

## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) 2019/1238 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 20 June 2019****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 <sup>(2)</sup>,

Whereas:

- (1) Union households are amongst the highest savers in the world, but the bulk of those 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) Old age pensions constitute an essential part of a retiree's income and for many people, adequate pension provision makes the difference between a comfortable old age and poverty. They are a precondition for exercising fundamental rights laid down in the Charter of Fundamental Rights of the European Union, including in Article 25 on the rights of the elderly which states: 'The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life'.
- (3) The Union is facing several challenges, including demographic challenges because of the fact that Europe is an ageing continent. In addition, career patterns, the labour market and the distribution of wealth are undergoing radical changes, not least as a result of the digital revolution.

<sup>(1)</sup> OJ C 81, 2.3.2018, p. 139.

<sup>(2)</sup> Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and decision of the Council of 14 June 2019.

- (4) A substantial part of old age pensions is provided under public schemes. Notwithstanding the exclusive national competence regarding the organisation of pension systems as determined by the Treaties, income adequacy and financial sustainability of national pension systems are crucial to the stability of the Union as a whole. By channelling more of Europeans' savings from cash and bank deposits to long-term investment products, such as voluntary pension products with a long-term retirement nature, the impact would therefore be beneficial both for individuals (who would benefit from higher returns and improved pension adequacy) and for the broader economy.
- (5) In 2015, 11,3 million Union citizens of working age (20 to 64 years old) were residing in a Member State other than the Member State of their citizenship and 1,3 million Union citizens were working in a Member State other than their Member State of residence.
- (6) A portable pan-European Personal Pension Product (PEPP) with a long-term retirement nature will increase its attractiveness as a product, particularly to young people and mobile workers, and will help to further facilitate the right of Union citizens to live and work across the Union.
- (7) 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.
- (8) This Regulation enables the creation of a personal pension product which will have a long-term retirement nature and will take into account environmental, social and governance (ESG) factors as referred to in the United Nations-supported Principles for Responsible Investment, insofar as possible, will be simple, safe, reasonably-priced, transparent, consumer-friendly and portable Union-wide and complements the existing systems in the Member States.
- (9) Currently, the internal market for personal pension products does not function smoothly. In some Member States there is not yet a market for personal pension products. In others, personal pension products are available, but there is a high degree of fragmentation between national markets. As a result, personal pension products have only a limited degree of portability. This can result in difficulties for individuals to make use of their basic freedoms. For instance, they might 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.
- (10) As the internal market for personal pension products is fragmented and diverse, the impact of PEPPs might be very different across Member States, and the target audience might be equally varied. In some Member States, PEPPs might offer solutions for people who do not currently have access to adequate provisions. In other Member States, PEPPs could broaden the consumer choice, or offer solutions to mobile citizens. However, PEPPs should not aim at replacing existing national pension systems, since it is an additional and complementary personal pension product.

- (11) 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. For this purpose, a PEPP will represent a step forward for the enhancement of the capital markets integration due to its support to the long-term financing of the real economy taking into account the long-term retirement nature of the product and the sustainability of investments.
- (12) As announced in the Commission's Action Plan on building a CMU of 30 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'.
- (13) In the resolution of the European Parliament 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 <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'.
- (14) In its conclusions of 28 June 2016, 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'.
- (15) In the Communication of the Commission of 14 September 2016 Capital Markets Union — Accelerating Reform, 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'.
- (16) In the Communication of the Commission of 8 June 2017 Mid-Term Review of the Capital Markets Union Action Plan, 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'.
- (17) The development of a PEPP will contribute to increasing choices for retirement saving, especially for mobile workers, and establish a Union market for PEPP providers. It should, however, only be complementary to public pension systems.
- (18) Financial education can support the understanding and awareness of households' saving choices in the area of voluntary personal pension products. Savers should also have a fair chance to fully grasp the risks and the features related to a PEPP.

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<sup>(3)</sup> OJ C 11, 12.1.2018, p. 24.

- (19) 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 statutory and occupational pension schemes and products, it will contribute to meeting the needs of people wishing to enhance the adequacy of their retirement savings, addressing the demographic 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, nor will it affect existing national statutory and occupational pension schemes and products.
- (20) A PEPP is an individual non-occupational pension product subscribed to voluntarily by a PEPP saver in view of retirement. Because a PEPP should provide for long-term capital accumulation, possibilities for the early withdrawal of capital should be limited and might be penalised.
- (21) This Regulation harmonises a set of core features for the PEPP, which concern key elements such as distribution, minimum content of contracts, investment policy, provider switching, or cross-border provision and portability. The harmonisation of those 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 PEPP will increase competition between providers on a pan-European basis and create economies of scale that should benefit savers.
- (22) Article 114 of the Treaty on the Functioning of the European Union (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. This Regulation is harmonising the core features of PEPPs which do not have to be subject to specific national rules and so, a regulation appears better suited than a directive in this case. On the contrary, the features which are outside the scope of this Regulation (e.g. accumulation phase conditions) are subject to national rules.
- (23) This Regulation should lay down uniform rules on the registration, provision, distribution and supervision of PEPPs. PEPPs should be subject to the provisions in this Regulation, relevant sectorial Union law as well as the corresponding delegated and implementing acts. In addition, the laws adopted by Member States in implementation of sectorial Union law should apply. If not already covered by this Regulation or by sectorial Union law, the respective laws of Member States should apply. A PEPP should also be subject to a contract concluded between the PEPP saver and the PEPP provider (the 'PEPP contract'). There is a set of key characteristics of the product that should be included in 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.
- (24) This Regulation should make clear that the PEPP contract 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. A PEPP contract might also be concluded by the representative of a group of PEPP savers, such as an independent savers association, acting on behalf of that group provided that this is done in compliance with this Regulation and applicable national law and that PEPP savers subscribing in this way obtain the same information and advice as PEPP savers concluding a PEPP contract either directly with a PEPP provider or through a PEPP distributor.

- (25) PEPP providers should have access to the whole Union market with one single product registration to be granted on the basis of a single set of rules. In order to market a product under the designation 'PEPP', applicant PEPP providers should apply for registration to their competent authorities. This Regulation does not prevent registration of an existing personal pension product which fulfils the conditions laid down by this Regulation. 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 the competent authorities, they should notify the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(4)</sup> accordingly to register the PEPP provider and the PEPP in the central public 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 and to EIOPA, where applicable.
- (26) A central public register should be created by EIOPA to contain information about PEPPs 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 the PEPP is offered. Where PEPP providers are not distributing PEPPs within the territory of a Member State but are able to open a sub-account for that Member State in order to ensure the portability for their PEPP customers, that register should also contain information about the Member States for which the PEPP provider offers sub-accounts.
- (27) The way in which institutions for occupational retirement provision (IORPs), as referred to in Directive (EU) 2016/2341 of the European Parliament and of the Council <sup>(5)</sup>, are organised and regulated varies significantly between Member States. In some Member States, those institutions are only allowed to carry out occupational pension activities whereas in other Member States, those institutions, including the authorised entities responsible for operating them and acting on their behalf, where IORPs do not have legal personality, are allowed to carry out occupational and personal pension activities. This has not only led 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 which are also authorised and supervised to provide personal pension products pursuant to national law should be allowed to provide PEPPs. Moreover and to further safeguard financial stability, all assets and liabilities corresponding to the PEPP provision business should be ring-fenced, without any possibility to transfer them to the other retirement provision business of the institution. IORPs that provide PEPPs should also at all times comply with the relevant standards set by Directive (EU) 2016/2341, including the more detailed investment rules laid down by the Member States where they are registered or authorised in accordance with Directive (EU) 2016/2341 when transposing that Directive, and the provisions of their system of governance. As with other PEPP providers, when this Regulation lays down more stringent provisions, such provisions should apply.

- (28) The single PEPP passport will ensure the creation of an internal market for PEPP.
- (29) PEPP providers should be able to distribute PEPPs that they have manufactured and PEPPs that they have not manufactured provided that this would be in compliance with the relevant sectorial law. PEPP distributors should be entitled to distribute PEPPs which they have not manufactured. PEPP distributors should distribute only those products for which they have the appropriate knowledge and competence in accordance with the relevant sectorial law.

<sup>(4)</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>(5)</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

- (30) Advice should be given to prospective PEPP savers by PEPP providers or PEPP distributors prior to the conclusion of the PEPP contract taking into account the long-term retirement nature of the product, the individual demands and needs of the PEPP saver and the limited redeemability. Advice should particularly aim at informing a PEPP saver about the features of the investment options, the level of capital protection and the forms of out-payments.
- (31) Under the freedom to provide services or the freedom of establishment, PEPP providers can provide PEPPs and PEPP distributors can distribute PEPPs within the territory of a host Member State after opening of a sub-account for that host Member State. 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 infringement 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 competent authorities of the home Member State fail to take appropriate measures or if the measures taken are insufficient.
- (32) 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.
- (33) 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, thereby 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.
- (34) 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 the PEPP provider. The sub-account should be used to keep a record of the contributions made during the accumulation phase and the out-payments made during the decumulation phase in compliance with the law of the Member State for which the sub-account has been opened. At the level of the PEPP saver, a first sub-account should be created upon the conclusion of a PEPP contract.
- (35) In order to allow a smooth transition for PEPP providers, the obligation to provide PEPPs comprising sub-accounts for at least two Member States should apply within three years of the date of application 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 without delay and 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 residence.

- (36) Taking into account the long-term retirement nature of the PEPP and the administrative burden involved, PEPP providers and PEPP distributors should provide clear, easy to understand, and adequate information to prospective 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 PEPP including the pre-contractual stage, the conclusion of the contract, the accumulation phase (including pre-retirement) and the decumulation phase. In particular, information concerning accrued retirement entitlements, projected levels of PEPP retirement benefits, risks and guarantees, the integration of ESG factors and costs should be given. Where projected levels of PEPP retirement benefits are based on economic scenarios, that information should also include a best-estimate scenario and an unfavourable scenario, which should be extreme but realistic.
- (37) Before concluding a PEPP contract, prospective PEPP savers should be given all the necessary information to make an informed choice. Prior to the conclusion of the PEPP contract, retirement-related demands and needs should be specified and advice should be provided.
- (38) In order to ensure optimal product transparency, PEPP providers should draw up a PEPP key information document (PEPP KID) for the PEPPs that they manufacture before those PEPPs can be distributed to PEPP savers. They should also be responsible for the accuracy of the PEPP KID. The PEPP KID 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>(6)</sup> which, as a consequence, would not have to be provided for PEPPs. A stand-alone PEPP KID should be drawn up for the Basic PEPP. Where the PEPP provider offers alternative investment options, a generic KID for the alternative investment options which could also contain references to other documents should also be provided. Alternatively, where the information required on the alternative investment options cannot be provided within a single stand-alone KID, a stand-alone KID for every alternative investment option should be provided. However, this should only be the case if the provision of a generic KID for the alternative investment options would not be in the interest of PEPP customers. Therefore, when the competent authorities assess the compliance of the PEPP KID with this Regulation, they should ensure optimal comparability of different investment options, if applicable, taking into account in particular up-to-date knowledge of behavioural analysis to avoid any cognitive bias caused by the presentation of the information.
- (39) In order to ensure widespread dissemination and availability of PEPP KIDs, this Regulation should provide for the publication by the PEPP provider of the PEPP KIDs on its website. The PEPP provider should publish the PEPP KID 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 the accumulation phase and to the decumulation phase for that Member State.
- (40) Personal 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 various PEPP providers, together with any further costs or fees charged by intermediaries or other parts of the investment chain not already included by the PEPP providers.

<sup>(6)</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).

- (41) The details of the information to be included in the PEPP KID 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 Commission should be empowered to adopt regulatory technical standards. The draft regulatory technical standards should be developed by EIOPA after consulting the other European supervisory authorities (ESAs) — the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(7)</sup> and the European Supervisory Authority (the European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(8)</sup> where applicable as well as with the European Central Bank, competent authorities and after consumer and industry testing as provided for in this Regulation, specifying the details and presentation of the information to be included in the PEPP KID; the conditions under which the PEPP KID should be reviewed and revised; the conditions for fulfilling the requirement to provide the PEPP KID; the rules to determine the assumptions on pension benefit projections; the details of the presentation of the information to be contained in the PEPP Benefit Statement; and the minimum criteria that the risk-mitigation techniques have to satisfy. When developing the draft regulatory technical standards, EIOPA should take into account the various possible types of PEPPs, the long-term nature of PEPPs, the capabilities of PEPP savers, and the features of PEPPs. Before submitting the draft regulatory technical standards to the Commission, consumer testing and industry testing with real data should take place where applicable. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010. The Commission should also be empowered to adopt implementing technical standards developed by EIOPA regarding the details for cooperation and the exchange of information together with the requirements needed to present that information in a standardised format allowing for comparison and, after consulting the other ESAs and the competent authorities and after industry testing, regarding the format of supervisory reporting by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1094/2010.
- (42) The PEPP KID should be clearly distinguishable and separate from any marketing material.
- (43) PEPP providers should draw up a PEPP benefit statement addressed to PEPP savers, in order to present them with key personal and generic data about the PEPP and to ensure up-to-date information on it. The PEPP 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. The PEPP benefit statement should also contain key information on the investment policy relating to ESG factors and should indicate where and how PEPP savers can obtain supplementary information on the integration of ESG factors. The PEPP benefit statement should be provided annually to PEPP savers.
- (44) PEPP providers should inform PEPP savers two months before the dates on which PEPP savers have the possibility to modify their pay-out options about the upcoming start of the decumulation phase, the possible forms of out-payments and the possibility to modify the form of out-payments. Where more than one sub-account has been opened, PEPP savers should be informed about the possible start of the decumulation phase of each sub-account.
- (45) During the decumulation phase, PEPP beneficiaries should continue to receive information on their PEPP 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.

<sup>(7)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>(8)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (46) In order to adequately protect 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, including those having a long-term horizon. 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 and in the best long-term interests of PEPP savers as a whole. Compliance with the prudent person rule therefore requires an investment policy geared to the customers' structure of the PEPP provider.
- (47) 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. The prudent person rule should also take into explicit consideration the role played by ESG factors in the investment process.
- (48) 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.
- (49) 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.
- (50) ESG factors 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 in order to avoid 'stranded assets'. The information on ESG factors should be available to EIOPA, to the competent authorities and to PEPP savers.
- (51) One of the objectives of regulating PEPPs is to create a safe, cost-friendly long-term retirement savings product. Because the investments concerning personal pension products are long-term, special regard should be given to the long-term consequences of asset allocation. In particular, ESG factors should be taken into account. PEPP savings should be invested taking into account ESG factors such as those set out in the Union's climate and sustainability objectives as set out in the Paris Agreement on Climate Change (Paris Agreement), the United Nations Sustainable Development Goals, and the United Nations Guiding Principles on Business and Human Rights.

- (52) 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 non-cooperative jurisdictions identified in the applicable Council's conclusions on the list of non-cooperative jurisdictions for tax purposes, nor in a high-risk third country with strategic deficiencies identified by the applicable Commission Delegated Regulation adopted on the basis of Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(9)</sup>.
- (53) 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 that choice 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, it should be possible for PEPP providers to allow PEPP savers to modify the chosen investment option more frequently.
- (54) The Basic PEPP should be a safe product and should act as a default investment option. It could take the form of either a risk-mitigation technique consistent with the objective of allowing the PEPP saver to recoup the capital, or a guarantee on the capital invested. A risk-mitigation technique consistent with the objective to allow the PEPP saver to recoup the capital 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. A guarantee on the capital invested should be due at the start of the decumulation phase and during the decumulation phase, where applicable.
- (55) In order to guarantee PEPP savers cost-efficiency and a sufficient performance, the costs and fees for the Basic PEPP should be limited to a fixed percentage of the accumulated capital. While that limit should be fixed at 1 % of the accumulated capital, it would be appropriate to further specify the types of costs and fees to be taken into account by regulatory technical standards, in order to ensure a level playing field between different PEPP providers and different types of PEPPs with their particular cost and fee structures. The Commission should be empowered to adopt such regulatory technical standards which should be developed by EIOPA. In drawing up the draft regulatory technical standards, EIOPA should, in particular, consider the long-term nature of the PEPP, the different types of PEPPs and the cost-relevant factors linked to their specific features, so as to ensure a fair and equal treatment of the different PEPP providers and their products while taking into account the character of the Basic PEPP as a simple, cost-efficient and transparent product providing a sufficient long-term real investment return. Moreover, with the aim of preserving the long-term retirement nature of the product, the form of out-payments, in particular with respect to lifelong annuities, should be carefully assessed. Within that framework, in order to ensure that PEPP providers offering a capital guarantee benefit of a level playing field with other providers, EIOPA should duly take into account the structure of costs and fees. Furthermore, the percentage values for costs and fees should be regularly revised in order to ensure their continued adequacy taking into account any changes in the level of costs. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

In order to ensure continued cost-efficiency and to protect PEPP customers from overly burdensome cost structures, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the percentage value, taking into account its reviews, in particular the actual level and changes in the actual level of costs and fees and the impact of the cost cap on the availability of PEPPs, and appropriate market access of different PEPP providers providing different types of PEPPs.

- (56) 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.

<sup>(9)</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (57) Where the PEPP provider is an IORP or an EU Alternative Investment Fund Manager (EU AIFM), it should appoint a depositary in relation to the safekeeping of the assets corresponding to the PEPP provision business. Additional safeguards are needed 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/EU of the European Parliament and of the Council<sup>(10)</sup> are targeted to funds marketed only to professional investors, with the exception of European long-term investment funds under Regulation (EU) 2015/760 of the European Parliament and of the Council<sup>(11)</sup>, marketed to retail investors, and the sectorial law applicable to IORPs does not require appointment of a depositary in all cases. In order to ensure the highest level of investor protection in relation to the safekeeping of assets corresponding to the PEPP provision business, this Regulation requires IORPs and EU AIFM providing PEPP to follow the rules of Directive 2009/65/EC of the European Parliament and of the Council<sup>(12)</sup> as regards the appointment of the depositary, the execution of its tasks and its oversight duties.
- (58) Transparency and fairness 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.
- (59) In order to fulfil the objectives set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of specifying the conditions for the exercise of intervention powers by EIOPA and the competent authorities and the criteria and factors to be applied by EIOPA to determine when there is a significant PEPP saver protection concern. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>(13)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (60) 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.
- (61) 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 bodies 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.

<sup>(10)</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).

<sup>(11)</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

<sup>(12)</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) (OJ L 302, 17.11.2009, p. 32).

<sup>(13)</sup> OJ L 123, 12.5.2016, p. 1.

- (62) 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 PEPP provider located in the same or another Member State during the accumulation phase, through a clear, quick and safe procedure. However, PEPP providers should not be obliged to provide the switching service for PEPPs, where savers are receiving out-payments in the form of lifetime annuities. During switching, transferring PEPP providers should transfer the corresponding amounts or, where applicable, assets-in-kind from the PEPP account and close it. PEPP savers should conclude contracts with receiving PEPP providers for the opening of a new PEPP account. The new PEPP account should have the same sub-account structure as the former PEPP account.
- (63) During the switching service, PEPP savers can choose to transfer assets-in-kind only when the switching is between PEPP providers, such as investment firms or other eligible providers holding an additional licence, engaged in portfolio management for PEPP savers. Written consent of the receiving provider is needed in that case. In the case of collective investment management, the switching of assets-in-kind is not possible as there is no separation of assets for every PEPP saver.
- (64) 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. Considering the pan-European nature of the product, PEPP savers should be able to switch without delay and free of charge when no sub-account is available in the Member State the PEPP saver moves to.
- (65) Before giving the authorisation for switching, the PEPP saver should be informed of all the steps of the procedure and costs necessary to complete the switching, in order to enable the PEPP saver to make an informed decision about the switching service.
- (66) 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.
- (67) 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 or guarantee at the moment of switching. The PEPP provider might also decide to ensure the capital protection or provide the guarantee at the moment of switching.
- (68) PEPP savers 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 a 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 a guarantee 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 and in any case, be limited to 0,5 % of the corresponding amounts or monetary value of the assets-in-kind to be transferred.

- (69) 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 one year before the start of the decumulation phase, at the start of the decumulation phase 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, it should be possible for the PEPP saver to opt for a different pay-out choice for each sub-account opened in his PEPP account.
- (70) PEPP providers should be allowed to make available to PEPP savers a wide range of forms of out-payments. That 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 Union policies and politically feasible, as it preserves enough flexibility for Member States to decide about which forms of out-payments they wish to encourage. In line with the long-term retirement nature of the product, it should be possible for Member States to adopt measures to privilege particular forms of out-payments such as quantitative limits for lump sum payments to further encourage lifelong annuities and drawdown payments.
- (71) In view of the pan-European character of the PEPP, there is a need to ensure a consistent high level of PEPP saver protection throughout the internal market. This requires adequate tools to effectively combat infringements and prevent consumer detriment. Therefore, the powers of EIOPA and the competent authorities should be complemented by an explicit mechanism for prohibiting or restricting the marketing, distribution or sale of any PEPP giving rise to serious concerns regarding PEPP saver protection, including with respect to the long-term retirement nature of the product, the orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for EIOPA.

The powers of EIOPA should be based on Article 9(5) of Regulation (EU) No 1094/2010 so as to ensure that such mechanisms for intervention can be applied in the case of significant PEPP saver protection concerns, including with respect to the particular long-term retirement nature of the PEPP. Where the conditions are met, the competent authorities should be able to impose a prohibition or restriction on a precautionary basis before a PEPP has been marketed, distributed or sold to PEPP savers. Those powers do not relieve the PEPP provider of its responsibility to comply with all the relevant requirements under this Regulation.

- (72) 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.
- (73) Although the ongoing supervision of PEPP providers is to be exercised by the respective competent authorities, EIOPA should coordinate the supervision with regards to PEPPs, in order to guarantee the consistent application of a unified supervisory methodology, contributing in that way to the pan-European and long-term retirement nature of PEPPs.
- (74) In order to strengthen consumer rights and to facilitate access to a complaints procedure, PEPP savers should be able, either individually or collectively, to submit complaints to the competent authorities of their Member State of residence, regardless of where the infringement occurred.
- (75) EIOPA should cooperate with competent authorities and facilitate cooperation and consistency between them. In this respect, EIOPA should play a role in the power of 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.
- (76) In order to ensure compliance with this Regulation by PEPP providers and PEPP distributors and to ensure that they are subject to similar treatment across the Union, administrative penalties and other measures which are effective, proportionate and dissuasive should be provided.
- (77) In line with the Communication of the Commission of 8 December 2010 'Reinforcing sanctioning regimes in the financial services sector' 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 other measures.

- (78) Although Member States can 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 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.
- (79) Competent authorities should be empowered to impose pecuniary penalties which are sufficiently high to offset the actual or potential profits, and to be dissuasive even for larger financial undertakings and their managers.
- (80) In order to ensure a consistent application of penalties across the Union, the competent authorities should take into account all relevant circumstances when determining the type of administrative penalty or other measures and the level of pecuniary penalties.
- (81) In order to ensure that decisions on infringements 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 unless such disclosure jeopardises the stability of financial markets or an ongoing investigation.
- (82) In order to detect potential infringements, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms, to enable reporting of potential or actual infringements.
- (83) This Regulation should be without prejudice to any provisions in the laws of Member States in respect of criminal offences.
- (84) 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 or the processing of personal data by PEPP providers or PEPP distributors, should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>(14)</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>(15)</sup>. Any exchange or transmission of information by the ESAs should be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>(16)</sup>.
- (85) Given the sensitivity of personal financial data, strong data protection is of the utmost importance. Therefore it is recommended that data protection authorities are closely involved in the implementation and supervision of this Regulation.
- (86) The registration and notification procedure laid down in this Regulation should not replace any additional national procedure in place to have the possibility to benefit from the advantages and incentives fixed at national level.
- (87) 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. Such an evaluation should take account of the different aims and purposes of establishing a well-functioning PEPP-market, and in particular should evaluate whether this Regulation has resulted in more European citizens saving for sustainable and adequate pensions. The importance of minimum European standards for the supervision of PEPP providers also requires the evaluation of the PEPP providers in terms of compliance with this Regulation and the applicable sectorial law.

<sup>(14)</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>(15)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>(16)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (88) Given the possible long-term implications of this Regulation, it is essential to closely monitor developments during the initial phase of application. When carrying out the evaluation the Commission should also reflect the experiences of EIOPA, stakeholders and experts, and report to the European Parliament and to the Council any observations it might have.
- (89) This Regulation should ensure respect for fundamental rights and observe the principles recognised in particular by the Charter of the Fundamental Rights of the European Union, in particular the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life, 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.
- (90) 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 the principle of subsidiarity as set out in Article 5 of the Treaty on 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 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 and is complementary to any statutory or occupational pension product;

- (b) provides for long-term capital accumulation with the explicit objective of providing income on retirement and with limited possibilities for early withdrawal before that time;
- (c) is neither a statutory nor an occupational pension product;
- (2) 'pan-European Personal Pension Product' or 'PEPP' means a long-term savings personal pension product, which is provided by a financial undertaking eligible according to Article 6(1) under a PEPP contract, and subscribed to by a PEPP saver, or by an independent PEPP savers association on behalf of its members, in view of retirement, and which has no or strictly limited possibility for early redemption and is registered in accordance with this Regulation;
- (3) 'PEPP saver' means a natural person who has concluded a PEPP contract with a PEPP provider;
- (4) 'PEPP contract' means a contract between a PEPP saver and a PEPP provider which fulfils the conditions laid down in Article 4;
- (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 retirement and the PEPP beneficiary to receive PEPP benefits;
- (6) 'PEPP beneficiary' means a natural person receiving PEPP benefits;
- (7) 'PEPP customer' means a PEPP saver, a prospective PEPP saver or a PEPP beneficiary;
- (8) 'PEPP distribution' means advising on, proposing, or carrying out other work preparatory to the conclusion of contracts for providing a PEPP, concluding such contracts, or assisting in the administration and performance of such contracts, including the provision of information concerning one or more PEPP contracts in accordance with criteria selected by PEPP customers through a website or other media and the compilation of a PEPP ranking list, including price and product comparison, or a discount on the price of a PEPP, when the PEPP customer is able to directly or indirectly conclude a PEPP contract using a website or other media;
- (9) 'PEPP retirement benefits' means benefits paid by reference to reaching, or the expectation of reaching, retirement in one of the forms referred to in Article 58(1);
- (10) 'PEPP benefits' means PEPP retirement benefits and other additional benefits to which a PEPP beneficiary is entitled in accordance with the PEPP contract, in particular for the strictly limited cases of early redemption or if the PEPP contract provides a coverage of biometric risks;
- (11) 'accumulation phase' means the period during which assets are accumulated in a PEPP account and ordinarily runs until the decumulation phase starts;
- (12) 'decumulation phase' means the period during which assets accumulated in a PEPP account may be drawn upon to fund retirement or other income requirements;

- (13) '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;
- (14) 'drawdown payments' means discretionary amounts which PEPP beneficiaries may draw up to a certain limit on a periodic basis;
- (15) 'PEPP provider' means a financial undertaking as referred to in Article 6(1) authorised to manufacture a PEPP and to distribute that PEPP;
- (16) 'PEPP distributor' means a financial undertaking as referred to in Article 6(1) authorised to distribute PEPPs not manufactured by it, an investment firm providing investment advice, or an insurance intermediary as defined in point (3) of Article 2(1) of Directive (EU) 2016/97 of the European Parliament and of the Council <sup>(17)</sup>;
- (17) '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;
- (18) 'competent authorities' means the national authorities designated by a Member State to supervise PEPP providers or PEPP distributors, as the case may be or to carry out the duties provided for in this Regulation;
- (19) 'home Member State of the PEPP provider' means home Member State as defined in the relevant legislative act referred to in Article 6(1);
- (20) '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;
- (21) 'host Member State of the PEPP provider' means a Member State, other than the home Member State of the PEPP provider, in which the PEPP provider provides PEPPs under the freedom to provide services or the freedom of establishment or for which the PEPP provider has opened a sub-account;

<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).

- (22) 'host Member State of the PEPP distributor' means a Member State, other than the home Member State of the PEPP distributor, in which the PEPP distributor distributes PEPPs under the freedom to provide services or the freedom of establishment;
- (23) 'sub-account' means a national section which is opened within each 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 phase and decumulation phase;
- (24) '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 PEPP savers;
- (25) 'financial instruments' means those instruments specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council <sup>(18)</sup>;
- (26) 'depository' means an institution charged with the safekeeping of assets and oversight of compliance with the fund rules and applicable law;
- (27) 'Basic PEPP' means an investment option as laid down in Article 45;
- (28) 'risk mitigation techniques' means techniques for a systematic reduction in the extent of exposure to a risk and/or the likelihood of its occurrence;
- (29) 'biometric risks' means risks linked to death, disability and/or longevity;
- (30) 'switching provider' means, upon a PEPP saver's request, transferring from one PEPP provider to another the corresponding amounts, or where applicable assets-in-kind in accordance with Article 52(4), from one PEPP account to the other, with closing the former PEPP account without prejudice to point (e) of Article 53(4);
- (31) 'advice' means a personal recommendation provided by the PEPP provider or PEPP distributor to a PEPP customer in respect of one or more PEPP contracts;
- (32) 'partnership' means cooperation between PEPP providers to offer sub-accounts for different Member States in the context of the portability service, as referred to in Article 19(2);
- (33) 'environmental, social and governance factors' or 'ESG factors' means environmental, social and governance matters such as those referred to in the Paris Agreement, the United Nations Sustainable Development Goals, the United Nations Guiding Principles on Business and Human Rights and the United Nations-supported Principles for Responsible Investment.

<sup>(18)</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).

*Article 3***Applicable rules**

The registration, manufacturing, distribution and supervision of PEPPs shall be subject to:

- (a) this Regulation; and
- (b) in the case of matters not regulated by this Regulation:
  - (i) relevant sectorial Union law including the corresponding delegated and implementing acts;
  - (ii) the laws adopted by Member States in implementation of relevant sectorial Union law and implementation of measures relating specifically to PEPPs;
  - (iii) other national laws which apply to PEPPs.

*Article 4***PEPP contract**

1. The PEPP contract shall lay down the specific provisions for the PEPP in accordance with the applicable rules referred to in Article 3.
2. The PEPP contract shall in particular include the following:
  - (a) a description of the Basic PEPP, as referred to in Article 45, including information on the guarantee on the capital invested or the investment strategy directed at ensuring the capital protection;
  - (b) a description of the alternative investment options, as referred to in Article 42(2), where applicable;
  - (c) the conditions related to the modification of the investment option referred to in Article 44;
  - (d) where the PEPP offers biometric risk coverage, details of that coverage, including the circumstances that would trigger it;
  - (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 referred to in Article 59;
  - (f) the conditions related to the portability service referred to in Articles 17 to 20 including information on the Member States for which a sub-account is available;
  - (g) the conditions related to the switching service referred to in Articles 52 to 55;

- (h) the categories of costs and total aggregate costs expressed in percentage terms and in monetary terms, where applicable;
- (i) the conditions related to the accumulation phase for the sub-account corresponding to the Member State of residence of the PEPP saver referred to in Article 47;
- (j) the conditions related to the decumulation phase for the sub-account corresponding to the Member State of residence of the PEPP saver referred to in Article 57;
- (k) where applicable, the conditions under which advantages or incentives granted are to be repaid to the Member State of residence of the PEPP saver.

## CHAPTER II

### REGISTRATION

#### *Article 5*

#### **Registration**

1. A PEPP may only be provided and distributed in the Union where it has been registered in the central public register kept by EIOPA in accordance with Article 13.
2. Registration of a PEPP shall be valid in all Member States. It entitles the PEPP provider to provide the PEPP and PEPP distributor to distribute the PEPP registered in the central public register referred to in Article 13.

Supervision of compliance with this Regulation on an ongoing basis shall be carried out in accordance with Chapter IX.

#### *Article 6*

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

1. Only the following financial undertakings authorised or registered under Union law 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>(19)</sup>;
  - (b) insurance undertakings authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council <sup>(20)</sup>, engaged in direct life insurance according to Article 2(3) of Directive 2009/138/EC and Annex II to that Directive;
  - (c) institutions for occupational retirement provision (IORPs) authorised or registered in accordance with Directive (EU) 2016/2341 which, pursuant to national law, are authorised and supervised to provide also 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;

<sup>(19)</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>(20)</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).

(d) investment firms authorised in accordance with Directive 2014/65/EU, providing portfolio management;

(e) investment companies or management companies authorised in accordance with Directive 2009/65/EC;

(f) EU alternative investment fund managers (EU AIFM) authorised in accordance with Directive 2011/61/EU.

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

(a) the standard contract terms of the PEPP contract to be proposed to PEPP savers, as referred to in Article 4;

(b) information on the identity of the applicant;

(c) information on arrangements regarding portfolio and risk management and administration with regard to the PEPP, including arrangements as referred to in Articles 19(2), 42(5) and 49(3);

(d) a list of Member States where the applicant PEPP provider intends to market the PEPP, where applicable;

(e) information on the identity of the depositary, where applicable;

(f) PEPP key information as referred to in Article 26;

(g) a list of Member States for which the applicant PEPP provider will be able to ensure the immediate opening of a sub-account.

3. The competent authorities shall assess whether the application referred to in paragraph 2 is complete within 15 working days of receipt of the application.

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.

4. Within three months of the date of the submission of the complete application under paragraph 3, the competent authorities shall take a decision for registration of a PEPP only if the applicant is eligible to provide PEPPs according to paragraph 1 and if the information and documents submitted in the application for registration referred to in paragraph 2 comply with this Regulation.

5. Within five working days of taking a decision for registration of the PEPP, competent authorities shall communicate to EIOPA the decision as well as the information and documents referred to in points (a), (b), (d), (f) and (g) of paragraph 2 and shall inform the applicant PEPP provider accordingly.

EIOPA shall not be responsible or be held liable for a decision for registration taken by competent authorities.

Where the competent authorities refuse to grant registration, they shall issue a reasoned decision which shall be subject to a right to appeal.

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

Any subsequent modifications 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), (d), (f) and (g) of paragraph 2, the competent authorities shall communicate those modifications to EIOPA without undue delay.

#### *Article 7*

##### **Registration of a PEPP**

1. Within five working days from the date of communication of the decision for registration as well as the information and documents in accordance with Article 6(5), EIOPA shall register the PEPP in the central public register referred to in Article 13 and shall notify the competent authorities accordingly without undue delay.

2. Within five working days after receiving the notification for the registration of the PEPP referred to in paragraph 1, competent authorities shall inform the applicant PEPP provider accordingly.

3. The PEPP provider may provide 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 referred to in Article 13.

#### *Article 8*

##### **Conditions for deregistration of a PEPP**

1. The competent authorities shall issue a decision for deregistration of the PEPP when:

(a) the PEPP provider 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 this Regulation; or

(d) the PEPP provider or the PEPP no longer meets the conditions under which registration was granted.

2. Within five 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.

3. Within five working days after receiving the notification of the decision for deregistration referred to in paragraph 2, EIOPA shall deregister the PEPP and shall notify the competent authorities accordingly.

4. Within five working days after receiving the notification for the deregistration of the PEPP referred to in paragraph 3, including the date of the deregistration, competent authorities shall notify the PEPP provider accordingly.

5. The PEPP provider shall no longer provide 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 referred to in Article 13.

6. Where EIOPA has received information regarding the existence of one of the circumstances referred to in point (b) or (c) of paragraph 1 of this Article, in accordance with the duty of cooperation between competent authorities and EIOPA referred to in Article 66, 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.

7. Before taking a decision for deregistration of the PEPP, the competent authorities and EIOPA shall give their best efforts to ensure that the PEPP savers interests are safeguarded.

#### *Article 9*

#### **Designation**

The designation 'pan-European Personal Pension Product' or 'PEPP' 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.

*Article 10***Distribution of PEPPs**

1. Financial undertakings referred to in Article 6(1) may distribute PEPPs which they have manufactured. They may also distribute PEPPs which they have not manufactured provided they comply with the relevant sectorial law in accordance with which they may distribute products which they have not manufactured.
2. Insurance intermediaries registered in accordance with Directive (EU) 2016/97 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 may distribute PEPPs which they have not manufactured.

*Article 11***Prudential regime applicable to different types of providers**

PEPP providers and PEPP distributors shall comply with this Regulation, as well as with the relevant prudential regime applicable to them in accordance with the legislative acts referred to in Articles 6(1) and 10(2).

*Article 12***Publication of national provisions**

1. The texts of the national laws, regulations and administrative provisions governing the conditions related to the accumulation phase referred to in Article 47 and the conditions related to the decumulation phase referred to in Article 57, including information about additional national procedures put in place for applying for advantages and incentives set at national level, where applicable, shall be made public and kept up to date by the relevant national authority.
2. All competent authorities in a Member State shall maintain and keep up to date on their website a link to the texts referred to in paragraph 1.
3. The publication of the texts referred to in paragraph 1 shall only be for informational purposes and shall not create legal obligations or liabilities for the relevant national authorities.

*Article 13***Central public register**

1. EIOPA shall keep a central public register identifying each PEPP registered under this Regulation, the registration number of the PEPP, the PEPP provider of this PEPP, the competent authorities of the PEPP provider, the date of the registration of the PEPP, a complete list of Member States in which this PEPP is offered and a complete list of Member States for which the PEPP provider offers a sub-account. The register shall be publicly available in electronic format and shall be kept up to date.
2. Competent authorities shall inform EIOPA of the links referred to in Article 12(2) and shall keep this information up to date.
3. EIOPA shall publish and keep up to date the links referred to in paragraph 2 in the central public register referred to in paragraph 1.

## CHAPTER III

**CROSS-BORDER PROVISION AND PORTABILITY OF PEPP**

## SECTION I

***Freedom to provide services and freedom of establishment****Article 14***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 law applicable to them referred to in points (a), (b), (d) and (e) of Article 6(1) or in Article 10(2) and after notifying their intention to open a sub-account for this host Member State in accordance with Article 21.

2. PEPP providers as referred to in points (c) and (f) of Article 6(1) shall comply with the rules set out in Article 15.

*Article 15***Exercise of the freedom to provide services by IORPs and EU AIFM**

1. PEPP providers as referred to in points (c) and (f) of Article 6(1) which intend to provide PEPPs to PEPP savers within the territory of a host Member State for the first time under the freedom to provide services and after notifying their intention to open a sub-account for this host Member State in accordance with Article 21, shall communicate the following information to the competent authorities of their home Member State:

(a) the name and address of the PEPP provider;

(b) the Member State in which the PEPP provider intends to provide or distribute PEPPs to PEPP savers.

2. The competent authorities of the home Member State shall transmit the information within 10 working days of the date of receipt to the host Member State together with a confirmation that the PEPP provider referred to in paragraph 1 of this Article complies with the requirements set out in Article 6(1). The information is communicated to the competent authorities 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 PEPP provider as referred to in points (c) and (f) of Article 6(1).

Where the competent authorities of the home Member State refuse to communicate the information to the competent authorities of the host Member State, they shall give reasons for such refusal to the 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 PEPP provider's home Member State.

3. The competent authorities of the host Member State shall within 10 working days acknowledge receipt of the information referred to in paragraph 1. The competent authorities of the home Member State shall then inform the PEPP provider that the information has been received by the competent authorities of the host Member State and that the PEPP provider can start the provision of PEPP to PEPP savers in that Member State.

4. In the absence of acknowledgment of receipt as referred to in paragraph 3 within 10 working days of the date of the transmission of the information as referred to in paragraph 2, the competent authorities of the home Member State shall inform the PEPP provider that the PEPP provider can start providing services in that host Member State.

5. In the event of a change in any of the information referred to in paragraph 1, 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.

6. Host Member States may, for the purposes of this procedure, designate other competent authorities than those referred to in point 18 of Article 2 in order to exercise the powers conferred on the competent authorities of the host Member State. They shall inform the Commission and EIOPA, indicating any division of those duties.

#### *Article 16*

##### **Powers of the competent authorities of the host Member State**

1. Where the competent authorities of the host Member State have reason to consider that a PEPP is distributed within its territory or a sub-account for that Member State has been opened in infringement of any obligations resulting from the applicable rules, as referred to in Article 3, they shall refer their findings to the competent authorities 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 appropriate measures without delay to remedy the situation. They shall inform the competent authorities of the host Member State of any such measures.

3. Where the measures taken by the competent authorities of the home Member State prove to be inadequate or are lacking, and the PEPP provider or the PEPP distributor continues to distribute the PEPP in a manner that is clearly detrimental to the interests of the host Member State's PEPP savers or to the orderly functioning of the market for personal 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 PEPP provider or the PEPP distributor from continuing the distribution of PEPPs within their 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 State, 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 PEPP provider or the PEPP distributor 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 PEPP provider or the PEPP distributor in a well-reasoned document and notified to the competent authorities of the home Member State without undue delay.

## SECTION II

### **Portability**

#### *Article 17*

#### **The portability service**

1. PEPP savers shall have the right to use a portability service which gives them the right to continue contributing into their existing PEPP account, when changing their residence to another Member State.

2. When 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 their PEPP.

#### *Article 18*

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

1. PEPP providers shall provide the portability service referred to in Article 17 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 prospective PEPP savers with information on the portability service and on which sub-accounts are immediately available.

3. Within three years of the date of application of this Regulation, each PEPP provider shall offer national sub-accounts for at least two Member States upon request addressed to the PEPP provider.

#### *Article 19*

#### **Sub-accounts of the PEPP**

1. Where PEPP providers provide a portability service to PEPP savers in accordance with Article 17, PEPP providers shall ensure that when a new sub-account is opened within a PEPP account, it shall correspond to the legal requirements and conditions, as referred to in Articles 47 and 57, determined at national level for the PEPP by the new Member State of residence of the PEPP saver. All transactions in the PEPP account shall be entered into a corresponding sub-account. The contributions made to and withdrawals from the sub-account may be subject to separate contract terms.

2. Without prejudice to applicable sectorial law, PEPP providers may also ensure compliance with the requirements referred to in paragraph 1 by establishing a partnership with another registered PEPP provider (the 'partner').

Having regard to the scope of the functions to be carried out by the partner, the partner shall be qualified and capable of undertaking the delegated functions. The PEPP provider shall enter into a written agreement with the partner. The agreement shall be legally enforceable and shall clearly define the rights and obligations of the PEPP provider and of the partner. The agreement shall comply with the relevant rules and procedures for delegation and outsourcing established by or under the Union law applicable to them, as referred to in Article 6(1). Notwithstanding that agreement, the PEPP provider shall remain solely liable for its responsibilities under this Regulation.

*Article 20***Opening of a new sub-account**

1. Without delay after being informed about the PEPP saver's change of residence to another Member State, 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.

In that case, the PEPP provider shall provide the PEPP saver free of charge with the PEPP KID, containing the specific requirements referred to in point (g) of Article 28(3) for the sub-account corresponding to the new Member State of residence of the PEPP saver.

In the case that a new sub-account is not available, the PEPP provider shall inform the PEPP saver about the right to switch without delay and free of charge and of the possibility to continue saving in the last sub-account opened.

2. If the PEPP saver intends to make use of the possibility to open a sub-account, the PEPP saver shall inform the PEPP provider of the following:

(a) the PEPP saver's new Member State of residence;

(b) the date from which the contributions shall be directed to the new sub-account;

(c) any relevant information about other conditions for the PEPP.

3. The PEPP saver may continue contributing to the last sub-account opened.

4. The PEPP provider shall offer to provide the PEPP saver with a personalised recommendation explaining whether the opening of a new sub-account within the PEPP saver's PEPP account and making contributions to the new sub-account would be more favourable than continuing to contribute to the last sub-account opened.

5. Where the PEPP provider is not able to ensure the opening of a new sub-account corresponding to the PEPP saver's new Member State of residence, the PEPP saver shall according to his or her choice be able to:

(a) switch PEPP provider without delay and free of charge notwithstanding the requirements of Article 52(3) on the frequency of switching; or

(b) continue contributing to the last sub-account opened.

6. The new sub-account shall be opened by amending the existing PEPP contract between the PEPP saver and the PEPP provider, in compliance with the applicable contract law. The date of opening shall be defined in the contract.

*Article 21***Provision of information on portability to the competent authorities**

1. The PEPP provider wishing to open a new sub-account for a host Member State for the first time shall notify the competent authorities of the home Member State.

2. The PEPP provider shall include in the notification the following information and documents:
- (a) standard contract terms of the PEPP contract, as referred to in Article 4, including the annex for the new sub-account;
  - (b) the PEPP KID, containing the specific requirements for the sub-account corresponding to the new sub-account in accordance with point (g) of Article 28(3);
  - (c) the PEPP Benefit Statement referred to in Article 36;
  - (d) information about contractual arrangements referred to in Article 19(2), where applicable.
3. The competent authorities of the home Member State shall verify whether the documentation provided is complete and transmit it within 10 working days 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 authorities of the home Member State shall then inform the PEPP provider that the information has been received by the competent authorities of the host Member State and that the PEPP provider can open the sub-account for that Member State.

In the absence of acknowledgment of receipt as referred to in paragraph 4 within 10 working days of the date of the transmission of the documentation as referred to in paragraph 3, the competent authorities of the home Member State shall inform the PEPP provider that the sub-account for that Member State can be opened.

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 22*

#### **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 PEPP customers.

*Article 23***Distribution regime applicable to different types of PEPP providers and PEPP distributors**

1. 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 6(1) of this Regulation and insurance intermediaries as referred to in Article 10(2) of this Regulation shall comply with the applicable national law giving effect to the rules set out in Chapters V and VI of Directive (EU) 2016/97, with the exception of Articles 20, 23, 25 and Article 30(3) of that Directive for the distribution of insurance-based investment products, with any directly applicable Union law adopted under those rules with respect to the distribution of such products and with this Regulation, with the exception of Article 34(4);
- (b) investment firms as referred to in Article 10(2) of this Regulation shall comply with the applicable national law giving effect to the rules on marketing and distribution of financial instruments set out in the first subparagraph of Article 16(3) and Articles 23, 24 and 25 of Directive 2014/65/EU, with the exception of Article 24(2) and Article 25(3) and (4) of that Directive, with any directly applicable Union law adopted under those provisions, and with this Regulation with the exception of Article 34(4);
- (c) all other PEPP providers and PEPP distributors shall comply with the applicable national law giving effect to the rules on marketing and distribution of financial instruments set out in the first subparagraph of Article 16(3) and in Articles 23, 24 and 25 of Directive 2014/65/EU, with the exception of Article 24(2) and Article 25(2), (3) and (4) of that Directive, with any directly applicable Union law adopted under those provisions and with this Regulation.

2. The rules set out in point (a) of paragraph 1 shall apply only to the extent that there is no more stringent provision in the applicable national law giving effect to the rules set out in Chapters V and VI of Directive (EU) 2016/97.

*Article 24***Electronic distribution and other durable mediums**

PEPP providers and PEPP distributors shall provide all documents and information under this Chapter free of charge to PEPP customers electronically, provided that the PEPP customer is able 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 providers and PEPP distributors shall inform PEPP customers about their right to request a copy of those documents on another durable medium, including paper, free of charge.

*Article 25***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, inducements and ESG factors.

## SECTION II

### ***Pre-contractual information***

#### *Article 26*

#### **PEPP KID**

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

2. The PEPP KID 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.

3. The PEPP KID 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 including a prospectus where applicable, only where such cross-references are related to the information required to be included in the PEPP KID by this Regulation.

A separate PEPP KID shall be drawn up for the Basic PEPP.

4. Where a PEPP provider offers to a PEPP saver a range of alternative investment options such that all information required in Article 28(3) regarding those underlying investment options cannot be provided within a single, concise, stand-alone PEPP KID, PEPP providers shall produce one of the following:

- (a) a stand-alone PEPP KID for each alternative investment option;
- (b) a generic PEPP KID providing at least a generic description of the alternative investment options and stating where and how more detailed pre-contractual information relating to the investments backing those investments options can be found.

5. In accordance with Article 24, the PEPP KID shall be drawn up as a short document written in a concise manner. 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 customers need;
- (c) be clearly expressed and written in language and a style that facilitates the understanding of the information and, in particular, in language that is clear, succinct and comprehensible.

6. Where colours are used in the PEPP KID, they shall not diminish the comprehensibility of the information if the PEPP KID is printed or photocopied in black and white.

7. Where the corporate branding or logo of the PEPP provider or the group to which it belongs is used in the PEPP KID, it shall not distract from the information contained in the document or obscure the text.

8. In addition to the PEPP KID, PEPP providers and PEPP distributors shall provide prospective PEPP savers with references to any publicly available reports on the financial condition of the PEPP provider, including its solvency, allowing prospective PEPP savers easy access to this information.

9. Prospective PEPP savers shall also be provided with information on the past performance of the PEPP saver's investment option covering performance of a minimum of 10 years or, in cases where the PEPP has been provided for less than 10 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 performance'.

*Article 27***Language of the PEPP KID**

1. The PEPP KID shall be written in the official languages, or in at least 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 those languages.

The translation shall faithfully and accurately reflect the content of the original PEPP KID.

2. If a PEPP is marketed in a Member State through marketing materials in one or more of the official languages of that Member State, the PEPP KID shall at least be in the corresponding official languages.

3. The PEPP KID shall be made available upon request in an appropriate format to PEPP savers with a visual impairment.

*Article 28***Content of the PEPP KID**

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

The PEPP KID shall be presented in the sequence laid down in paragraphs 2 and 3.

2. An explanatory statement shall appear directly underneath the title. It shall read:

'This document provides you with key information about this pan-European Personal Pension Product (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 personal pension product and to help you compare it with other PEPPs.'

3. The PEPP KID shall contain the following information:

(a) at the beginning of the document: the name of the PEPP, whether it is a Basic PEPP or not, the identity and contact details of the PEPP provider, information about the competent authorities of the PEPP provider, the registration number of the PEPP in the central public register and the date of the document;

(b) the statement: 'The retirement product described in this document 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 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 statement as to
  - whether the Basic PEPP provides a guarantee on the capital or takes the form of a risk-mitigation technique consistent with the objective to allow the PEPP saver to recoup the capital, or
  
  - whether and to what extent any alternative investment option, if applicable, provides a guarantee or a risk-mitigation technique;
  
- (iv) a description of the PEPP retirement benefits, in particular the possible forms of out-payments and the right to modify the form of out-payments as referred to in Article 59(1);
  
- (v) where the PEPP covers biometric risk: details of the risks covered and of the insurance benefits, including the circumstances in which those benefits may be claimed;
  
- (vi) information on the portability service, including a reference to the central public register referred to in Article 13 where information for the conditions for the accumulation phase and the decumulation phase determined by Member States in accordance with Articles 47 and 57 is contained;
  
- (vii) a statement on the consequences for the PEPP saver of early withdrawal from the PEPP, including all applicable fees, penalties, and possible loss of capital protection and of other possible advantages and incentives;
  
- (viii) a statement on the consequences for the PEPP saver if the PEPP saver stops contributing to the PEPP;
  
- (ix) information on the sub-accounts available and on the PEPP saver's rights referred to in Article 20(5);
  
- (x) information about the PEPP saver's right to switch and the right to receive information about the switching service as referred to in Article 56;
  
- (xi) the conditions for modification of the chosen investment option referred to in Article 44;
  
- (xii) information, where available, related to the performance of the PEPP provider's investments in terms of ESG factors;
  
- (xiii) the law applicable to the PEPP contract 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;
  
- (xiv) where applicable, whether there is a cooling-off period or cancellation period for the PEPP saver;

- (d) under a section titled 'What are the risks and what could I get in return?', a short 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, conditions for returns to PEPP savers or built-in performance caps;
  - (v) a statement that the tax law of the PEPP saver's Member State of residence may have an impact on the actual payout;
- (e) under a section titled 'What happens if [the name of the PEPP provider] is unable to pay out?', a short 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 direct and indirect costs to be borne by the PEPP saver, including one-off and recurring costs, presented by means of summary indicators of those costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment.

The PEPP KID shall include a clear indication that the PEPP provider or PEPP distributor shall 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 those aggregate costs have on the return of the investment;

- (g) under a section titled 'What are the specific requirements for the sub-account corresponding to [my Member State of residence]?:'
- (i) under a sub-section titled 'Requirements for the pay-in phase':

a description of the conditions for the accumulation phase, as determined by the Member State of residence of the PEPP saver in accordance with Article 47;
  - (ii) under a sub-section titled: 'Requirements for the pay-out phase':

a description of the conditions for the decumulation phase, as determined by the Member State of residence of the PEPP saver in accordance with Article 57;

(h) under a section titled 'How can I complain?': information about how and to whom a PEPP saver can make a complaint about the PEPP or the conduct of the PEPP provider or PEPP distributor.

4. Layering of the information required under paragraph 3 shall be permitted where the PEPP KID is provided in an electronic format, whereby detailed parts of the information can be presented through pop-ups or through links to accompanying layers. In this case, it shall be possible to print the PEPP KID as one single document.

5. In order to ensure consistent application of this Article, EIOPA shall, after consulting the other ESAs 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 paragraph 3;

(b) the methodology underpinning the presentation of risk and reward as referred to in points (d)(i) and (iii) of paragraph 3;

(c) the methodology for the calculation of costs, including the specification of summary indicators, as referred to in point (f) of paragraph 3;

(d) where information is presented in an electronic format with layering of information, which information shall be in the first layer, and which information may be provided in the additional layers of detail.

When developing the draft regulatory technical standards, EIOPA shall take into account the various possible types of PEPPs, the long-term nature of the PEPP, the capabilities of PEPP savers, and the features of the PEPPs, in order to allow the PEPP saver to select from different investment options and other options provided for by the PEPP, including where that selection may be undertaken at different points in time, or changed in the future.

EIOPA shall submit those draft regulatory technical standards to the Commission by 15 August 2020.

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

#### *Article 29*

#### **Marketing materials**

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

#### *Article 30*

#### **Revision of the PEPP KID**

1. The PEPP provider shall review the information contained in the PEPP KID 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 consulting the other ESAs and after conducting consumer testing and industry testing, develop draft regulatory technical standards specifying the conditions under which the PEPP KID shall be reviewed and revised.

EIOPA shall submit those draft regulatory technical standards to the Commission by 15 August 2020.

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

#### *Article 31*

##### **Civil liabilities**

1. The PEPP provider shall not incur civil liability solely on the basis of the PEPP KID, 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 28.

2. A PEPP saver who demonstrates loss resulting from reliance on a PEPP KID under the circumstances referred to in paragraph 1, when concluding a PEPP contract for which that PEPP KID 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 32*

##### **PEPP contracts which cover biometric risks**

Where the PEPP KID concerns a PEPP contract covering biometric risks, the PEPP provider's obligations under this section shall be only towards the PEPP saver.

#### *Article 33*

##### **Provision of the PEPP KID**

1. A PEPP provider or PEPP distributor shall provide prospective PEPP savers with all the PEPP KIDs drawn up in accordance with Article 26 when advising on, or offering for sale, a PEPP, in good time before those PEPP savers are bound by any PEPP contract or offer relating to that PEPP contract.

2. A PEPP provider or PEPP distributor may satisfy the requirements of paragraph 1 by providing the PEPP KID to a natural 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 KID as laid down in paragraph 1.

EIOPA shall submit those draft regulatory technical standards to the Commission by 15 August 2020.

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

### SECTION III

#### *Advice*

#### Article 34

#### **Specification of demands and needs and provision of advice**

1. Prior to the conclusion of a PEPP contract, the PEPP provider or PEPP distributor shall specify, on the basis of information required and obtained from the prospective PEPP saver, the retirement-related demands and needs of that prospective PEPP saver, including the possible need to acquire a product offering annuities, and shall provide the prospective PEPP saver with objective information about the PEPP in a comprehensible form to allow that PEPP saver to make an informed decision.

Any PEPP contract proposed shall be consistent with the PEPP saver's retirement-related demands and needs, taking into account his or her accrued retirement entitlements.

2. The PEPP provider or PEPP distributor shall provide advice to the prospective PEPP saver prior to the conclusion of the PEPP contract providing the prospective PEPP saver with a personalised recommendation explaining why a particular PEPP, including a particular investment option, if applicable, would best meet the PEPP saver's demands and needs.

The PEPP provider or PEPP distributor shall also provide the prospective PEPP saver with personalised pension benefit projections for the recommended product based on the earliest date on which the decumulation phase may start and a disclaimer that those projections may differ from the final value of the PEPP 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.

3. If a Basic PEPP is offered without at least a guarantee on the capital, the PEPP provider or PEPP distributor shall clearly explain the existence of PEPPs with a guarantee on the capital, the reasons for recommending a Basic PEPP based on a risk mitigation technique consistent with the objective to allow the PEPP saver to recoup the capital and clearly demonstrate any additional risks that such PEPPs might entail in comparison to a capital guarantee based Basic PEPP providing a guarantee on the capital. This explanation shall be done in written format.

4. When providing advice the PEPP provider or PEPP distributor referred to in point (c) of Article 23(1) of this Regulation shall ask the prospective PEPP saver to provide information regarding that person's knowledge and experience in the investment field relevant to the PEPP offered or demanded and that person's financial situation including his or her ability to bear losses, and his or her investment objectives including his or her risk tolerance so as to enable the PEPP provider or PEPP distributor to recommend to the prospective PEPP saver one or more PEPPs that are suitable for that person and, in particular, are in accordance with his or her risk tolerance and ability to bear losses.

5. The responsibilities of the PEPP provider or PEPP distributor shall not be reduced due to the fact that advice is provided in whole or in part through an automated or semi-automated system.

6. Without prejudice to stricter applicable sectorial law, PEPP providers and PEPP distributors shall ensure and demonstrate to competent authorities on request that natural persons giving advice on PEPPs possess the necessary knowledge and competence to fulfil their obligations under this Regulation. Member States shall publish the criteria to be used for assessing such knowledge and competence.

#### SECTION IV

### *Information during the term of the contract*

#### Article 35

#### **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 any relevant law, including national social, labour and tax law (PEPP Benefit Statement). The title of the document shall contain the words 'PEPP Benefit Statement'.

2. The exact date to which the information in the PEPP Benefit Statement refers shall be stated prominently.

3. The information contained in the PEPP Benefit Statement, shall be accurate and up-to-date.

4. The PEPP provider shall make the PEPP Benefit Statement available to each PEPP saver annually.

5. Any material change to the information contained in the PEPP Benefit Statement compared to the previous statement shall be clearly indicated.

6. In addition to the PEPP Benefit Statement, the PEPP saver shall be informed promptly throughout the term of the contract of any change concerning the following information:

(a) the contract terms including general and special policy conditions;

(b) the name of the PEPP provider, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract;

(c) information on how the investment policy takes into account ESG factors.

#### Article 36

#### **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 earliest date on which the decumulation phase may start for any sub-account;

- (b) the name and contact address of the PEPP provider and an identification of the PEPP contract;
- (c) the Member State in which the PEPP provider is authorised or registered and the names of the competent authorities;
- (d) information on pension benefit projections based on the date referred to in point (a), and a disclaimer that those projections may differ from the final value of the PEPP 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;
- (e) information on the contributions paid by the PEPP saver or any third party into the PEPP account over the previous 12 months;
- (f) a breakdown of all costs incurred, directly and indirectly, by the PEPP saver over the previous 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 PEPP benefits; such costs should be expressed both in monetary terms and as a percentage of contributions over the previous 12 months;
- (g) where applicable, the nature and the mechanism of the guarantee or risk mitigation techniques referred to in Article 46;
- (h) where applicable, the number and value of units corresponding to the PEPP saver's contributions over the previous 12 months;
- (i) the total amount in the PEPP account of the PEPP saver on the date of the statement referred to in Article 35;
- (j) information on the past performance of the PEPP saver's investment option covering performance of a minimum of 10 years or, in cases where the PEPP has been provided for less than 10 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 performance';
- (k) for PEPP accounts with more than one sub-account, information in the PEPP Benefit Statement shall be broken down for all existing sub-accounts;
- (l) summary information on the investment policy relating to ESG factors.

2. EIOPA shall, in consultation with the European Central Bank and competent authorities, develop draft regulatory technical standards specifying the rules to determine the assumptions on pension benefit projections referred to in point (d) of paragraph 1 of this Article and in Article 34(2). 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.

EIOPA shall submit those draft regulatory technical standards to the Commission by 15 August 2020. Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010.

*Article 37***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, including with regard to investments, the decumulation phase, the switching service and the portability service;
  - (b) the annual accounts and annual reports of the PEPP provider that are publicly available;
  - (c) a written statement of the PEPP provider's investment-policy principles, containing at least information on 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 ESG 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) the level of PEPP benefits, in the case of redemption before the date referred to in point (a) of Article 36(1).
2. In order to ensure consistent application of Article 36 and of this Article, EIOPA shall, after consulting the other ESAs and after conducting consumer testing and industry testing, develop draft regulatory technical standards specifying the details of the presentation of the information referred to in Article 36 and in this Article. In relation to the presentation of the information on past performance as referred to in point (j) of Article 36(1), the differences between the investment options shall be taken into account, in particular if the PEPP saver bears investment risk or if the investment option is age-dependent or includes duration matching.

EIOPA shall submit those draft regulatory technical standards to the Commission by 15 August 2020.

Power is conferred on the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

3. Without prejudice to Article 34(2) and point (d) of Article 36(1), in order to allow for comparison with national products, Member States may require PEPP providers to provide PEPP savers with additional pension benefit projections where the rules to determine the assumptions are set by the respective Member States.

*Article 38***Information to be given to PEPP savers during the pre-retirement phase and to PEPP beneficiaries during the decumulation phase**

1. In addition to the PEPP Benefit Statement, PEPP providers shall provide each PEPP saver two months before the dates referred to in points (a) and (b) of Article 59(1) or at the request of the PEPP saver, with information about the upcoming start of the decumulation phase, the possible forms of out-payments and the possibility for the PEPP saver to modify the form of out-payments in accordance with Article 59(1).

2. During the decumulation phase, PEPP providers shall provide annually PEPP beneficiaries with information about the PEPP benefits due and the corresponding form of out-payments.

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

#### Article 39

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

At the request of a PEPP saver or of a PEPP beneficiary or of their representatives, the PEPP provider shall provide the supplementary information referred to in Article 37(1) and supplementary information about the assumptions used to generate the projections referred to in point (d) of Article 36(1).

#### SECTION V

##### **Reporting to national authorities**

#### Article 40

##### **General provisions**

1. PEPP providers shall submit to their competent authorities the information which is necessary for the purposes of supervision in addition to the information provided under the relevant sectorial law. That additional information shall include, where applicable, 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, 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 law, 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 predefined intervals, upon occurrence of predefined events or 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.

5. PEPP providers shall submit to the competent authorities annually the following information:

(a) for which Member States the PEPP provider offers sub-accounts;

(b) number of notifications in accordance with Article 20(1) received from PEPP savers that have changed their residence to another Member State;

(c) number of requests for opening a sub-account and number of sub-accounts opened in accordance with Article 20(2);

(d) number of requests from PEPP savers for switching and actual transfers made in accordance with point (a) of Article 20(5);

(e) number of requests from PEPP savers for switching and actual transfers made in accordance with Article 52(3).

The competent authorities shall forward the information to EIOPA.

6. PEPP providers shall have appropriate systems and structures in place to fulfil the requirements laid down in paragraphs 1 to 5 as well as a written policy, approved by the management, supervisory or administrative body of the PEPP provider, ensuring the ongoing appropriateness of the information submitted.

7. Upon request to the competent authorities and in order to carry out the duties assigned to it by this Regulation, EIOPA shall have access to the information submitted by PEPP providers.

8. Where PEPP contributions and PEPP benefits are eligible for advantages or incentives, the PEPP provider shall in accordance with the relevant national law submit to the relevant national authority all information necessary for the provision or reclaiming of such advantages and incentives received in relation to such contributions and benefits, where applicable.

9. The Commission shall adopt delegated acts in accordance with Article 72 to supplement this Regulation by specifying the additional information referred to in paragraphs 1 to 5 of this Article, with a view to ensuring to the appropriate extent convergence of supervisory reporting.

EIOPA, after consulting the other ESAs and the 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 15 August 2020.

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 41

#### **Investment rules**

1. PEPP providers shall invest the assets corresponding to the PEPP 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) within the prudent person rule, PEPP providers shall take into account risks related to and the potential long-term impact of investment decisions on ESG factors;
  - (c) the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
  - (d) the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels;
  - (e) 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;

- (f) 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;
- (g) the assets shall not be invested in a non-cooperative jurisdiction for tax purposes identified in the applicable Council's conclusions on the list of non-cooperative jurisdictions for tax purposes, nor in a high-risk third country with strategic deficiencies identified by the applicable Commission Delegated Regulation adopted on the basis of Article 9 of Directive (EU) 2015/849;
- (h) the PEPP provider shall not expose itself and the assets corresponding to the PEPP to risks stemming from excessive leverage and excessive maturity transformation.
2. The rules set out in points (a) to (h) of paragraph 1 apply only to the extent that there is no more stringent provision in the relevant sectorial law applicable to the PEPP provider.

## SECTION II

### **Investment options for PEPP savers**

#### Article 42

##### **General provisions**

1. PEPP providers may offer up to six investment options to PEPP savers.
2. The investment options shall include the Basic PEPP and may include alternative investment options.
3. All investment options shall be designed by PEPP providers on the basis of a guarantee or risk-mitigation technique which shall ensure sufficient protection for PEPP savers.
4. Provision of guarantees shall be subject to the relevant sectorial law applicable to the PEPP provider.
5. PEPP providers referred to in points (c), (d), (e) and (f) of Article 6(1) may offer PEPP with a guarantee only by cooperating with credit institutions or insurance undertakings that can provide such guarantees according to the sectorial law applicable to them. Those institutions or undertakings shall be solely liable for the guarantee.

#### Article 43

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

Having received the relevant information and advice, the PEPP saver shall choose an investment option when concluding the PEPP contract.

#### Article 44

##### **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 choose a different investment option after a minimum of five years from the conclusion of the PEPP contract and, in the case of subsequent changes, after five years from the most recent change of 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 45

##### **The Basic PEPP**

1. The Basic PEPP shall be a safe product representing the default investment option. It shall be designed by PEPP providers on the basis of a guarantee on the capital which shall be due at the start of the decumulation phase and during the decumulation phase, where applicable, or a risk-mitigation technique consistent with the objective to allow the PEPP saver to recoup the capital.
2. The costs and fees for the Basic PEPP shall not exceed 1 % of the accumulated capital per year.
3. In order to ensure a level playing field between different PEPP providers and different types of PEPPs, EIOPA shall develop draft regulatory technical standards specifying the types of costs and fees referred to in paragraph 2, having consulted the other ESAs where applicable.

When developing the draft regulatory technical standards, EIOPA shall take into account the various possible types of PEPPs, the long-term retirement nature of the PEPP and the various possible features of the PEPPs, in particular out-payments in the form of long-term annuities or annual drawdowns until at least the age corresponding with the average life expectancy of the PEPP saver. EIOPA shall also assess the peculiar nature of the capital protection with specific regard to the capital guarantee. EIOPA shall submit those draft regulatory technical standards to the Commission by 15 August 2020.

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

4. Every two years from the date of application of this Regulation, the Commission shall, after having consulted EIOPA and, where applicable, the other ESAs, review the adequacy of the percentage value referred to in paragraph 2. The Commission shall, in particular take into account the actual level and changes in the actual level of costs and fees and the impact on the availability of PEPPs.

The Commission is empowered to adopt delegated acts in accordance with Article 72 to amend the percentage value referred to in paragraph 2 of this Article in the light of its reviews with a view to allowing appropriate market access for PEPP providers.

#### Article 46

##### **Risk-mitigation techniques**

1. The use of risk-mitigation techniques shall ensure that the investment strategy for the PEPP is designed in order to build up a stable and adequate individual future retirement income from the PEPP and to ensure a fair treatment of all generations of PEPP savers.

All risk-mitigation techniques, whether applied under the Basic PEPP or for the alternative investment options, shall be sound, robust and consistent with the risk profile of the corresponding investment option.

2. The applicable risk-mitigation techniques may include, inter alia, provisions:
  - (a) for gradually adapting the investment allocation to mitigate the financial risks of investments for cohorts corresponding to the remaining duration (life-cycling);

(b) establishing reserves from contributions or investment returns, which shall be allocated to PEPP savers in a fair and transparent manner, to mitigate investment losses; or

(c) for using appropriate guarantees to protect against investment losses.

3. In order to ensure the consistent application of this Article, EIOPA shall, after consulting the other ESAs, and after conducting industry testing, develop draft regulatory technical standards specifying the minimum criteria that the risk-mitigation techniques have to satisfy, taking into account the various types of PEPPs and their specific features, as well as the various types of PEPP providers and the differences between their prudential regime.

EIOPA shall submit those draft regulatory technical standards to the Commission by 15 August 2020.

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

### SECTION III

#### *Other aspects of the accumulation phase*

##### Article 47

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

1. The conditions related to the accumulation phase of the national sub-accounts 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 contributions and their continuity.

### CHAPTER VI

#### **INVESTOR PROTECTION**

##### Article 48

#### **Depositary**

1. The PEPP providers referred to in points (c), (e) and (f) of Article 6(1) shall appoint one or more depositaries for the safekeeping of assets in relation to the PEPP provision business 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.

*Article 49***Coverage of biometric risks**

1. PEPP providers may offer PEPPs with an option ensuring the coverage of biometric risks.
2. Coverage of biometric risks shall be subject to the relevant sectorial law applicable to the PEPP provider. The coverage of biometric risks may vary from sub-account to sub-account.
3. PEPP providers referred to in points (a), (c), (d), (e) and (f) of Article 6(1) may offer PEPPs with an option ensuring the coverage of biometric risks. In that case, the coverage shall be granted only by cooperating with insurance undertakings that can cover those risks according to the sectorial law applicable to them. The insurance undertaking shall be fully liable for the coverage of biometric risks.

*Article 50***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 24, to the PEPP customers' complaints. The reply shall address all points raised, within an adequate timeframe and at the latest within 15 working days of receipt of the complaint. In exceptional situations, if the answer cannot be given within 15 working 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 working days.
4. PEPP providers and PEPP distributors shall inform the PEPP customer about at least one alternative dispute resolution (ADR) body 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 body 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.
7. In cases that concern more than one Member State, the complainant may choose to lodge his or her complaint through the competent authorities of his or her Member State of residence, regardless of where the infringement occurred.

*Article 51***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>(21)</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.

## CHAPTER VII

**SWITCHING OF PEPP PROVIDERS***Article 52***Provision of the switching service**

1. PEPP providers shall provide a switching service transferring, upon a request of the PEPP saver, the corresponding amounts or, where applicable, assets-in-kind in accordance with paragraph 4, from a PEPP account held with the transferring PEPP provider to a new PEPP account with the same sub-accounts opened with the receiving PEPP provider, with closing the former PEPP account.

When using the switching service, the transferring PEPP provider shall transfer all information linked to all sub-accounts of the former PEPP account, including reporting requirements, to the receiving PEPP provider. The receiving PEPP provider shall register that information in the corresponding sub-accounts.

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

2. Notwithstanding paragraph 1, during the decumulation phase, PEPP providers shall not be obliged to provide a switching service for PEPPs, where PEPP savers are receiving out-payments in the form of lifetime annuities.
3. 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 point (a) of Article 20(5). The PEPP provider may allow the PEPP saver to switch PEPP providers more frequently.
4. Where the switching is between PEPP providers engaged in individual portfolio management for PEPP savers, PEPP savers may choose to transfer assets-in-kind or corresponding amounts. In all other cases, only the transfer of corresponding amounts shall be allowed.

The written consent of the receiving PEPP provider shall be required where the PEPP saver requests a transfer of assets-in-kind.

<sup>(21)</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).

*Article 53***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 56, the switching service shall be initiated by the receiving PEPP provider.

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 request, the PEPP saver shall:

- (a) give his or her specific consent to the performance by the transferring PEPP provider of each of the tasks referred to in paragraph 4 and shall give his or her specific consent to the performance by the receiving PEPP provider of each of the tasks referred to in paragraph 5;
- (b) in agreement with the receiving PEPP provider, specify the date from which payments are to be executed to the PEPP account opened with the receiving PEPP provider.

That date shall be at least two weeks after the date on which the receiving PEPP provider receives the documents transferred from the transferring PEPP provider pursuant to paragraph 4.

Member States may require the request from the PEPP saver to be in writing and that a copy of the accepted request is provided to the PEPP saver.

3. Within five working days from receipt of the request referred to in paragraph 2, the receiving PEPP provider shall request the transferring PEPP provider to carry out the tasks as referred to in paragraph 4.

4. Upon receipt of a request from the receiving PEPP provider, the transferring PEPP provider shall:

- (a) within five working days, send the PEPP Benefit Statement for the period from the date of the last drawn up PEPP Benefit Statement to the date of the request to the PEPP saver and to the receiving PEPP provider;
- (b) within five working days, send a list of the existing assets that are being transferred in the case of transfer of assets-in-kind as referred to in Article 52(4) to the receiving PEPP provider;
- (c) stop accepting incoming payments on the PEPP account with effect from the date specified by the PEPP saver in the request referred to in point (b) of paragraph 2;
- (d) transfer the corresponding amounts, or where applicable, assets-in-kind in accordance with Article 52(4), from the PEPP account to the new PEPP account opened with the receiving PEPP provider on the date specified by the PEPP saver in the request;

- (e) 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.

5. The receiving PEPP provider shall, as provided for 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, make any necessary preparations to accept incoming payments and accept them with effect from the date specified by the PEPP saver in the request.

#### Article 54

##### **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 53(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 costs incurred by the PEPP provider and shall not exceed 0,5 % of the corresponding amounts or monetary value of the assets-in-kind to be transferred to the receiving PEPP provider.

Member States may set a lower percentage of the fees and charges as referred to in the first subparagraph and a different percentage when the PEPP provider allows PEPP savers to switch PEPP provider more frequently as referred to in Article 52(3).

The transferring PEPP provider shall not charge any additional fees or charges to the receiving PEPP provider.

4. The receiving PEPP provider may only charge the actual administrative and transaction costs of the switching service.

#### Article 55

##### **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 53 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 law.

3. Liability under paragraph 1 shall be established in accordance with the legal requirements applicable at national level.

4. The PEPP saver shall bear 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 52(4).

5. The transferring PEPP provider shall not be obliged to ensure capital protection or provide a guarantee at the moment of switching.

#### *Article 56*

##### **Information about the switching service**

1. PEPP providers shall give to PEPP savers the following information about the switching service in order to enable the PEPP saver to make an informed decision:

(a) the roles of the transferring and receiving PEPP provider for each step of the switching process, as set out in Article 53;

(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 or guarantee, and other information related to the switching service;

(e) 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.

The receiving PEPP provider shall, where applicable, inform the PEPP saver of the existence of any guarantee scheme, including a deposit guarantee scheme, investor-compensation scheme or insurance guarantee scheme, which covers that PEPP saver.

2. The information referred to in paragraph 1 of this Article shall be available on the PEPP provider's website. It shall also be provided to PEPP savers on request in accordance with the requirements of Article 24.

#### CHAPTER VIII

##### **DECUMULATION PHASE**

#### *Article 57*

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

1. The conditions related to the decumulation phase and the out-payments of the national sub-accounts 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 the start of the decumulation phase, of a maximum period before reaching the retirement age for joining a PEPP, as well as conditions for redemption before the minimum age for the start of the decumulation phase, in particular in case of particular hardship.

#### Article 58

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

1. PEPP providers shall 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. The form of out-payments may differ from sub-account to sub-account.

3. Without prejudice to paragraph 1 of this Article or to Article 57 or 59, Member States may adopt measures to privilege particular forms of out-payments. Such measures may include quantitative limits on lump sum payments to further encourage the other forms of out-payments referred to in paragraph 1 of this Article. Such quantitative limits shall only apply to out-payments corresponding to the capital accumulated in PEPP sub-accounts linked to Member States whose national law provides for quantitative limits on lump sum payments.

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

#### Article 59

##### **Modifications of the forms of out-payments**

1. 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) one year before the start of the decumulation phase;

(b) at the start of the decumulation phase;

(c) at the moment of switching.

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

2. Upon receipt of a PEPP saver's request to modify his or her 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.

#### *Article 60*

##### **Retirement planning and advice on out-payments**

1. For the Basic PEPP, at the start of the decumulation phase, the PEPP provider shall offer the PEPP saver personal retirement planning on the sustainable use of the capital accumulated in the PEPP sub-accounts, taking into account at least:

- (a) the value of the capital accumulated in the PEPP sub-accounts;
- (b) the total amount of other accrued retirement entitlements; and
- (c) the long-term retirement-related demands and needs of the PEPP saver.

2. The retirement planning referred to in paragraph 1 shall include a personal recommendation to the PEPP saver on his or her optimal form of out-payments unless only one form of out-payments is provided. If a lump-sum payment is not in line with the retirement-related needs of the PEPP saver, the advice shall be accompanied by a warning to that end.

#### CHAPTER IX

#### **SUPERVISION**

#### *Article 61*

##### **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 and in accordance with the relevant sectorial supervisory regime and standards. 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 regard to the tasks to be fulfilled when providing a PEPP.

2. EIOPA and competent authorities shall monitor personal pension products provided or distributed in order to verify that such products are designated 'PEPP' or it is suggested that such products are PEPPs only when they are registered under this Regulation.

#### *Article 62*

##### **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 63*

##### **Product intervention powers of competent authorities**

1. Competent authorities may prohibit or restrict in or from its Member State the marketing or distribution of a PEPP under the following conditions:

- (a) the competent authorities are satisfied that there are reasonable grounds to believe that the PEPP gives rise to significant or reiterated 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 concluded a PEPP contract;
- (c) the competent authorities have 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, competent authorities 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 authorities.

2. The competent authorities shall not impose a prohibition or restriction under this Article unless, not less than one month before the measure is intended to take effect, they have 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 they have based their decision and upon which they have reasonable grounds to believe that each of the conditions in paragraph 1 are met.

3. In exceptional cases where the competent authorities deem it necessary to take urgent action under this Article in order to prevent detriment arising from the PEPP, the competent authorities may take action on a provisional basis with no less than 24 hours' written notice before the measure is intended to take effect to all other competent authorities and EIOPA, provided that all the conditions set out in this Article are met and that, in addition, it is clearly established that a one-month notification period would not adequately address the specific concern or threat. The competent authorities shall not take action on a provisional basis for a period exceeding three months.

4. The competent authorities shall publish on their websites 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.

5. The competent authorities shall revoke a prohibition or restriction if the conditions in paragraph 1 no longer apply.

#### Article 64

##### **Facilitation and coordination**

1. EIOPA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 63. 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 63 of any prohibition or restriction that is to be imposed under that Article, EIOPA shall issue 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 issued 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 65

##### **Product intervention powers of EIOPA**

1. In accordance with Article 9(2) of Regulation (EU) No 1094/2010, EIOPA shall monitor the market for PEPPs which are marketed, distributed or sold in the Union.

2. In accordance with Article 9(5) of Regulation (EU) No 1094/2010, EIOPA may, where the conditions in paragraphs 3 and 4 of this Article are fulfilled, temporarily prohibit or restrict in the Union the marketing, distribution or sale of certain PEPPs or PEPPs with certain specified features.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, to be specified by EIOPA.

3. EIOPA shall take a decision under paragraph 2 of this Article after consulting the other ESAs, where appropriate, and only if all of the following conditions are fulfilled:

- (a) the proposed action addresses a significant PEPP saver protection concern, including with respect to the long-term retirement nature of the product, or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union;
- (b) regulatory requirements under Union law that are applicable to PEPPs do not address the threat;
- (c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

Where the conditions set out in the first subparagraph are fulfilled, EIOPA may impose the prohibition or restriction referred to in paragraph 2 on a precautionary basis before a PEPP has been marketed, distributed or sold to PEPP customers.

4. When taking action under this Article, EIOPA shall ensure that the action does not:

- (a) have a detrimental effect on the efficiency of financial markets or on PEPP savers that is disproportionate to the benefits of the action; or
- (b) create a risk of regulatory arbitrage.

Where a competent authority or competent authorities have taken a measure under Article 63, EIOPA may take any of the measures referred to in paragraph 2 of this Article without issuing the opinion provided for in Article 64.

5. Before deciding to take any action under this Article, EIOPA shall notify competent authorities of the action it proposes.
6. EIOPA shall publish on its website notice of any decision to take any action under this Article. That notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.
7. EIOPA shall review a prohibition or restriction imposed under paragraph 2 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period, it shall expire.
8. Any action taken by EIOPA in accordance with this Article shall take precedence over any previous action taken by a competent authority.
9. The Commission shall adopt delegated acts in accordance with Article 72 to supplement this Regulation with criteria and factors to be applied by EIOPA in determining when there is a significant PEPP saver protection concern, including with respect to the long-term retirement nature of the product, or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union referred to in point (a) of paragraph 3 of this Article.

Those criteria and factors shall include:

- (a) the degree of complexity of the PEPP and the relation to the type of PEPP saver to whom it is marketed and sold;
- (b) the degree of innovation of a PEPP, an activity or a practice;
- (c) the leverage a PEPP or practice provides;
- (d) in relation to the orderly functioning and integrity of financial markets, the size or the total amount of accumulated capital of the PEPP.

#### Article 66

#### Cooperation and consistency

1. Each competent authority shall contribute to the consistent application of this Regulation throughout the Union.
2. The competent authorities shall cooperate with each other in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(22)</sup>, Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU, (EU) 2016/97 and (EU) 2016/2341.
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.
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.

<sup>(22)</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).

5. In order to ensure consistent application of this Article, EIOPA shall develop draft implementing technical standards specifying the details of 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 15 August 2020.

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.

## CHAPTER X

### PENALTIES

#### *Article 67*

#### **Administrative penalties and other 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 the rules on appropriate administrative penalties and other measures applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative penalties and other measures provided for shall be effective, proportionate and dissuasive.

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

By the date of application 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. The administrative penalties and other measures laid down in paragraph 3 of this Article shall apply at least to situations where:

- (a) a financial undertaking as referred to in Article 6(1) has obtained a registration of a PEPP through false or misleading statements or any other irregular means in infringement of Articles 6 and 7;
- (b) a financial undertaking as referred to in Article 6(1) provides, respectively distributes, products bearing the designation 'pan-European Personal Pension Product' or 'PEPP' without the required registration;
- (c) a PEPP provider has not provided the portability service in infringement of Article 18 or 19 or the information about that service required under Articles 20 and 21, or has failed to meet the requirements and obligations set out in Chapter IV, Chapter V, Articles 48 and 50, and Chapter VII;
- (d) a depositary has failed to fulfil its oversight duties under Article 48.

3. Member States shall, in accordance with national law, provide for competent authorities to have the power to impose at least the following administrative penalties and other measures in relation to the situations referred to in paragraph 2 of this Article:

- (a) a public statement, which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Article 69;

- (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 on any member of the financial undertaking's management, supervisory or administrative body or any other natural person, who is held responsible, from exercising 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 14 August 2019;
- (e) in the case of a legal person, the maximum administrative fines referred to in point (d) may be up to 10 % of the total annual turnover according to the latest available accounts approved by the management, supervisory or administrative 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>(23)</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 latest available consolidated accounts approved by the management, supervisory or administrative 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 14 August 2019;
- (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 point (d), (e) or (f), respectively.

4. Any decision imposing administrative penalties or other measures set out in the first subparagraph of paragraph 1 and in paragraph 3 shall be reasoned and subject to the right of appeal before a tribunal.

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

#### Article 68

##### **Exercise of the power to impose administrative penalties and other measures**

1. Competent authorities shall exercise the powers to impose administrative penalties and other measures referred to in Article 67 in accordance with their national legal frameworks:

- (a) directly;
- (b) in collaboration with other authorities;
- (c) by application to the competent judicial authorities.

<sup>(23)</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).

2. Competent authorities, when determining the type and level of an administrative penalty or other measure imposed under Article 67(3), 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 authorities, 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 69*

##### **Publication of administrative penalties and other measures**

1. Competent authorities shall publish without undue delay on their official websites any decision imposing an administrative penalty or other measure for infringement of this Regulation after the addressee of the administrative penalty or other 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 administrative penalties or other measures imposed.

3. Where the publication of the identity, in the case of legal persons, or the identity and personal data, in the case of natural persons, is considered by the competent authorities to be disproportionate following a case-by-case assessment, or where the competent authorities consider 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 penalty or other measure until the reasons for non-publication cease to exist;
- (b) publish the decision imposing the administrative penalty or other 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 penalty or other 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 an administrative penalty or other measure on an anonymous basis as referred to in point (b) of paragraph 3, the publication of the relevant data may be postponed. Where a decision imposing an administrative penalty or other measure is subject to an appeal before the relevant judicial authorities, competent authorities shall also without delay add that information to their official website and any subsequent information on the outcome of such appeal. Any judicial decision annulling a decision imposing an administrative penalty or other measure shall also be published.

5. 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 70

##### **Duty to submit information to EIOPA in relation to administrative penalties and other measures**

1. Competent authorities shall inform EIOPA of all administrative penalties and other measures imposed but not published in accordance with point (c) of Article 69(3) including any appeal in relation thereto and the outcome thereof.

2. Competent authorities shall provide EIOPA annually with aggregated information regarding all administrative penalties and other measures imposed in accordance with Article 67.

EIOPA shall publish that information in an annual report.

3. Where Member States have chosen, in accordance with the second subparagraph of Article 67(1), to lay down criminal sanctions for infringements of this Regulation, their competent authorities shall on an annual basis provide EIOPA 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.

4. Where competent authorities have disclosed an administrative penalty, other measure or criminal sanction to the public, they shall at the same time report that penalty, measure or sanction to EIOPA.

#### CHAPTER XI

#### FINAL PROVISIONS

#### Article 71

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

With regard to the processing of personal data within the framework of this Regulation, PEPP providers, PEPP distributors and competent authorities shall carry out their tasks for the purpose of this Regulation in accordance with Regulation (EU) 2016/679 and Directive 2002/58/EC. With regard to the processing of personal data by EIOPA within the framework of this Regulation, EIOPA shall comply with Regulation (EU) 2018/1725.

*Article 72***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 Articles 40(9), 45(4) and 65(9) shall be conferred on the Commission for a period of four years from 14 August 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of powers referred to in Articles 40(9), 45(4) and 65(9) 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. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 40(9), 45(4) or 65(9) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to 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 of the Council.

*Article 73***Evaluation and report**

1. Five years after the date of application of this Regulation, and every five years thereafter, 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 and the Council. That report shall be accompanied, where appropriate, by a legislative proposal.
2. The Report shall cover in particular the following:
  - (a) the functioning of the procedure for registration of PEPPs in accordance with Chapter II;
  - (b) portability, in particular the sub-accounts available to PEPP savers and the possibility for the saver to continue to contribute to the last opened sub-account in accordance with Article 20(3) and (4);
  - (c) development of partnerships;
  - (d) the functioning of the switching service and the level of the fees and charges;

- (e) the level of market penetration of the PEPP and the effect of this Regulation on pension provision across Europe, including substitution of existing products and the uptake of the Basic PEPP;
- (f) the complaints procedure;
- (g) the integration of ESG factors in the PEPP investment policy;
- (h) the level of fees, charges and expenses that are directly or indirectly borne by PEPP savers, including an assessment of possible market failures;
- (i) the compliance of PEPP providers with this Regulation and the standards set by the applicable sectorial law;
- (j) the application of different risk-mitigation techniques used by the PEPP providers;
- (k) the provision of PEPP under the freedom to provide services and freedom of establishment;
- (l) if there are merits to disclosing information on the past performance of the product to prospective PEPP savers, taking into account the information for the performance scenarios which will be included in the PEPP;
- (m) whether advice provided to PEPP savers is adequate, in particular regarding possible forms of out-payments.

The assessment referred to in point (e) of the first subparagraph shall take into account 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. The Commission shall set up a panel with relevant stakeholders to monitor the development and implementation of PEPPs on an ongoing basis. That panel shall include at least EIOPA, the competent authorities, industry and consumer representatives and independent experts.

The secretariat of the panel shall be EIOPA.

#### Article 74

#### **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*.

This Regulation shall apply 12 months after the publication in the *Official Journal of the European Union* of the delegated acts referred to in Articles 28(5), 30(2), 33(3), 36(2), 37(2), 45(3) and 46(3).

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

Done at Brussels, 20 June 2019.

*For the European Parliament*  
*The President*  
A. TAJANI

*For the Council*  
*The President*  
G. CIAMBA