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AK Position Paper

# Pan-European Personal Pension Product (PEPP)

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## About us

**The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske  
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Christoph Klein  
Director

## Executive Summary

In June 2017 the European Commission published a “Proposal for a Regulation on a pan-European Personal Pension Product (PEPP)” which, according to the plans of the European Commission, is to close gaps in statutory, company and private pension schemes. On the one hand, the capital markets are to be stimulated and the capital markets union strengthened; on the other hand, consumers are to be offered a pan-European private pension scheme. In particular, possibilities for cross-border distribution are to be created and pan-European portability created for customers so that they can take their PEPP rights with them when moving to another EU country.

In order to achieve this aim the Commission has also recommended that national governments offer tax relief on PEPP products, even if they do not satisfy all national criteria. Since Member States have three years to comment on the Commission’s recommendation, but sales of PEPP products are to begin before that date, the draft regulation appears to be premature from the consumer’s point of view, in particular because there is no clarity or legal certainty with regard to tax treatment. However, since tax allowances are an important marketing and sales argument in favour of pension products, the draft regulation should be postponed.

From the consumer’s point of view the content of the draft regulation also requires improvement, above all in the important matters of options for cancellation, obligations to provide advice and information, avoiding conflicts of interests, and the incomplete regulation of the capital-back guarantee.

## The AK's position in detail

Tax incentives or subsidies for private pension products are a major distribution and marketing argument, as experience with the premium-aided pension savings scheme in Austria has shown. Tax incentives can include tax relief on contributions paid, tax exemption, or tax allowances for revenue from capital employed, or in the payment period which is regularly highlighted correspondingly in advertising, in product sales and in sales talks.

With the PEPP regulation the European Commission wishes to prevent consumers from losing such tax benefits when moving to another Member State and is aiming at portability of private pension products across the EU. Since Member States are responsible for tax treatment of pension products, the Commission has issued a recommendation, together with the draft PEPP regulation, for Member States to grant PEPPs the same tax relief as for national private pension products, even if PEPPs do not have all the product characteristics which the Member State stipulates to qualify for tax relief granted for national private pension products. (<https://ec.europa.eu/transparency/regdoc/rep/3/2017/DE/C-2017-4393-FI-DE-MAIN-PART-1.PDF>). The European Commission has asked Member States to respond within three years at the latest after the effective date of the regulation and inform it of the measures they have taken to implement its recommendation.

We view the Commission's encouragement to offer tax incentives on PEPPs, independent of whether "all the national criteria for tax relief" are met, with scepticism.

When offering tax incentives the legislative is exercising a type of control (also when promoting certain pension products) which could undermine such a flat-rate scheme. Furthermore, we should not overlook the fact that by introducing tax incentives to acquire certain private pension products, the state is also assuming political liability to a certain extent, which requires a certain amount of caution.

**The Austrian Federal Chamber of Labour (BAK) is essentially against the introduction or approval of PEPP products, for reasons of consumer protection, before clarity has been determined regarding tax incentives offered by Member States.** We consider it imperative that Member States come to a decision on the national implementation of taxation aspects before the regulation comes into force in order to secure long-term legal certainty and avoid consumers who sign a PEPP contract - of long duration - from incurring losses.

**At all events the recommendation of the Commission to the Member States is not sufficient to achieve the objective of the regulation - to avoid the loss of tax incentives on moving to another Member State.** Since this objective cannot be achieved before the regulation comes into force, from the consumer's point of view the proposal must be considered as not fully mature and is beneficial primarily to the financial industry (offerors of PEPPs and PEPP distribution). **In view of the feared disadvantages for consumers we therefore advocate postponing the draft PEPP regulation.**

**Rejection of the regulation's objective: channelling savings deposits to capital markets**

From the consumer's point of view it is completely unacceptable that the overriding aim of the draft regulation is to "channel more household savings away from traditional instruments, such as savings deposits, towards the capital markets". This political primacy misses the underlying consideration where a decision to make a financial investment should be taken primarily according to profitability, security and liquidity ("magic triangle"). The features of savings products with deposit protection differ very significantly from finance products and instruments in capital markets.

Therefore investment decisions should remain an individual decision supported by the duty of care of financial intermediaries (e.g. determination of the customer's readiness to assume risks, experience and knowledge of financial products, length of investment, etc.) which are set out in important EU guidelines for consumer protection and which primarily regulate the advice and sales process to consumers (Markets in Financial Instruments Directive (MiFID), Insurance Distribution Directive (IDD), key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs), etc.).

This maxim enshrined in the PEPP proposal appears to counter the painstakingly developed consumer protection laws in the financial industry, the elaboration of which - not least in view of the numerous investor scandals throughout Europe - was overdue. A characteristic of these financial scandals was that many retail investors were hustled from safe savings products to capital markets

products which were promoted in advertising and sales as apparently "safe". **Savings deposits offer a safe basis for capital formation or the individual creation of a savings rate. Therefore they are and have been an important part of the range of products wanted and needed by consumers. They most certainly cannot be replaced 1:1 by PEPPs or other investment products.**

**Limited options for termination**

BAK is of the opinion that options for early termination should be offered with PEPPs - similar to life insurance. The fact that the proposal does not offer any or only limited options for termination does not reflect the lives of consumers which are often characterised by heterogeneous income and family situations (e.g. divorce, change or loss of jobs and place of work, etc.). Nor should it be forgotten (as experience with the premium-aided pension savings scheme in Austria has frequently shown) that consumers do not expect a product that cannot be terminated and will not of themselves address the question of termination in sales talks. Salespersons and brokers often did not refer to the impossibility of terminating the contract during the minimum term (10 years). In our opinion, in the future we have to assume these facts regarding sales and consumers' knowledge. The possibility of terminating a PEPP product should be defined in the regulation as a product characteristic which is important for the needs of consumers.

***BAK demands: The last phrase on the limited options of termination in Art. 2 Z 1 point d should be deleted and an annual option to terminate introduced.***

### **PEPP retail investors instead of PEPP savers**

The term “savings” or “saver” should not be used anywhere in the regulation because, according to standard definitions, there is absolutely no connection with savings deposits; on the contrary, PEPP savers are defined as retail investors. From the outset the term “saver” itself is misleading for consumers and in Austria is not permitted, according to the Austrian Banking Act, to be used for products other than savings deposits.

***BAK demands: The term “PEPP saver” should be replaced by “PEPP retail investor” in Art. 2 Z 3 and throughout the whole regulation.***

### **Advice and information on tax questions**

“Advice” in relation to PEPP requires that tax regulations in connection with the portability service to another Member State must be considered.

Giving a personal recommendation regarding the product only is not sufficient for consumers to be able to take a well-informed decision. In order to achieve the objective of the regulation, advice on tax questions must be included.

***BAK demands: Art. 2 Z 27 and Art. 25 should be supplemented to ensure that advice provided must also cover tax questions. Furthermore, in Art. 23 Z 3 iv (PEPP key information document), consumers should be informed of taxation aspects regarding the portability service.***

### **Distribution of the acquisition commission over the duration of the PEPP contract**

High acquisition commissions at the start of a contract are one of the main sources of conflicts of interest when selling investment and retirement products. Misleading monetary incentives could, in the opinion of BAK, be countered effectively by distributing the sales commission over the whole of the duration of the contract – proportional distribution of the commission instead of the current Zillmer method frequently used, where commissions are charged to the contract in the first five years. Distribution over the duration of the contract brings advantages for consumers in the form of higher surrender values and maturity payments and can prevent contracts for unsuitable products being signed too quickly.

***BAK demands: Art. 20 should state that PEPP brokers will receive their acquisition and broker’s commission distributed proportionally over the duration of the contract.***

### **Not just e-sales and digital information**

BAK is essentially of the opinion that consumers should have the option to choose between hard copy and permanent data media. Consumers must have a genuine choice as to how intensively they wish to participate in digital life. Therefore all documents should be available in hard copy or on another permanent data medium.

***BAK demands: Art. 21 should state that consumers have the choice of receiving all information and documents covered by this chapter in hard copy or on another permanent data medium.***

### **Duty to advise on PEPP**

BAK warns against PEPPs being sold without advice. Standardised products also require advice because of the long length of contract (often over several decades and possibly without a capital-back guarantee), in particular if the strict termination provisions are maintained. The complex tax situation further complicates taking a decision alone and asks too much of consumers. We are of the opinion that pension products and their sale should be subject to strict quality criteria and that a duty to advise is required.

***BAK demands: The possibility of selling PEPP products without advice should be deleted from Art. 26.***

### **Capital-back guarantee**

BAK rejects the term capital protection, based on the definition in Art. 2 para. 3 Z 21, and urges that capital protection should be defined so that the investor receives the whole amount paid in by him/her. We must assume that consumers certainly do not understand capital protection in the sense that all costs, fees and expenses that are deducted from the amount paid in by them are not covered by the capital-back guarantee. This is all the more important because too much use is made of the advantages of capital-back guarantees in advertising and sales and there is a risk that consumers are not made aware of the limited capital-back guarantee.

***BAK demands: The phrase in Art. 37 para. 2 "the capital invested" should be replaced by "the capital paid in".***

### **Loss of capital protection when changing providers**

From the consumer's point of view the loss of capital protection when changing providers is not acceptable. Here, too, there is a risk that consumers are often not aware - due to the emphasis placed on the capital-back guarantee in advertising and sales talks - that this capital protection is lost when changing provider. Furthermore, in our estimation this provision would counteract the flexible approaches taken in regulation of the PEPP product and would result in consumers losing confidence in the product.

***BAK demands: Art. 49 para. 5 should be deleted without substitution.***

### **Information on the loss of capital protection**

Should the loss of capital protection when changing providers not be deleted from the draft regulation, then information on changing providers must be made mandatory on this question, which is important to consumers.

***BAK demands: The loss of capital protection when changing providers should be included in Art. 50.***

Should you have any further questions  
please do not hesitate to contact

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