Brussels, the 30th of March 2021

Letter on the problematic inclusion of the costs of the mandatory advice for the basic PEPP

Dear Mr Pîslaru,

The Cross Border Benefits Alliance-Europe (CBBA-Europa) would like to stress the well-known problematic question about the inclusion of the mandatory personalized advice costs for the basic PEPP (Pan-European Personal Product) within the fee-cap of 1% of the capital accumulated every year.

As we know, paragraph 2 of article 45[1] of the Regulation (EU) 2019 /1238 of 20 June 2019 regulating the basic PEPP (default option) provides that the costs and the fees for the basic PEPP shall not exceed 1% (fee-cap, or cost threshold)[2].

---

[1] Reg. 1238 / 2019 Art. 45:

"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 outpayments 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".

[2] Initially, savers could waive the advice for the default investment option, as the Commission and the Council considered the Basic PEPP as a default investment option designed as a "safe" retirement product either with a guaranteed capital or strong risk mitigation techniques aiming at capital preservation at retirement. However, during

Cross Border Benefits Alliance - Europe
Square de Meeûs 38-40, B-1000 Brussels (Belgium), Tel: +32 2 401 87 92, Fax: +32 2 401 6868
Website: https://www.cbba-europe.eu

In order to ensure a level playing field between different PEPP providers and different types of PEPPs, paragraph 3 provides that EIOPA shall develop draft regulatory technical standards, specifying the types of costs and fees referred to within the cost threshold.

In this regard, two matters were raised by the pension industry during its exchanges with the European authority:

- the possible exemption from the fee cap of 1% (threshold) of the cost of the guarantees on the insured capital investment option (which is one of the two default investment options, together with the capital recoup through risk-mitigation techniques);

- and the possible exemption of the cost of the mandatory personalized advice required before the subscription, as to say prior to the conclusion of a PEPP contract[3].

In the technical standards of last August 2020, EIOPA actually proposed to exempt the cost of the annual guarantee from the threshold set out in paragraph 2, recognizing the potential higher cost borne by insurance companies to offer a guarantee on the capital.

The cost of the mandatory personalized advice had a different fate, instead. In its letter to the Commission, EIOPA actually highlighted this issue by stressing that several stakeholders complained that the inclusion of the cost of advice in such a threshold might represent a major problem for PEPP providers.
However, the current wording of article 45 seems not to allow, as such, any exclusion of the cost of personalized mandatory advice, considering that the said paragraph 3 of the Regulation only allows exemptions aimed at assuring a "*level playing field*" between PEPP providers, and as the burden of the advice equally affects all of them, an exemption was not legally possible.
And indeed, the Commission Delegated Regulation (EU) 2021/473 of 18 December 2020 did not provide for the said exclusion.

Based on in-depth studies, we will be pleased to share with you that many potential providers strongly believe that including the costs of the mandatory personalized advice will considerably jeopardize the economic viability of creating and distributing PEPPs[4]. Indeed, the advice will need to be tailored and personalized to the individual, and despite of the possibility to give such advice in an automated and robo-advisory fashion[5], it will be very hard -if not impossible- to do so in a satisfactory manner via those tools. In other words, in order to undertake a "know-your-customer" procedure, human interaction is still most likely needed.

---

the final vote of the PEPP regulation at the European Parliament, the European Parliament requested the personalized advice to be mandatorily applied also to the Basic PEPP.

[3] As provided by article 34 of the PEPP Regulation.

[4] It should be also taken into consideration that the expected contributions to PEPPs will consist of small and regular amounts, at least initially. Therefore, it will be more challenging to develop a viable business model on limited scales. In addition, it should be reminded that PEPP users will have the right to switch to other PEPP providers every five years, which would make even more difficult for providers to amortize the costs of advice over time.

[5] As provided by the aforementioned article 34 in paragraph 5.

Cross Border Benefits Alliance - Europe
Square de Meeûs 38-40, B-1000 Brussels (Belgium), Tel: +32 2 401 87 92, Fax: +32 2 401 6868
Website: https://www.cbba-europe.eu

Granted that robot-automated advice does not yet exist, even when/if it will be available one day, it may not be as cheap as expected due to the costs of developing it[6].
More in general, a fee-cap of 1% including the advice would seriously risk impacting its overall quality.

Moreover, it should be reminded that the PEPP is a personal pension product, which should be normally offered and distributed by for-profit providers.
Therefore, on the one hand, pension providers will legitimately expect a reasonable return on the sale of PEPPs; on the other hand, they will obviously bear the costs of creation and distribution of PEPPs without any security that their investments could be recouped.

As a consequence, if the market appetite for providers does not materialize due to the unreasonable fee cap, those providers might likely prefer to keep offering their national pension products, while PEPPs will risk being left aside. And if PEPPs are not created and distributed by pension providers, consumers will never benefit from the potential advantages of the new pan-European personal pension product.

In order to avoid this risk as soon as possible, CBBA-Europe proposes to amend the current Regulation with regard to the costs of personalized mandatory advice.

Two solutions might be possible:

1) The first solution, which is the most desired by potential PEPP providers, would consist in the total exclusion of the mandatory advice cost from the fee-cap, so that the 1% threshold would just refer to the ordinary operating costs and fees for the basic PEPP. The cost of the mandatory advice provided during the pre-contractual phase would be then recharged on the user through a one-single payment or spread over smallest annual tranches at the request of the customer[7].

2) As a second option, the costs of the mandatory personalized advice might be suspended during the first two years from the entry into force of the PEPP Regulation in order to let the PEPP market develop, and then to leave the Commission to decide afterwards on the appropriate level for the fee cap, as provided by paragraph 4 of article 45 of the PEPP Regulation.

In any case, whatever solution exempting the mandatory advice will be chosen, it shall remain granted that a full and clear information about the costs will always be disclosed to the PEPP users.

CBBA-Europe is aware that the aforementioned paragraph 4 of article 45 of the PEPP Regulation provides that the Commission shall review the adequacy of the fee-cap every two years. As we can expect that the PEPP Regulation will be in force in Q2 2022, this means that the Commission might consider a change not before the end of 2024. If the costs

[6] Including the fact that such a tool should be adapted not only to the individual user's needs, features and expectations, but also to the different EU member states tax and social security conditions where the user resides.
[7] However, in this second case, an exit fee clause would be needed if the member terminates the contract before paying all the installments of the advice fee.

Cross Border Benefits Alliance - Europe
Square de Meeûs 38-40, B-1000 Brussels (Belgium), Tel: +32 2 401 87 92, Fax: +32 2 401 6868
Website: https://www.cbba-europe.eu

of the mandatory personalized advice will remain included into the fee-cap, such a timeframe would be too long to wait, as the interest in the PEPP could be lost by potential providers. Moreover, if PEPPs will be not created and distributed under the current conditions, the legislator would miss the necessary data and figures to establish a new fee-cap in the following two years.

Keeping in mind that the process to adoption of such an ambitious EU project like the PEPP Regulation has been very long and complex, we hope that the aforementioned observations will be taken into your consideration to support a much and urgently needed personal pension product in Europe,

Sincerely yours,

Francesco Briganti
Secretary General of CBBA-Europe

Contacts:

Francesco Briganti,
Francesco.briganti@cbba-europe.eu

CBBA-Europe Offices:
Tel +32 2 401 87 92
info@cbba-europe.eu

Cross Border Benefits Alliance - Europe
Square de Meeûs 38-40, B-1000 Brussels (Belgium), Tel: +32 2 401 87 92, Fax: +32 2 401 6868
Website: https://www.cbba-europe.eu

About CBBA-Europe (mission and main activities)

The Cross-Border Benefits Alliance-Europe (CBBA-Europe), is a Brussels based advocacy organization (Belgian AISBL) promoting the creation of cross border and pan-European social benefits in the European Economic Area (EEA), including pensions (occupational and individual), healthcare insurance, unemployment benefits, long term care insurance, etc.

Indeed, CBBA-Europe considers the current excessive fragmentation of national social systems as detrimental to the creation of a European common market based on economies of scale and on the removal of costly and burdensome barriers in particular for citizens; but also detrimental to free movement of services, capitals and persons; and to the potential accumulation of huge capitals to be invested in the European economy, in accordance with the Capital Markets Union (CMU) to foster much needed growth and employment.

More generally, CBBA-Europe wishes the European Union to become a more interconnected economic and social area, where both economic competitiveness, with more efficiency in delivering benefits, and the protection of social rights assured to companies and citizens.

As for its structure, CBBA-Europe is a transversal Alliance made up of stakeholders with different backgrounds, including multinational companies, trade unions, asset managers, pension funds, insurance companies, consumers' organizations, national and international trade associations. Just created in October 2017, CBBA-Europe already has twenty members, and is still rapidly growing.

CBBA-Europe also relies on a Scientific Council made up of well-known experts and professors from the most prestigious Universities of Europe.

Finally, in addition to its activities of monitoring and publication of position papers, CBBA-Europe organizes several public meetings throughout Europe with national and European decision makers and stakeholders.

For more information about CBBA-Europe, please visit our website: www.cbba-europe.eu

Cross Border Benefits Alliance - Europe
Square de Meeûs 38-40, B-1000 Brussels (Belgium), Tel: +32 2 401 87 92, Fax: +32 2 401 6868
Website: https://www.cbba-europe.eu