



aba response to

[Consultation Capital Markets Union Mid-term Review](#)

4. Fostering Retail Investment and Innovation

Question: Are there additional actions that can contribute to fostering retail investment? Please propose complementary policy measures, explain their advantages, and illustrate any foreseeable challenges to their implementation

We have fundamental concerns regarding the role which the consultation gives to personal pensions generally and specifically on the policy framework to establish European personal pensions (“PEPP”), for which a legislative proposal is expected in Q2 2017. We do not agree with the statement “Personal pensions have a key role to play”, rather the focus should be on occupational pensions and with that on institutional investors. Across the EU, societies are ageing, and public finances are being consolidated by a cut-back of first pillar pensions. This poses a big challenge, which partly can be addressed by the strengthening of supplementary pensions. Via supplementary pensions, EU citizens can also reap the benefits of a more integrated Capital Markets Union, benefitting from improved efficiency and more generally the increasing economic performance of the EU economy. From our perspective, however, these benefits can best be reaped by collectively organised second pillar pensions, rather than in individually sold products. For detailed comments on the PEPP, see aba position paper ([Positionspapier in German](#)).

In the context of the PEPP we would also like to comment on the [Study on the and adequacy of pension decumulation practices in four EU countries](#) Ernst & Young carried out for the EU Commission. The aim of the study was to analyse the pension decumulation practices in four EU countries (UK, NL, Germany and Poland). However, we do not think that the study actually achieves this objective: While the title and other aspects of the study suggest that occupational pensions are included, for Germany this is not the case, and it is not explicitly explained why they were left out. For Germany it mostly covers Riester, Rürup and pension insurance contracts (all third pillar) and is overall relatively superficial. In addition, we find that the study falls short of quality in several areas manifesting itself as a lack of references to legal or official sources; it contains misrepresentations of the German pension system and in some areas lack clarity.

According to EIOPA, Germany has the biggest personal pensions market in the EU ([EIOPA’s advice on PPP in July 2016](#)). However, after more than 15 years of experience and 16.5m Riester contracts (personal pensions incentivised by the Government) signed, the Government has decided to strengthen occupational pensions ([Law to strengthen occupational pensions](#)). We welcome this development and urge the Commission to promote occupational pensions at the European level as well.

The way forward for occupational pensions

However, we do also see problems with applying the idea of the PEPP to the 2nd pillar, as done by Gabriel Bernardino in his speech at the EIOPA Conference on 18 October 2016. He said that “a further important step would be the design of a simple and transparent Second Regime for Defined Contribution Occupational Pensions Schemes”. Many of the criticisms made in relation to the PEPP apply here as well, we therefore urge the Commission to consider the implications carefully. Crucially, tax, social and labour law are very clearly compe-

tencies of the Member States. If under a 2nd Regime the same tax framework would be granted to a Pan-European occupational PEPP, the consequences for national occupational pensions could be immense. We understand the advantages for multi-national companies and the benefits from economies of scale if the barriers currently posed by differing labour, social and tax law would be eliminated. Under these proposals, the Member States would have to surrender their competencies in the area of supplementary pensions and without doubt EIOPA would stand ready to take on this task. Gabriel Bernardino has called for an extension of the remit and instruments of EIOPA in case a PEPP was introduced. He has also called for EIOPA to be financed by fees paid directly from insurance companies and IORPs to EIOPA.

All this is to be seen in the context of the review of the EU supervisory system and the EIOPA Regulation. Issues around pensions should be decided at the national level. From our perspective, after five years it should finally be settled what role EIOPA can and should play for occupational pensions. The EIOPA Regulation is geared towards harmonisation and convergence, and with regard to IORPs states, “the Authority shall act without prejudice to national social and labour law”.

From our perspective, this leaves a lot of room for interpretation – which EIOPA in practice uses. In contrast, the IORP II Directive will only set prudential minimum standards, and not aspire to full harmonisation, and recognises the importance of social and labour law. From our perspective, this is the right way forward – the EU should follow the direction Commission, Council and Parliament are setting with IORP II.

6. Facilitating Cross-Border Investment

Question: Are there additional actions that can contribute to facilitating cross-border investment? Please propose complementary policy measures, explain their advantages, and illustrate any foreseeable challenges to their implementation.

The ["proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures"](#) which could have negative consequences for occupational pensions (book reserve schemes and support funds) in Germany. This could and should not be the intention of the Directive. The proposed provisions would on one hand reduce the liabilities of the employer, while on the other hand they would result in lower pension benefits for members and beneficiaries. This is not acceptable. Therefore it should be made clear, that „members and beneficiaries“ are not 'affected parties' in the sense of Article 2 (3) of the proposed Directive.

The WHT refund processes are complex, expensive, and long-lasting. Often they can last even 10 years and cost half of the expected refunds, as costly tax advice in foreign languages is needed. Since the legal outcomes are uncertain, given that the legal recourse involves several levels of jurisdiction, often pension funds do not assert their justified reclaims.

Therefore, the aba calls on the EU Member States to ensure simple, transparent, and inexpensive WHT refund processes. The aba emphasizes that relief-at-source systems for the WHT are the most effective way to promote cross-border investment ([PensionsEurope: Position Paper on the EC's Code of Conduct for relief-at-source from the withholding tax procedures](#)) and supports an EC's code of conduct.

Berlin, 17 March 2017 VM/SD