



**General remarks regarding the consultation of the European Commission
on a potential EU personal pension framework**

Summary

- Demographic developments paired with cuts in state pension provision create the need to supplement state retirement income by private pensions. The first choice in this regard are occupational pensions.
- Occupational pensions have a number of advantages: they can be organised at a collective level, are often good value for money, can balance security against returns and are governed primarily by social and labour law.
- We are therefore against the introduction of a Second Regime / PEPP which would strengthen an individualised rather than a collective approach to pensions.
- The main danger of introducing a PEPP is that it would undermine existing efficient national systems.
- Pensions firmly fall in the remit of the Member States. We welcome that the IORP II Directive recognises this and sets minimum standards rather than aiming for full harmonisation.

If you have any questions, please do not hesitate to contact:

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The aba - Arbeitsgemeinschaft für betriebliche Altersversorgung e.V. - is the German association representing all matters concerning occupational pensions in the private and public sector. The aba has 1,100 members including corporate sponsors of pension schemes, IORPs, actuaries and consulting firms, employer associations and unions, as well as insurance companies, banks and investment managers. According to our statutes, our mission is to represent existing schemes as well as to expand coverage of occupational pensions independent of vehicle.

Introduction

Across the EU, societies are ageing, and public finances are being consolidated by a cut-back of first pillar pensions. We agree with the Commission that this poses a big challenge, which partly can be addressed by the strengthening of supplementary pensions. From our perspective, however, the solution lies in collectively organised second pillar pensions, rather than in individually sold products.

Below, we set out the arguments for strengthening occupational pensions, the issues we see with the PEPP and what we believe the right way forward is.

Why the Commission should strengthen occupational pensions

Demographic developments paired with cuts in state pension provision create the need to supplement state retirement income by private pensions. The first choice in this regard are occupational pensions. Because of the involvement of employers, occupational pensions can be organised at a collective level. Occupational pensions are therefore good value for money, particularly for those on low incomes. They balance security against returns and provide a life-long pension for their beneficiaries, who share the risks around death and invalidity. In contrast to personal pensions, occupational pensions can therefore address these risks without undertaking an individual assessment. In contrast to personal pension products, occupational pensions are mainly governed and protected by social and labour law. The employer or tariff partners choose an occupational pension provider for the employees, which overcomes behavioural barriers such as inertia on part of the employee and addresses issues around asymmetric information, reducing the complexity for the individual. Often employers or tariff partners are better placed to choose a pension provider than the individual. The interests of employees are protected by representatives in the relevant committees.

These advantages should be used. Occupational pensions should be strengthened further in all 28 Member States, thus ultimately preventing old age poverty while at the same time relieving public finances in the medium and long-term. Existing systems should be further developed and enhanced to reach their potential before additional systems are established and supported.

Why the Commission should not pursue the introduction of a PEPP

In some Member States adequate and working supplementary pension systems exist. In these countries, there is less pressure to act from a social policy perspective. Care should be taken not to damage any existing systems which work well, but rather to strengthen them. In other Member States, second and third pillar pensions might not be as strong, even though cut backs were made to the state pensions. From our perspective it is mostly here that action is needed, but it is questionable whether a PEPP is the right way forward for those Member States.

In particular those on low incomes have little or no money spare to set aside for their retirement – an occupational pensions offering the advantages mentioned above, potentially benefitting from employer contributions would be a better solution for this group than an individually sold product.

In addition, we see a number of challenges for the PEPP, which from our perspective cannot always be overcome:

- While in Germany occupational and personal pensions are legally clearly separated, there are of course interdependencies. Employees can decide whether they want to use salary sacrifice and put their money into an occupational pension, whether to use a national personal pension product (Riester-Rente), a future PEPP, products which do not receive any tax advantages or whether to spend the money differently altogether. Employers can decide as well whether to contribute to an occupational pension, to a future PEPP or whether to pay a higher salary. How these decisions are made depends to a significant extent on the given social contribution and tax framework. In Germany the tariff partners sometimes set the framework for these decisions. If the PEPP fell under EET taxation and was offered as a pure savings product (see point below), many employers and short sighted employees might choose the PEPP over an occupational pension. This is not desirable from a social policy perspective and neither in the interest of future tax payers, who would have to finance old age social benefits for those who outlive their PEPP savings.
- The definition of what constitutes a personal pension varies significantly across Member States for good reasons, the frameworks differ according to the role personal pensions play. We do not see how the PEPP would be able to cater to the different needs and requirements. From the German perspective, for example, the PEPP is a savings product and not a pension product: The EU requirements are mostly geared towards the accumulation phase, there are no requirements securing a life-long benefit payment. Similarly, there are no elements protecting beneficiaries / their dependents in case of death or disability.
- Tax, social and labour law are very clearly competencies of the Member States. Personal pensions need to be designed to fit the national pension systems, the form personal pensions take always depends on the design of the first and second pillar. Countries with a strong first and second pillar are for example less likely to offer a generous tax treatment for third pillar pensions than countries where the first and second pillar are less strong.
- We note that the Commission has referred to the idea of a principle which would call on Member States to grant the same tax framework to the PEPP as it is doing for national personal pensions. From a German perspective, we wonder first of all which type of personal pension would be the reference point (the tax framework for Basisrenten and Riesterrenten differs significantly¹). Second, this would significantly undermine national systems if weaker or different requirements (e.g. no pay-out before a

¹ The requirements for tax relief for the Riester- and the Basisrente are very different. The backdrop for the Basisrente is the German system of old age provision, in which only few self-employed face mandatory membership of the state pension. The tax framework surrounding the Basisrente is therefore very different to the one surrounding the Riesterrente, which is only intended to be an addition to the state pension. The conditions for the Basisrente partly mirror the ones for the state pension: For example it has to be paid out as a pension (rather than a lump sum), the accumulated capital cannot be used as collateral, it cannot be passed on or transferred to someone else. These requirements, which define the receipt of tax relief, are decided on the national level (See the rules set out in the Income Tax Law as well as in the „Gesetz über die Zertifizierung von Altersvorsorge- und Basisrentenverträgen“; additional circulars (Bundesministerium der Finanzen) regarding „Steuerliche Förderung der privaten Altersvorsorge und betrieblichen Altersversorgung“ from 24 July 2013, amended on 13 January 2014).

certain age; requirement to take out a life-long pension rather than a lump sum payment) were applied.

Specifically in relation to the consultation paper:

- The consultation paper states competition between providers as an opportunity of the PEPP, leading to more choice for consumers (p. 5). However, we have two concerns in this regard: First, in Germany, we are not aware of any discrimination of providers from other EU Member States. The Law regarding the Certification of pension provision and contracts for Basisrenten includes in §1 (2) and §2 (2) providers of Riester- or Basisrenten “home in a different Member State of the European Economic Area.” So already today it is possible for EU providers to offer a Riester Plan in Germany. Second, even if it was possible to further increase the supply of products, we wonder whether more choice is needed. Behavioural economics have shown the problems around choice overload. In addition, competition only leads to better products / services for consumers if there are no information asymmetries between providers and consumers – which for personal pensions clearly is not the case. From our perspective, this calls for a strengthening of occupational pensions.
- Limited portability is stated as a challenge a PEPP could overcome. However, we would like to point out that while increasing over the last years, labour mobility across the EU is still very low, only affecting 3,3% of the working population in 2013. From our perspective this is not one of the most pressing problems to be addressed. Rather, those Member States which currently do not have strong supplementary pension systems but wish to strengthen them should be supported.

Based on these concerns, we are against the introduction of a Second Regime / PEPP. We therefore do not respond to any questions in the questionnaire which pertain to the design of the PEPP. Since some of the questions were mandatory in the online form, we have either chosen “no opinion”, “other” or a random answer where there was no other choice (please disregard our answers for Questions 5, 6, 14, 15 and 18). We urge the Commission to allow respondents to future consultation to choose not to answer a consultation question.

The way forward

In his speech “Exploring new horizons for the benefit of the citizens in the European Union“, Gabriel Bernardino said at the EIOPA Conference on 18 October 2016, “a further important step would be the design of a simple and transparent Second Regime for Defined Contribution Occupational Pensions Schemes“. Unsurprisingly, we are strongly against such a development and urge the Commission to consider the implications carefully. If under a Second Regime the same tax framework would be granted to a Pan-European occupational PEPP, the consequences for national occupational pensions would be immense. We understand the advantages for multinational companies and the benefits from economies of scale if the barriers currently posed by differing labour, social and tax law would be eliminated. Under a Second Regime, only European level prudential law would define the requirements for this type of pan-European pension plan.

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.

Berlin, 31st of October 2016, VM/SD