



27 January 2014

**PensionsEurope Position Paper
on the proposal for a
Regulation on key information documents for
investment products (PRIPS)**

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for occupational pensions. Some members operate purely individual pension schemes.

PensionsEurope has **23 member associations** in EU Member States and other European countries with significant – in size and relevance – workplace pension systems¹.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope member organizations cover the workplace pensions of about **80 million European citizens**. Through its Member Associations PensionsEurope represents approximately **€ 3.5 trillion of assets** managed for future pension payments.

PensionsEurope Members are large institutional investors representing the **buy-side** on the financial markets.

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¹ EU Member States: Austria, Belgium, Croatia, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, UK. Non-EU Member States: Guernsey, Iceland, Norway, Switzerland.

1. PensionsEurope statement on PRIPS

Occupational pensions should be excluded from the scope of the Regulation of the European Parliament and of the Council on key information documents for investment products (PRIPS).

A full and unambiguous exemption should be included in the final PRIPS regulation to this extent. A clear distinction should be made between occupational pensions on the one hand and personal pensions on the other. Occupational pensions are not a “financial product”, but are a social benefit the employer offers with an employment contract.

Before we lay out the arguments supporting our position, we provide the background to the current PRIPS proposal.

2. Background

On 3 July 2012, the European Commission published the PRIPS proposal. The proposal is aimed at improving the quality of information that is provided to consumers when considering investments. Information is to be provided in a format which is easy to understand. For this reason, a new standard for product information has been proposed, the so-called 'Key Information Document' (KID). The proposal stipulates that every manufacturer of retail investment products (e.g. investment fund managers, insurers, banks) will have to produce such a document for each investment product.

On 26 June 2013, the Council adopted its General Approach in relation to the Commission's PRIPS proposal. On 20 November 2013 the European Parliament in its turn adopted its report on the proposal. Trilogue negotiations are now expected to begin any time soon.

PensionsEurope is concerned that said rules for (the offering of) retail financial products could also apply to occupational (work-related) pensions in Europe. In that respect, the relevant texts are:

- (i) the original Commission proposal excludes “(i) occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC; and (ii) pension products for which a financial contribution from the employer is required by national law and where the employee has no choice as to the pension product provider” from its scope;
- (ii) The Council in its General Approach excludes both occupational and personal pensions from the scope; and
- (iii) The European Parliament adopted Article 2(e) that excludes from the scope: “officially recognised occupational pension schemes and individual pension products for which a financial contribution from the employer is required by national law and where the employee has no choice as to the provider”.

As to the European Parliament's text, the question has been raised whether the part that reads “for which a financial contribution from the employer is required by national law and where the employee has no choice as to the provider” is, as a condition, to apply only to individual pension products (as it was intended by the Commission proposal) or also to officially recognised occupational pension

schemes. We hold that the latter interpretation would be false (clearly the reasoning in the last sentence can only refer to personal pension products). It would also be contrary to the original intent of the European Commission and Council to exclude occupational pensions. Therefore, we propose the sentence to be clarified in alignment with this view.

3. Position

a) PRIPS is inappropriate for occupational pensions

In practice, the wrongful interpretation of the European Parliament's text would mean that the majority of occupational pensions in Europe would need to comply with rules that are designed for investment products and retail investors, rather than for occupational pensions and their beneficiaries. Indeed, occupational pensions are not financial products and are not directly marketed to retail investors. Occupational pensions are a social benefit that the employer offers to its employees through an employment contract or in a collective agreement. They are generally organised on a collective basis where employers are free to choose amongst those institutions which best cater to the needs of their businesses.

b) Information on occupational pensions should be tailor-made

Due to the specific characteristics of occupational pensions in Europe, Key information documents on occupational pensions, as they exist already in many European countries, should provide tailor-made and comprehensive information to the beneficiary. In that respect, it needs to go further than to provide mere investment information such as the PRIPS Key Information Documents. Therefore, it should be clear that although we fully support the provision of transparent and clear information on occupational pensions, the proposed PRIPS regulation is not the suitable vehicle to achieve this.

c) The coverage of occupational pensions in Europe would be negatively affected

Requiring occupational pension schemes (and the employers offering them) to comply with rules not adapted to them will damage occupational pensions and their coverage in Europe. Indeed, employers and their pension schemes would need to comply with information requirements designed for retail financial products (see for instance Article 8) and the compliance with these requirements would need to be monitored and eventually sanctioned. European pension funds would therefore see their administrative costs increase, which could increase costs for employers and employees alike. As a result, they could be discouraged from offering occupational pensions schemes to their employees.

d) The IORP Directive establishes the transparency requirements for occupational pensions

Occupational pension schemes - we would like to avoid the word "product" - are regulated by the social and labour laws of the EU Member States. At European level, occupational pensions are regulated by the Directive 2003/41/EC; the so-called IORP Directive. Commissioner Michel Barnier is

currently finalising plans for a revised version of the IORP Directive which would specifically focus on governance, transparency / reporting requirements and easing the funding requirements for cross-border occupational pension schemes. Moreover, the recently approved Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights (the former “Portability Directive”) establishes further transparency requirements to improve the mobility of workers across the EU. These legal frameworks form an adequate layer of protection for occupational scheme members and beneficiaries.

e) A Directive instead of a Regulation would have been a more appropriate legal instrument to regulate issues affecting occupational pensions

Moreover, the PRIPS proposal adopts the form of an EU Regulation. As a Regulation it will apply directly, while a Directive has to be transposed into national law. If occupational pensions were to be included in the scope of PRIPS, the proposal would then have a direct and immediate impact in the social and labour laws of the EU Member States. This raises the question whether the principle of subsidiarity of Article 5 of the Treaty on European Union would be adequately respected. In those areas which do not fall within its exclusive competence (e.g. in the field of social policy and thus of Labour Law), the EU should regulate through a Directive, which gives the necessary flexibility to implement EU laws into Member States’ social and labour laws, and not through an immediately binding and hence inflexible Regulation

f) The EMPL Committee should have been consulted

Furthermore, the European Parliament should not adopt legislation affecting occupational pensions without taking into consideration the opinion of the Parliamentary Committee for Employment and Social Affairs. As stated above, occupational pensions are regulated by the social and labour laws of the EU Member States, with the EMPL Committee being the leading Committee in the European Parliament for these matters. The fact that EMPL Committee has not been consulted shows that the proposed regulation was not meant for and cannot apply to occupational pensions.

g) Personal pensions should also remain out of the scope for the time being

Finally, although there might be scope to include personal pension products into the PRIPS project, we consider that at this stage the PRIPS Regulation shall not apply to personal pensions and we suggest awaiting the outcome of the different initiatives that the European Commission and EIOPA are undertaking in the field of personal pensions. It should be noted that, unlike other retail financial products, personal pensions play an important role in Member States’ overall social protection systems, especially in Member States with limited reliance on work-related pensions. In such cases those pension schemes perform a fundamentally different public policy objective from other retail investment products; as a consequence, different regulatory considerations must be taken into account. In addition, the characteristics of personal pensions vary widely across Europe and the transparency provisions of some personal pension products are already regulated on the Member State level, for example if they are subsidized/get tax exemptions. In order to avoid double

regulation, these official products should not be included in the PRIPs Regulation – if the national level grants subsidies/tax exemptions², they should also regulate these official products, and therefore it should not be done on the European level.

4. Exemption

For the reasons set out above, we strongly encourage clarifying that occupational pensions are excluded from the scope of the PRIPS regulation. We would propose the following wording to be included in the final text:

*“Article [2]: This Regulation shall apply to the manufacturing and selling of investment products. However, it shall not apply to the following products:
(...)
(e) occupational pension schemes; and
(f) personal pension products.*

² In Germany this is for example the case for the Basisrente (subsidized pension for the self-employed who are outside the state pension system, explanation for both see below) and the Riester-Rente (subsidized 3rd pillar pension).