed basis, as well as during the life of the investment.
17. In ESMA's view the above disclosure requirements are able to capture/address any specificities linked to the long-term and complex nature of personal pension products and any deviations should be limited and duly justified (as noted in relation to the PRIIPs KID). In particular and in light of several questions on both the necessity of providing certain information items (including information on costs and returns, guarantees, investment options, any flexibility in contributions, etc) as well as the timing (before signing the contract and/or periodically after, or even not at all), ESMA would like to suggest a cautious approach with respect to any layered approach which would not ensure appropriate and comprehensible information is provided in good time to consumers.
18. Finally, ESMA notes the reference to the possibility to make it mandatory for individuals to determine the appropriate level of market risk he/she should be taking, in view of their time horizon, the risk of inflation, and in view of the different approaches offered by providers and would like to note that, in our understanding, EIOPA's advice referred to this point in the context of information to consumers (on what the level of risk shown means in terms of performance and on how investments and related returns accumulate over the longer time, also taking into account the impact of inflation)⁷. Moreover, making it mandatory for consumers to determine themselves the appropriate level of market risk they would be willing to take would appear to contradict other

⁶ Please note ESMA's call for closer alignment across various pieces of legislation as stressed in our response to the Green Paper on CMU and to the Green Paper on retail financial services mentioned above.

⁷ See pages 33 and 34, EIOPA's advice on the development of an EU Single Market for personal pension products (PPP), 14 July 2016.

reflections around additional protections that might be required in relation to such long-term and complex products.

III. Distribution

Issue

19. The Consultation noted that while personal pension products are currently sold through physical distribution channels such as branches or intermediary networks, recent technological developments give rise to new ways of online distribution. Such online channels have the potential to enhance efficiency and reducing costs of products, allow for online personalised advice or facilitate comparing products from distinct providers. Online channels could also facilitate purchasing products from providers in other EU Member States.
20. In accordance with the Consultation, the uptake of personal pensions would be greatly enhanced by ensuring it would be available via a wide range of distribution channels, including both intermediary and online (non-advised) sales. The offer of personal pension products across borders would also be beneficial to increasing uptake.

ESMA's views

21. It is ESMA's view that the distribution of personal pension products should be limited only to authorised intermediaries and should comply with IDD or MiFID rules. Ensuring the distribution of these products is always covered by one of the above EU frameworks should ensure [relatively] similar organisational and conduct of business standards and facilitate the cross-border provision of these products. Moreover, these frameworks allow for the development of various distribution channels (i.e. either online or through physical networks), and therefore for taking into account any consumers' needs and preferences for specific channels. Online channels⁸ could, for instance, be a very good fit for the distribution of non-complex personal pension products⁹, easy for customers to access and understand.
22. In ESMA's opinion the question of online distribution is however different from the question of advice, and it being compulsory or not. ESMA agrees with the statement that, in light of the often complex nature of the products and information asymmetries between providers and savers, distributors, and in particular the advice they could provide, could have a very significant impact on the development of a sound personal pensions market. Advice could for instance be deemed necessary in the case of more complex products/investment options (other than the default one). Furthermore, this would be in line with product governance requirements, and in particular with the identification of a distribution strategy and distribution channels that would ensure that

⁸ Potentially in parallel to physical channels if distributors choose so or if this is deemed more appropriate in light of customers' preferences.

⁹ These products would be the ones including the default investment option.

products are distributed in accordance with the needs, characteristics and objectives of the identified target clients. Finally, ESMA takes the opportunity to recall that the use of automated tools could improve the provision of and access to advice, reduce costs and increase advisers' efficiency¹⁰.

23. ESMA would also like to recall that under MiFID II, advisers must inform clients whether they will provide the client with a periodic assessment of the suitability of the product recommended. In light of the long term and complex nature of products, this requirement could be strengthened to impose such periodic assessments in line with the suggestion that distributors should/could play a role during the lifetime of a personal pension product, assisting consumers in assessing their retirement provisions over time and helping trigger changes in consumers' allocation of resources within a personal pension product, or switching investment option over time, especially in the run-up to retirement.

¹⁰ See Joint Committee work stream on automated advice.