

ETUC position on the proposal of Pan European Personal Pensions (PEPP)

Adopted at the Executive Committee of 23-24 October 2018

Key messages

1. The regulation of a Pan-European Personal Pension product, currently under the Triilogue process, should acknowledge the high social relevance of pension savings. Despite its nature within the financial market dimension, PEPPs should remain restricted to the market of private products, freely but with high safety guarantees available to individuals.
2. The ETUC stresses that the PEPP initiative must be duly framed in a wider context of European social pensions policy. The ETUC firmly rejects the idea of qualifying PEPP as an equivalent to complementary pension systems based on collective agreements. Socially and fiscally sustainable adequate pension systems shall rely on public and collective systems, entailing the participation of all actors involved, mainly employees, employers and Member States.
3. PEPPs' marginal potential in terms of coverage, affordability and adequacy, typical of individual, voluntary and complementary pensions must be taken into account, as emerged in the impact assessment of the initial EC proposal.
4. PEPP's regulatory framework must never directly or indirectly affect detrimentally to first and second (statutory) pension pillars, which represent the backbones of adequate and safe retirement income to all. These pillars are to be supported and enhanced with relevant actions and means across all Member States. PEPP regulatory provisions must ensure fairness among providers of pension products of a different scheme or nature.
5. Consistently, beneficial tax treatment must be excluded, unless it is widely justified by the provision of specific requirements and guarantees for workers and savers.
6. PEPPs must remain individual products, whereas the collective pension schemes must be promoted in accordance with their specificities, aims and existing national and European regulatory and governance frameworks.
7. PEPPs as pension products must adhere to the highest standard of consumer information, protection and good faith. The new product should not be able to undercut existing products by operating with excessive incentives, with weaker regulatory standards, or with different legislative provisions existing across-countries. This would be detrimental for existing pension products, systems and markets, as well as for the long-term expectations of workers and savers.

8. EIOPA above the national authorities and institutions must be enabled and empowered to play a coordinating and monitoring role, in order to prevent law shopping in the foreseen cross-border dimension, to authorise reliable providers, and to protect consumers and competitors from negligent or unfair risk management.

Introduction

9. The [proposal for a regulation on a pan-European personal pension product \(PEPP\)](#), was introduced, together with a Commission recommendation on the tax treatment of personal pension products, following the 2017 Commission Work Programme. It stated that the EC would 'propose a simple, efficient and competitive **EU personal pension product** aimed at reducing barriers to the provision of pension services across borders and increasing competition between pension providers'.
10. Elaborated by the EC Directorate General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), the proposal aimed at ensuring a higher liquidity and funds supply for long-term institutional investors. Innovation resides in the operational scope of cross-border dimension for both providers and savers; with respect to existing pension saving products, and greater affordability, and is linked to a certain degree of risk, supposed to be mitigated by the long-term perspective.
11. In principle, there is no opposition towards the development of a further financial product, provided that a) it respects the specific requirements and conditions set out in the national and European legislation for worker/saver/customer protection, b) schemes of the first and second pillar are not displaced, c) other existing schemes are not penalised by the competition with new products not submitted to equally stringent regulating rules; and d) the role, expectations and aims of the third pillar product are realistic and clear to all. It is with this view that the ETUC and other European stakeholders active in the field of pension provision have approached the public consultation and the whole PEPP initiative since the beginning.
12. The legislative procedure through the Parliament and the Council has deeply modified the original proposal. Nowadays, the PEPP proposal must be monitored beyond the introduction of a further "third pillar" pension product.
13. On the one hand, there is the need to consider the original proposal and its further developments in the framework of the overall European policy approach to pensions.
14. On the other hand, it is necessary to look at the concrete features of the product itself. Its technical settings (although still under discussion) present critical aspects in terms of guarantees and safety provisions for savers, and in relation to the market of existing similar products, especially with respect to the functioning of national second pillar schemes. High attention must also be paid to the possible role of European and national institutions with respect to private financial actors in such a highly sensitive field as pensions.

PEPPs in the context of the European pension policy

15. Even the original EC proposal was supported by a narrative which raised concerns with respect to what a “multi-pillar approach” to adequate and sustainable pensions should imply. PEPP is often mentioned as a possible solution to integrate poor statutory pensions and as a contribution towards ensuring adequate pension income in the future, especially in countries with no developed collective second pillar pensions. It is also envisaged to be a possible option for the atypical workforce currently uncovered by formal or effective access to social protection.
16. The current debate on “a multi-pillar approach to pensions”, especially if aimed at ensuring pension adequacy, deserves a real open dialogue and deep reflection, involving the comprehensive consideration of several features, including those related to the European economic governance and the ageing outlook.
17. In this debate, the ETUC stresses the need to address the priority role of public and collective pension systems, rather than measures geared to privatisation and individualisation of social rights.
18. Adequate pensions for all must be the role of the national first pillar system and (depending on the countries) quasi-obligatory, of the second pillar, in combination. In voluntary systems, the objective is to improve the replacement rate, whereas pension adequacy must be guaranteed by the mandatory systems.
19. **A “multi-pillar approach to pensions” should instead acknowledge and enhance the role of the first public pillar - the only approach able to ensure universality, equality, fairness.** The European Pillar of Social Rights clearly commits to the provision of adequate access to social protection for all workers. The recent EC proposal of a Council recommendation on access to social protection represents an opportunity for Member States to re-design their systems, and make them fully accessible, effective, adequate and transparent. This relates in particular, to the situation of a huge number of European workers who do not currently have formal nor *de facto* access to social protection, often due to their atypical working relations.
20. Thus, **Member States shall have a primary role to play in ensuring adequate pensions to all, despite the individuals’ capacity to contribute to their future pensions.** PEPP should not be the catalyst for the development of a stronger pan-European regulatory regime for defined contribution pensions.
21. **Both a fiscal and socially sustainable approach to adequate pensions can only rely on shared responsibilities and the participation of all actors involved.** It cannot ignore the significant role that employers have to play in supporting pension saving, both by making contributions, and providing access to pension products. This role must be played within fairly balanced legislative and governance frameworks.
22. Whereas risk sharing and risk pooling are crucial for sustainability and pension adequacy, pushing for individual and private solutions would not result in this being cost- or benefit- efficient. On the contrary, it would lead to further fragmentation and

inefficiency of entitlements, lack of effectiveness and inequalities in access to adequate social protection. Data in the 2018 Pension Adequacy Report show the remuneration levels of many European workers do not allow them to afford any third pension products. This is namely the case in eastern Member States where the World Bank pension model has been established, and where these Member States are targeted as the preferential “markets” for the PEPPs. However, this is also the case, within the whole of Europe, where some 40% atypical workers have no access to formal or effective social protection.

23. Funds individually and privately invested on the financial market via PEPPs would be more profitably conveyed in accessible and effective first and second pillar public schemes. In addition, the tax benefits, if any, granted to the PEPPs would further reduce the resources allocated to the budgets of the Member States, but would not counterbalance the higher risks for pension savers.
24. Collective complementary systems, whether statutory or voluntary, negotiated and managed by social partners should be supported and enhanced. They are based on collective agreements whereby all stakeholders are concerned about the pension policy as an integrated part of the remuneration policy. Further advantages are the cost-efficiency due to economies of scale and non-existing marketing costs; the usual adherence to sustainable investment and financial policies channelled into the real economy; the high standards of governance, security and engagement; and the operational context of fiduciary duty and freedom of investment within reasonable limits negotiated by the concerned parties, submitted via the monitoring role of national and European authorities. If embedded in a *balanced* multi-pillar approach based on solid first public pillar, they can contribute to lower poverty amongst the elderly.
25. The strengthening of a multi-pillar approach to promote adequate and sustainable pensions for all, may be better achieved by improving the effectiveness of mandatory and collective schemes already in place. Collective and negotiated schemes must be explored and developed, also in the transnational dimension, with specific attention to features of the social partners’ involvement and governance role.
26. Such an approach would require investment in capacity building to enhance social dialogue and collective bargaining, especially in those countries where a second pillar is not established - which typically registers a low collective bargaining coverage, wage dumping, low salaries, and higher risks of poverty and inequality rates.
27. Institutional interventions should concentrate on monitoring, understanding, addressing and overcoming the above-mentioned structural issues. Other relevant actions in the pension policy framework should target the low level of financial literacy and lack of information on future replacement rates, and the low capacity of individuals saving for retirement.

Specific concerns about the regulation on PEPPs so far

28. Enriching the supply-side market with a new type of pension product, if necessary, should only be carried out with an overall strategy at European-level, focusing on delivering an adequate and safe retirement income to pensioners.
29. The texts approved at the Council and European Parliament, the basis for the current Trialogue, neither seem to fully respond to this requirement, nor to the need to fully protect workers and consumers.
30. The legislative process should ensure that the introduction of PEPPs as cross-border products does not circumvent the existing national legislation in terms of information, governance, minimal requirements of the provider, investment limits, rules of access to the national market, portability and transferability of positions and provisions. Specific attention must be paid to the risks of law shopping in a cross-border dimension.
31. The ETUC expresses concerns that neither the EP report nor the Council agreement sufficiently addresses the issue of the very fragmented legal framework on which the PEPP regulation is supposed to build on, being composed on the one side by “legislative core” represented by European rules and, on the other, by many different legal frameworks linked to Member States and/or providers. Negative effects could be registered over the national system as the introduction of PEPPs could result in lower levels of saver’s protection, particularly in terms of governance, disclosure, transparency and monitoring. Moreover, the reference to many legal frameworks will make it difficult to compare different PEPPs and PEPPs with national individual pension products.
32. In a harmonising capacity, a crucial role in all these fields must be played by the national authorities and especially by the EIOPA.
33. The proposal is still missing assurance that providers of the PEPP will be subject to a sufficient level of prudential treatment, whereas the authorisation to provide the PEPP should not be given where companies are not subject to a proper EU-wide prudential framework. Leaving the authorisation role to provide PEPPs to national competent authorities (NCAs), as in the Council’s text, does not allow any protection against “more aggressive” and less guaranteed products made available on the cross-border market. In the Council’s text, in fact, EIOPA should only keep a central public register that includes information on the sub-accounts. The EP report introduces a relatively greater regulatory role for EIOPA which should supervise that the PEPP providers and products in a transnational dimension are not more competitive on the basis of less strict rules applied in other Member States.
34. The ETUC believes that IORPs, given the nature of their origin and mission, should not act as providers of individual financial products. As for the differences in national legislation and in accordance with the IORP II Directive, under the current conditions, in some Member States IORPs cannot offer PEPPs - as their playing field is limited by nature to the second pillar. The PEPPs should remain of an individual character, whereas the specificity of IORPs should be preserved, as the providers of collectively managed funds, under negotiated and specific rules, which

respond to collective interests. Also, their performances are made possible by their collective and negotiated nature.

35. IORPs have instead been included in the list of potential PEPP providers in the final EC proposal and in the Council agreement upon authorisation of NCAs. In this case, they will have to ring-fence the PEPP assets, appoint a depositary, and cannot cover biometric risks by themselves, but only through insurance companies.
36. As for the EP report, EIOPA should play a determinant role of “upward convergence” in monitoring the conditions of authorisations of IORPs as PEPP providers, in order to prevent law shopping, and NCAs in this field should be submitted to EIOPA’s supervision.
37. In addition, PEPP provisions by IORPs should be designed only in agreement with social partners. Member States that wish to do so, should be free to maintain restrictions. It is also necessary to distinguish among private and collective PEPP providers and the products they propose. Their different nature and potential should be taken into account. The aims, operational features, services and the advantages typical of collective dimension with respect to the individual and private one should be put into value. A clear distinction between individual products and collective investments – and differential rules and conditions - should be marked. The option of allowing collective purchases of PEPPs to single workers must be excluded.
38. The decumulation phase, is characterised by total flexibility in the Council text, whereas the EP requires a regulatory role by EIOPA. Such flexibility is not in line with the mission to provide pension income support, by definition, projected in the long term. In this context, the ETUC stresses the need to not stipulate equal tax treatments for products of very different nature, such as lifelong annuities compared to payments for a limited period of time.
39. There is indeed the problem of consumers’ protection. It is essential that subscribers are able to receive complete and detailed information on PEPPs, before and during the validity of the subscription. Consumers’ must be protected against change in the initial conditions and risk class, and allowed to withdraw with no loss or damage. In addition, it is necessary for investors to be able to benefit from credible guarantees against the insolvency of suppliers of savings products. These protective measures must also be correctly explained by the issuers.
40. The introduction of PEPPs should not undercut but rather encourage higher standards of transparency and governance than typically seen in the provision of personal pensions – given the higher risk involved. National authorities and EIOPA should oversee PEPP providers and ensure the interest representation of consumers and workers. In particular, with respect to managing costs, providers should be held to full and consistent disclosure of costs and charges ultimately borne by savers.
41. In these fields, the EP report correctly provides relatively more guarantees to consumers in terms of investment options (a 1% cap on the annual fees that companies can charge PEPP savers, obligatory basic advice) and also insist on ESG features for preferential investments.

42. Portability rights are relatively guaranteed by the obligation of opening sub-accounts in all Member States within 3 years from when the entry into force is removed. The EP report also correctly introduces the free of charge portability from one provider to another, in case a PEPP is not available in the chosen compartment by the provider or one of its partners.