

BIPAR Update

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1. PEPP – EIOPA/Commission webinar on PEPP's launch day - 22 March 2022

On 22 March 2022, the Regulation on a Pan-European Personal Pension Product (PEPP) will start to apply, meaning that providers can start offering PEPPs on the European markets.

BIPAR organized a webinar on 22 February 2022 for its members to recall the key principles of PEPP, in particular from a distributor perspective, and to reflect on the practical deployment of PEPP and the European supervisor EIOPA's role in this respect. Speakers at this webinar were Didier Millerot, Head of Unit "Insurance and Pensions" of DG Financial Stability, Financial Services and Capital Markets Union (FISMA), European Commission, and Fausto Parente, Executive Director of EIOPA.

The European Commission and EIOPA are now organising a joint "launch webinar" themselves on PEPP on 22 March: "Introduction to the PEPP Regulation".

The webinar is directed to both businesses and consumers and will provide an entry-level introduction to what PEPPs are about and what value they can bring:

- What is PEPP about?
- What value can they bring?
- When can we expect PEPPs on the market?

You can register and find the programme to the webinar [here](#).

The BIPAR Secretariat will attend this webinar.

2. ESMA views on MiFIR review, including on proposed payment for order flows ban

On 9 March 2022, ESMA sent a [letter](#) on the Commission's MiFIR review proposals to Bruno Le Maire, President of the Economic and Financial Affairs Council - French Presidency, and to Irene Tinagli, Chair of the European Parliament's Committee on Economic and Monetary Affairs.

The Commission's proposals to (partially) review MiFIR and MiFID II are part of the wider 2021 CMU follow-up package. The legislative proposals mainly focus on:

- the creation of a **European consolidated tape** (centralised database meant to provide a comprehensive view on prices and volume of equity and equity-like financial instruments traded throughout the Union across a multitude of trading venues) and on the other hand
- a proposed **ban on Payment For Order Flow (PFOF)**.

With the letter, ESMA wishes to share its technical comments on the proposal, notably on the consolidated tape provider (CTP), non-equity transparency, including the trading obligation for derivatives, data reporting and investor protection parts.

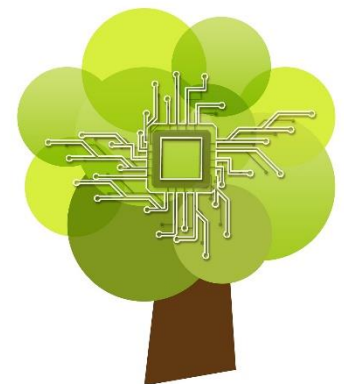
With regard to PFOFs, the letter states that: *“ESMA shares the Commission’s analysis regarding PFOF and is aware that further studies by NCAs have been published and/or are ongoing. In fact, ESMA’s own analysis of earlier last year, as expressed in its public statement of 13 July 2021, provided a warning to firms and investors about the risks arising from PFOF. In this statement, ESMA stressed that the receipt of PFOF by firms from third parties raises significant investor protection concerns. A particular concern is the conflict of interest between the firm and its clients due to the receipt of PFOF, as the firm will be incentivised to choose the execution venue offering the highest payment rather than the venue offering the best possible result for its clients when executing client orders. Indeed, ESMA concluded in its statement, based on the current MiFID II requirements on investor protection, that due to the significant investor protection concerns raised by PFOF, it would in most cases be unlikely that receiving PFOF would be compliant with MiFID II.*

For further background on ESMA's earlier statements on PFOFs, please see BIPAR Updates of 2 March and 15 July 2021.

3. EU Proposal on Corporate Sustainability Due Diligence for large companies - Indirect impact on SMEs

In late February 2022, the European Commission adopted a **proposal for a Directive on corporate sustainability due diligence**. You can find the Commission proposal [here](#).

According to the Commission press release, *“the proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains. Companies will be required to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights, such as child labour and exploitation of workers, and on the environment, for example pollution and biodiversity loss. For businesses these new rules will bring legal certainty and a level playing field. For consumers and investors they will provide more transparency. The new EU rules will advance the green transition and protect human rights in Europe and beyond”*.



The proposed corporate due diligence rules will apply to:

1. Very large EU limited liability companies with more than 500 employees and over EUR 150 million in net turnover worldwide,
2. Other limited liability companies with more than 250 employees and over EUR 40 million net turnover worldwide, only if they operate in one or more defined high impact sectors in terms of human rights violations or harm to the environment. The list of high-risk sectors includes the textile industry, agriculture, forestry and fisheries, as well as extraction of minerals.

As regards the financial sector, due to its specificities, even if it is covered by sector-specific OECD guidance, it does not form part of the high-impact sectors covered by this Directive.

These companies should start to comply with the rules 2 years later than the very large companies and they will have obligations in relation to severe adverse impacts on the respective sector.

3. Non-EU companies active in the EU with turnover threshold aligned with the above-mentioned groups of companies, generated in the EU.

targeted and proportionate support to SMEs with which they have established business relationships). Moreover, the review clause makes explicit reference to the personal scope of the Directive, which should be reviewed in the future in light with the experience of implementation.

Companies in scope will need to take appropriate measures (“obligation of means”), in light of the severity and likelihood of different impacts on human rights and on the environment, the measures available to the company in the specific circumstances, and the need to set priorities. In addition, very large companies (category 1) will need to have a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C in line with the Paris Agreement.

National administrative authorities appointed by Member States will be responsible for supervising these new rules and may impose fines in case of non-compliance. In addition, **victims will have the opportunity to take legal action for damages** that could have been avoided with appropriate due diligence measures.

Furthermore, to ensure that due diligence becomes part of the whole functioning of companies, directors of companies will have to be involved. The Commission proposal also introduces **directors' duties to set up and oversee the implementation of due diligence and to integrate it into the corporate strategy**. In addition, when fulfilling their duty to act in the best interest of the company, directors must take into account the human rights, climate change and environmental consequences of their decisions. Where companies' directors enjoy variable remuneration, they will be incentivised to contribute to combating climate change by reference to the corporate plan.

The Commission's proposal has been presented to the European Parliament and the Council for examination and finalisation. Once adopted, Member States will have two years to transpose the Directive into national law.



Small and medium enterprises (SMEs) are not directly in the scope of this proposal. Nevertheless, according to the Commission, **SMEs might be indirectly**

affected by the new rules as a result of the effect of large companies' actions across their value chains (as contractors or subcontractors). The proposal indicates that “accessible and practical support is necessary for companies, in particular SMEs in the value chain, to prepare for the obligations (or the consequent demands they may be passed on to them indirectly). This could include practical guidance and supporting tools such as hotlines, databases or training, as well as the setup of an observatory to help companies with the implementation of the Directive”. Other mitigation measures to reduce indirect impact on the SMEs are part of the obligations of companies in the scope of this Directive (e.g. to provide