Council of the European Union
General Secretariat

PUBLIC

Interinstitutional files:
2025/0363 (COD)

Brussels, 24 April 2026

WK 5893/2026 INIT

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MEETING DOCUMENT

From:	AT, FR, EL, SI
To:	Working Party on Financial Services and the Banking Union (PEPP) Financial Services Attachés
Subject:	Non-paper by Austria, France, Greece, Slovenia - Review of the PEPP Regulation

Non-paper – Review of the PEPP Regulation

Austria, France, Greece, Slovenia

Developing the uptake of PEPPs while recognizing the diversity of national pension systems on advice

The PEPP regulation and the development of supplementary pensions is an opportunity to better mobilize household savings towards investments in line with the conclusions of the Draghi Report. Long-term saving products such as pensions are a key element of the Savings and Investment Union.

While the PEPP regulation is relevant to facilitate cross-border activity, the organization of pension systems remains a national competence. Regulation 2019/1238 sets a common framework but recognizes the diversity of European pension systems through the system of national sub-accounts.

We suggest to allow Member States to opt-out of the mandatory advice in the distribution of Basic PEPPs, mirroring the compromise reached in IDD and RIS for IBIPs**.**

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Current EU legislation acknowledges various practices of Member States regarding advice in the distribution of insurance products. IDD Article 22 (2) allows Member States to maintain mandatory advice when selling any insurance product. IDD Article 30 (3) allows Member States to depart from the obligation to provide advice in the distribution of specific insurance products. Those provisions have been consensually maintained during the RIS negotiations. **The execution-only framework is an option and not an obligation** in the distribution of insurance products. Negotiations for "PEPP1.0" had also led to maintain mandatory advice.

Therefore, Member States can choose whether or not to mandate advice. We advocate for PEPP regulation to be consistent with agreements in previous EU legislation.

Maintaining ability for Member States to set mandatory advice in the distribution of the Basic PEPP would be consistent with the balance reached in RIS negotiations. Indeed, national pension schemes would necessarily be impacted by this provision. Deleting advice for Basic PEPPs would lead to differentiated regulatory requirements for comparable pension products which could lead to a de facto *race to the bottom* on advice.

Proposal

Austria, France, Greece and Slovenia propose to mirror the compromise on advice reached in RIS and previous EU legislations, which contributes to the simplification agenda.

Our proposal would acknowledge the various practices among Member States which reflect the diversity of their national pension schemes. **We advocate to allow Member States to opt-out of the requirement to provide advice for Basic PEPPs**.

Article 34 could be modified as proposed below :

> 3. **Member States may allow PEPP providers or distributors to derogate from the obligations referred to in paragraph 2, first subparagraph of this Article, in the distribution of a Basic PEPP. All PEPP providers or distributors, including those operating under the freedom to provide services or the freedom of establishment, when distributing a Basic PEPP to customers having their habitual residence or establishment in a Member State which does not make use of the derogation referred to in this paragraph shall comply with the applicable**

provisions in that Member State. ~~The requirement to provide advice to a prospective PEPP saver in accordance with paragraph 2, first subparagraph, shall not apply in relation to the distribution of the Basic PEPP. In case advice is provided in relation to the distribution of the Basic PEPP, advice shall be provided only upon request of the PEPP saver. The PEPP provider or the PEPP distributor shall provide advice on an independent basis.~~

Introducing a Member States' optionality on advice would be fully compatible with the nature of a Regulation. There is no legal obstacle to introducing optionality in this Regulation. For instance, Article 47 of the current proposal includes the option for Member States to allow the PEPP to be provided as part of a workplace arrangement using auto-enrolment. Another example would be the GDPR regulation on Data protection which contains dozens of optionality clauses, including on key aspects of the proposal (age of consent of minors; categories of sensitive data, etc.).

This proposal would not lead to EU market fragmentation.

- **Our proposal would maintain PEPP's current framework on advice but would allow voluntary Member States to implement an execution-only framework.** Member States choosing to maintain advice would be bound by the current common requirements on advice avoiding the risk of market fragmentation. The execution-only distribution is clearly defined in current EU legislation. **Considering that providers distributing Basic PEPPs in an execution-only framework would have to provide advice if it is required by savers, PEPP providers in those countries would already have their advice models in place and the additional cost would be minimal.**
- **Introducing this optionality on advice would not prevent the portability of contracts and/or the mobility of citizens**, as the clause would be limited to the pre-contractual relation between distributors and savers. This clause would have no impact on the ability for a PEPP saver to transfer to a provider in another country or to a sub-account.
- **Several stakeholders of the industry indicated that they could support this proposal** and did not see it as contradictory to the development of PEPP.

PEPP distributors are already subject to different rules in their respective national sub-accounts. For example, the form of out-payments, which is a central aspect of the PEPP regulation can differ between national sub-accounts. Member States also determine the conditions related to the accumulation phase (Article 47) and the decumulation phase (Article 57). Advice can also be distributed online and represents a limited cost (based on feedback from the industry). Therefore, the proposal would not constrain the development of the PEPP.

On the contrary, **we believe that this proposal could boost PEPP's development**. Advice may facilitate savers' decisions of investing in a PEPP and positively contribute to their financial outcomes while representing a limited cost[1].

[1] Some studies, namely in the context of the United Kingdom, have shown that financial outcomes of savers tend to improve with advice, with particularly positive effects for those at the bottom of the wealth distribution (who otherwise tend to under-save). The United Kingdom is introducing a reform of *targeted support* with the specific intent to reduce the advice gap.