PENSIONS EUROPE

PensionsEurope Newsletter 2024/04

1. Workstreams on PEPP

Background:

On 5 August 2024, the OPSG published **on their own initiative a discussion paper on the development of the Pan-European Pension Product, its market development, challenges, obstacles, and solutions.**

Then, on 11 September 2024, EIOPA published a staff paper named **"A Simple and Long-term European Savings Product: The Future of the Pan-European Pension Product".** On 24 September 2024, EIOPA participated in the WG PPP to present their paper.

Content:

I. OPSG Paper:

- One of the main challenges for PEPP development is the ''*friendliness*'' of the regulatory environment. It analyses this ''*friendliness*'' in each MS.

- It recommends that the EC and EIOPA promote a **fair tax regime for PEPP without disadvantaging existing occupational pension schemes.**
- Basic PEPP advice requirements should be removed. Online tools should be proposed instead.

II. EIOPA Staff Paper:

- Recommendations include **combining employer and personal contributions to make the PEPP more flexible as a second and third-pillar product**.
- Rather than focusing on fee levels, the emphasis should be on **whether PEPPs offer good value for money.**
- MSs could develop local PEPPs marketed under the PEPP label.
- **Auto-enrolment is considered**. PEPP accounts could automatically open for EU citizens when they turn 18 or start working

Next steps:

A review of the PEPP framework is planned for 2027. EIOPA will contribute to this process and will gather input from stakeholders during the review.

2. Workstreams on the SFDR

Background:

During the summer of 2024, several workstreams were published, including proposals for reviewing the Sustainable Finance Framework. In September 2023, the European EC) launched a consultation to evaluate the current framework, and consider some areas for improvement.

The EC is expected to propose a review of the SFDR in 2025, although the exact date is yet to be confirmed.

Content:

I. **Joint opinion on the assessment of the Sustainable Finance Disclosure Regulation (SFDR) published by the ESAs** on 18 June 2024.

- **Introducing a product classification system based on categories**, including a sustainability and transition category, **and/or indicators** to show the sustainability features on a scale;
- Revising and potentially aligning **the definition of "sustainable investments"** in both the Taxonomy and SFDR, while also developing a Social Taxonomy;
- Requiring key PAIs information for all financial products;
- Developing a framework to assess the sustainability features of government bonds.

II. **Opinion on the functioning of the Sustainable Finance Regulatory Framework .published by ESMA** on 24 July 2024. This builds on the joint ESAs opinion on SFDR.

- **Putting the EU taxonomy at the centre of the sustainable finance framework** and developing the social Taxonomy;

- **Clarifying legally the term ''transition finance''**, developing standards for transition bonds and sustainability-linked bonds;
- Establishing minimum sustainability disclosures for all financial products with few KPIs. Retail investors would receive only essential disclosures, while the full set would be available to all investors.
- Regulating ESG data products.

III. The current implementation of the SFDR with an assessment on how the legislative framework is working for retail investors **commissioned by the ECON Committee** and published on 2nd July 2024:

- **The CSRD should take a more modular approach**, identifying and exporting SFDR-relevant information into SFDR reporting.
- **Establishing minimum thresholds for sustainability categories**, managed by ESMA and EIOPA in collaboration with the industry. However, creating a sustainability rating on a scale will be challenging.
- Introducing mandatory disclosure of product-level PAIs.

Next steps:

PensionsEurope is preparing a position paper with a particular focus on the ESAs' joint opinion on the SFDR.

3. State of play on the new College of Commissioners

Background

On 17 September, Commission President Ursula von der Leyen presented her proposed composition of the new College of Commissioners and the allocation of their respective portfolio. The related mission letters have been also published.

The commission president gave the **Financial Services portfolio to Maria Luis Albuquerque**, who was Portugal's Minister of Finance between 2013 and 2015. Her official title will be that of ***Commissioner for Financial Services and the Savings and Investments Union***.

Roxana Minzatu, a former Romanian MEP, was ***appointed Executive Vice-President for People, Skills and Preparedness***. She will be responsible for the EU's social affairs agenda, among other duties.

Content

Mission letter to Maria Luis Albuquerque :

- The mission letter formalises the gradual shift from the term CMU to the ''Savings and Investment Union, which tasks her to "*develop a European Savings and Investments Union, including banking and capital markets*". The letter also mentions that she should "***work on the potential of private and occupational pensions to help EU citizens with their retirement and channel their savings into the economy***".

Mission letter to Roxana Minzatu:

- Regarding social rights, the mission letter calls for **a new Action Plan on the implementation of the European Pillar of Social Rights**, set to be presented in 2025. It also mentions **the need for a new Pact for European Social Dialogu**e.

Next steps:
EP hearings of those EVP/ commissioners will be held from 4 November to 12 November.

4. Draghi's report: The Future of European Competitiveness

Background:

On 9 September 2024, former Italian Prime Minister Mario Draghi presented his report **''The Future of European Competitiveness''**. The report is divided into two sections: the first outlines an overarching strategy for Europe, and the second provides detailed sector-by-sector analyses and recommendations.

The report responds to structural challenges in sectors like defence and energy, as well as long-ignored issues such as low investment in innovation and addressed how to unlock Europe's potential.

Content:

Key highlights relevant to us:

- The report focuses on the significant investment needs the EU needs to finance its strategic goals, **underdeveloped funded pension systems** in many MS are referred to as a ***''missed opportunity''***. Draghi believes that *''The EU must also better channel households' savings to productive investments'' and that the best way to do it is via ''long-term savings products (pensions)*''.
- Draghi **emphasises the heavy regulatory burden** on European companies. He notes that between 2019 and 2024, the U.S. passed around 2,000 federal resolutions, whereas the EU passed 13,000. He recommends reducing the overall volume of regulation and **fully implementing the EU's proposed 25% cut in reporting requirements.**
- In the context of sustainable finance, **the report highlights that the sustainability reporting and due diligence frameworks have added a significant regulatory burden**. The Corporate Sustainability Reporting Directive is criticised for creating risks of over-reporting, and the EU Taxonomy is also mentioned as having unclear definitions and requirements.

5. EIOPA consultation on liquidity risk management for IORPs

Background:

On 26 September 2024, EIOPA launched its expected consultation on liquidity risk management. This is the step following EIOPA's advice on the IORP II review and the relevant EIOPA's workshop which was organised earlier this year.

Content:

EIOPA's aim is to assess IORPs' exposure to margin and collateral calls, early withdrawals, and outgoing transfers – as well as an evaluation of their ability to manage these risks. Moreover, this consultation paper sets out EIOPA's draft Opinion on the supervision of IORPs' liquidity risk management.

The consultation paper includes 16 questions in total. In the consultation paper, there are the following 3 chapters and an impact assessment on which the questions are based:

1. Definitions
2. Forward-looking and risk-based supervision of the management of IORPs
3. IORPs liquidity risk management and governance.

In the consultation paper as part of an impact assessment, EIOPA also presents and compares the different options concerning the scope of the liquidity risk management and outsourcing of investments in derivative instruments. Those policy options are the following:

A: Scope of liquidity risk-management:

- Policy option A.0: No change
- Policy option A.1: Scope restricted to margin and collateral calls on derivative positions
- Policy option A.2: Scope covering all material sources of liquidity risk (preferred option by EIOPA)

B: outsourcing of investments in derivative instruments:

- Policy option B.0: No change
- Policy option B.1: Investment funds to hold appropriate level of liquid assets using principle-based approach (preferred option by EIOPA)
- Policy option B.2: Investment funds to hold appropriate level of liquid assets using standardised approach

Next steps

The deadline for answering the consultation is 20 December 2024. EIOPA expects to publish the final Opinion in the course of 2025 together with a feedback statement on stakeholders' responses.

6. Framework for financial data access (FIDA)

I. Council

Treatment of occupational pension schemes

20 MSs (DK, EE, ES, MT, NL, PL, PT, RO, SE, AT, CY, DE, FI, FR, LU, LV, LT, CZ, IE, and BG) broadly agreed during the 30 September Council's meeting on the exclusion of occupational pension schemes data from the scope of FIDA, with an opt-in.

FR, ES, LU, and DE asked questions about the modalities and the need for such a data registry as proposed by the presidency.

Two MSs (FR and SE) opposed the review clause proposed by the presidency, which would grant the EC, the task to assess whether data related to occupational pension schemes should be included at a later stage in the scope of FIDA.

The EC stressed during that meeting that they would prefer a broad scope for FIDA, including occupational pension schemes, and insisted on the need to keep a review clause if they would be excluded from FIDA.

Italy and Slovakia were the only MSs indicating their dissatisfaction with the exclusion of occupational pension schemes from the scope of FIDA.

<u>Gatekeepers' access to FIDA data sharing and the treatment of third-country Financial Information Service Provider (FISPs)</u>

Those two issues were still heavily debated among MSs with no clear consensus. For instance, some MSs (LU, NL, DE, DK, FI, and SE) asked for a Council's and EC's legal opinion on the options regarding the treatment of third-country FISPs. On the access of DMA-designated gatekeepers to FIDA-related data, MSS disagreed between a group of MSs accepting it with certain safeguards and a small group of MSs (FR, DE, and IT) refusing it.

<u>Allowing or not enabling data sharing outside schemes</u>
Most MSs supported FDSS to be the only way for data sharing, while few MSs supported data sharing outside of the Financial Data Sharing Schemes. The EC indicated its preference for a middle-way, authorising data sharing outside schemes as long as schemes are not yet established.

MSs had until 3 October 2024 to provide written comments to the presidency. The Hungarian presidency will circulate a new compromise during the week of 14 October before the next meeting which will take place on 25 October 2024. As it takes longer than anticipated, the Hungarian presidency now aims to reach a general approach in November.

II. European Parliament

In September, MEP Johan Van Overtveldt (ECR,BE) has been appointed rapporteur on FIDA. MEPs Regina Doherty (EPP,IE), Eero Heinäluoma (S&D,FI), Ondrej Kovarik (PfE,CZ), Stéphanie Yon Courtin (Renew,FR) and Rasmus Andresen (Greens,DE) are shadow rapporteurs.

The EP ECON report adopted on 30 April 2024 needs to be approved in a plenary session, with or without amendments. It could take place during the 21-24 October 2024 plenary session.

III. PensionsEurope advocacy

On 18 September 2024, PensionsEurope sent messages on FIDA to the ongoing Hungarian presidency. Different options are on the table of the Council to exclude pension rights/IORPs from the scope of FIDA.

We indicated our full support for the so-called option 3 to exclude pension rights in officially recognised occupational pension schemes, under the Solvency II and IORP II directives with an opt-in possibility. Indeed, this would take account of the diverse EU occupational pension landscape by ensuring the exclusion of occupational pension schemes while preserving the ability of Member States to include occupational pension schemes in the scope.

7. Digital Operational Resilience Act (DORA) levels 2 & 3 measures

First batch policy products

On 15 July 2024, three DORA-related RTSs arising from the first batch of policy products entered into force:

- RTS on classification criteria of ICT incidents;
- RTS on the policy on the use of ICT services regarding critical functions;
- RTS on ICT risk management tools, methods, processes, and policies.

The remaining piece of the first batch of DORA policy products, the ITS on the register of information is still missing. Delay regarding the process of adopting the ITS on the register of information is longer than expected as we understand that the Commission pushed back the text submitted by the ESAs. The EC asked the draft ITS to be redrafted, especially on issues related to the legal entity identifier (LEI).

Second batch of policy products

On 17 July 2024, The ESAs published a set of draft DORA level 2/3 measures related to the second batch of policy products :

- RTS and ITS on content, timelines, and templates on incident reporting (art. 20.a & art. 20.b) ;
- Guideline on aggregated costs and losses from major ICT incidents (art. 11.11);
- RTS on oversight harmonisation (art 41) ;
- Guideline on oversight cooperation between ESAs and competent authorities (art. 32.7) ;
- RTS on threat-led penetration testing (TLPT) (art. 26.11).

On 26 July 2024, the ESAs published the remaining piece of the second batch with :

- RTS on subcontracting of critical or important functions (art. 30.5).

The delegated acts related to the second batch policy products are expected to be adopted by the EC in October 2024. Then, the RTS will undergo a three-month scrutiny period, before its publication at the OJEU if no objection is raised from the co-legislators.

PensionsEurope advocacy

Besides, our responses to ESAs consultations (here and here) and our meetings with EIOPA on those issues, we have been liaising since August 2024, with members and working to establish a consensus on a letter to be sent to the EC that aims to seek clarification on DORA's definition of ICT services.

Time is running out for DORA compliance work as the application date for DORA is on 17 January 2025.

8. VAT review for financial services

The EC already launched a new process to prepare a potential new initiative on that topic. DG TAXUD commissioned mid-2024 a consultancy called *Syntesia* to draft a support study on the taxation of the financial sector.
To recall, in 2022, the last review of VAT rules for financial and insurance services was postponed for political and technical reasons.

While the scope of this supporting study is broader than the VAT treatment of the financial sector by also including topics such as the FTT, it has major implications on any upcoming political decisions to be made by the EC on the VAT treatment of financial services. It needs to be connected to ongoing debates of new "*own resources*" as the EC needs ultimately to reimburse borrowings linked to the EU recovery plan.

The mission letter for the Commissioner designated for tax issues, Wopke Hoekstra, also gives some vague insights about what could be a potential new tax initiative under the next EC: "*You will identify innovative solutions for a coherent tax framework for the EU's financial sector that helps further integrate the EU's financial sector, facilitate cross-border operations and foster digitalization and innovation*". The upcoming EP hearing (4-12 November) could give more clarity on that topic.

The Commission work is also driven by :

- EC VAT group: it is working on the future of VAT and should deliver a report on it by the end of 2024 which will include potential ideas of the VAT review for financial services.
- ECOFIN council: The last June 2024 ECOFIN report to the European Council on tax issues also highlights that "*some delegations recalled the need for amendments in the VAT rules in the tourism sector and relating to financial services, and other delegations welcomed the upcoming review of Regulation (EU) nr. 904/2010 on administrative cooperation and combating fraud in the field of value added tax*".
- The evolving case law: On 5 September 2024, the ECJ issued its ruling on the VAT treatment for Dutch DB funds. The prejudicial questions regard article 135 (1) (g) of the VAT Directive, which grants EU Member States the right to exempt transactions from VAT that involve "*the management of special investment funds as defined by Member States*." There has been a long-running discussion over whether pension funds can be regarded as special investment funds, which has been featured in various questions that have been posed to the CJEU. The preliminary ruling says the following ;
  - (1)To assess investment risk, the impact of investment returns on the pension benefit should be regarded, rather than the qualification of the pension scheme as '*defined benefit*' in the Dutch Pension Act and;
  - (2) Test for *comparability* to a special investment fund, rather than for *equivalence.*

it is up now to a Dutch regional court to rule on the five cases, it is not following the AG's opinion which would have risked eliminating VAT exemption for most European pension schemes.

PensionsEurope advocacy

On 13 September 2024, we had an interview with that consultancy. They needed preliminary insights on the VAT regime for pension funds and our views on potential future changes. We also briefly discussed the FTT and the positioning of our sector.

9. PensionsEurope events

C&S Seminar 2024

The C&S Seminar ***''Europe needs Pension Funds''*** will be held **on 18 November 2024** from 14:00 to 17:00 at the Cercle Gaulois in Brussels.

This will be an in-person event, followed by a reception and a dinner for members.

The programme will focus on the European Commission's agenda for pension funds during the new mandate and the role of pension funds in fostering innovation and growth. Confirmed speakers include Tilman Lueder, Head of Unit for Insurance and Pensions at DG FISMA, European Commission; Roger Havenith, Deputy Chief Executive at the European Investment Fund; and András Inotai, Head of Unit for Innovation Policy and Access to Finance at DG RTD.

All members received an invitation. To register, please click here.

European Retirement Week 2024

The European Retirement Week (ERW), taking place annually in the last week of November provides a platform for a wide range of stakeholders to debate the future of pensions in Europe and raise citizens' awareness of the need to save for retirement and achieve pension adequacy.

This year, European Retirement Week will kick off on **25 November 2024**.

As part of the ERW, we are organising a webinar on the topic of ***''Future-Proofing Retirement in Europe: The Case for More Funded Pensions''.*** The webinar will take place **on 26 November 2024 from 14:00 to 16:00**. More information on the programme and registration will be available soon.