



Occupational pension providers should not be treated as purely financial service providers

Following our previous papers, which are based on the legislative developments of [the Parliament](#) and [the Council](#), we would like to contribute to the policy debate on FIDA ahead of the trilogues to be conducted under the Polish presidency.

We are broadly pleased that both co-legislators acknowledge the specificities of occupational pension schemes that mostly do not deal with consumers and customers. A differentiated treatment for IORPs and other providers of occupational pensions as well as their member and beneficiary-related data is justified. Occupational pensions are often managed by social partners and depend on the employer's affiliation. Therefore, second-pillar pension funds have characteristics different from all other financial entities.

Removal of pension rights in occupational pension schemes from the customer data categories

We fully support the [Council's position](#) to exclude the “*pension rights in officially recognised occupational pension schemes*” customer data category from the scope of FIDA (Article 2(1)c). We assess that the European Parliament's approach to include only “*pension rights (..) that are accessible for all interested consumers*” achieves similar outcomes given that most of the occupational pension schemes are part of the relationship between the employer, employee, and the pension fund.

Furthermore, we also welcome the Council's provisions in Article 2(1)1a to create a Member State opt-in system for the above-mentioned customer data category. It would account for the diverse EU occupational pension landscape by ensuring the exclusion of occupational pension schemes while preserving the ability of Member States to include them in the scope if they wish to do so.

IORPs in the entities' scope

We have reservations as regards Article 2(2)k of the Council text to include IORPs in the scope as data holders and data users “*insofar as they manage personal pension products*” as it would have some unintended effects. It includes some IORPs in the scope which are obligated (by national labour and social law) to manage personal pension products that started as occupational pension rights as well as IORPs that devote only a very small part of their activities to personal pension products, which are defined by reference to Article 2(1) of the [PEPP regulation](#).

In some Member States, IORPs can offer personal pension products, but only in a limited number of cases. For example, in Germany IORPs are barred from offering PEPPs. IORPs can make a targeted offer to representatives of sponsoring undertakings for a specific type of personal pension (e.g. “Rürup pensions”), which in its design and tax treatment is modeled after the German first pillar pension system. Those representatives are not employees. However, only five German IORPs have ever made use of this possibility and among them, only two still actively do so. Thus, such offers are exceptional in nature for IORPs and represent in all instances only a small margin of their operations.

In Italy, IORPs that are Open Pension Funds can be considered as managing personal pension products as those funds are open to individuals and not regulated by a collective agreement. Furthermore, in Italy, IORPs are often open to the dependents of the members, to members who are no longer eligible, and in a few cases to self-employed. In Italy, people can continue to pay voluntarily their contributions to their pension scheme when they leave their company if they don't decide to redeem their pot or transfer their pension scheme elsewhere.

FIDA compliance as a data holder for IORPs managing personal pension products would provoke very high fixed costs and be disproportionate in view of the small number of use cases in which a FIDA-based financial data service could potentially offer a benefit to a member. Developing the FIDA IT infrastructure would include implementing a multi-user data access interface like the permission dashboards, new Applications Programming Interfaces (APIs) as has been the case with PSD2 and Financial Data Sharing Schemes (FDSS). Pension rights holders and their pension rights would also be negatively affected by legislation given the high costs that IORPs will have to bear.

I. Ensuring a proper distinction between workplace and personal pension

A. A Member State decision

A European definition of personal pension products as provided in Article 2(1) of the [PEPP regulation](#) does not accurately capture the national specificities of the different occupational pension systems. To correctly capture the specificities of the different pension systems across the EU, it is preferable to treat IORPs as a unique institution; the reference to “*insofar as they manage personal pension products*” in Article 2(2)(k) for the scoping of IORPs should be deleted accordingly. IORPs should be acting as data holders and data users only when a Member State decides to apply Article 2(1)(1a) as indicated below in our request for clarification for the opt-in system. The decision to consider what pillar 2 and pillar 3 are should be left to Member States. This would also ensure a correct application of the subsidiarity principle.

B. Adequately dealing with IORPs that do not offer personal pensions “on the market”

In case “*insofar as they manage personal pensions products*” is not deleted in Article 2(2)(k), it will be necessary to ensure that a distinction is made between personal pension products offered on the market and pension rights for which this is not the case. For this purpose, Article 2(2) k could be worded as follows: “*institutions for occupational retirement provision (IORP), insofar as they manage personal pension products that are accessible for all interested*”

consumers or insofar the Member State has decided to apply this Regulation to customer data on pension rights in occupational pension schemes (Article 2 paragraph 1a)”.

Such wording would also adequately address instances in which pension rights continue to be managed by IORPs after the end of employment based on legal obligations in national labour and social law.

The chosen characteristic of accessibility for all interested consumers corresponds to the EP [position](#) and acknowledges the specificities of IORPs by excluding IORPs and pension schemes that are not accessible to all interested consumers¹. The Council’s concern of legal ambiguity can be mitigated by an explanatory recital.

C. PensionsEurope proposal for a de minimis limit for IORPs that manage personal pension products

Only if the first two solutions are not feasible, as a last resort we propose another possibility with a *de minimis limit* for IORPs that manage personal pension products. Considering that managing personal pension products represents only a small portion of the activities of IORPs in some Member States, the costs associated with the implementation of the FIDA infrastructure will be disproportionate to the potential benefits that may be derived from such compliance.

Therefore, we suggest in Article 2(3) to add a new point “x” after “ix. *where applicable, to small IORPs referred to in Article 5 of Directive 2016/2341*”):

[“*This regulation does not apply*”]

“x. to IORPs managing personal pension products, if the percentage of these personal pension products among all managed contracts is lower than 6%.

II. Clarification for the opt-in system for pension rights from occupational pension schemes is needed

Given the diversity of IORPs and other occupational pension providers across the EU, PensionsEurope has been supportive of the inclusion of an opt-in system within FIDA². This would allow Member States to include in the scope the pension data related to occupational pension schemes, if they wish so while enforcing an exclusion from such data for Member States not activating the opt-in.

Against that background, we would like to mitigate the legal uncertainty arising from the formulation of Article 2(2)k by the Council with further clarification. It can have consequences that are not in line with the objective of Article 2(1)1a to create a Member State opt-in system. IORPs only offering “*pension rights in officially recognised occupational pension schemes*” would not be data holders under FIDA given that only “*IORPs offering personal pension*

¹ [PensionsEurope statement on FIDA’s European Parliament developments](#)

² [PensionsEurope messages on FIDA to HU presidency](#)

products” would be in scope. Thus, those IORPs only offering occupational pension rights would not have the legal obligation to make the customer data available.

Furthermore, IORPs being data holders as specified by the opt-in system are unable to use data from other financial entities in the scope of FIDA because they would not be data users.

We request clearer wording for Article 2(2)k as follows: “*IORP insofar the Member State has decided to apply this Regulation to customer data on pension rights in occupational pension schemes as foreseen in Article 2(1)(1a).*” This wording would make it possible to accurately consider the heterogeneity of pension systems across EU Member States with a well-functioning opt-in system.

III. Excluding occupational pension data outside those provided by IORPs and insurance undertakings

While the Council text foresees an exclusion of pension rights in occupational pension schemes under the IORP II and the Solvency II directives, it does not tackle the issue of pension rights managed by asset management companies. In some Member States such as France, employees can benefit from participation schemes or saving occupational collective retirement products managed by UCITS or AIF entities, with the related supplementary pension being part of the company’s social policy.

In that case, the employer, not the employee, is the service provider’s client and there is no contract between the employee and the pension provider. Therefore, it cannot be considered a personal pension product as defined by the PEPP regulation. Nor would it be possible to implement any permission dashboards for that type of pension right given that the employer is the direct client of the pension provider and not the employee.

We suggest excluding such pension rights data from the scope of FIDA as including them could hinder the willingness of the companies to provide supplementary pensions to their employees.

IV. Extending the timeframe of the staged approach for the personal pension product customer data category

The Council foresees a phase-in system to include customer data categories at different stages depending on the degree of standardization of the data category. The customer data category for personal pension products would be in scope 36 months after the entry into force of FIDA, while it would be 48 months for insurance-based individual pension products and Insurance-based investment products (IBIPs). As regards articles 9 to 11, for the three products, entry into force is six months earlier.

PensionsEurope supports the rationale behind the phased approach. We consider it important to ensure a unified phase-in for all types of products that have pension benefits purposes such as personal pension products, insurance-based individual pension products, and IBIPs. In this regard, we suggest granting a 48-month phase-in period for all types of products with pension features as they have all complex features, implying significant implementation time.

Annex

a. Article 2(1)c of the FIDA regulation (customer data categories scope)

This Regulation applies to the following categories of customer data on:

Commission proposal	European Parliament's position	Council General Approach
Pension rights in occupational pension schemes, in accordance with Directive 2009/138/EC and Directive (EU) 2016/2341 of the European Parliament and of the Council;	pension rights in occupational pension schemes, in accordance with Directive 2009/138/EC and Directive (EU) 2016/2341 of the European Parliament and of the Council ^[44] that are accessible for all interested consumers, with the exception of data related to sickness and health cover of a member or beneficiary;	(c) pension rights in officially recognised occupational pension schemes, in accordance with Directive 2009/138/EC and Directive (EU) 2016/2341 of the European Parliament and of the Council ⁵⁵ insofar as they are accessible for all interested consumers, with the exception of data related to sickness and health cover of a member or beneficiary;

b. Article 2(2)k of the FIDA regulation (entities scope)

This Regulation applies to the following entities when acting as data holders or data users:

Commission proposal	European Parliament's position	Council General Approach
Institutions for occupational retirement provision;	institutions for occupational retirement provision (IORP) that are accessible for all interested consumers, excluding small IORP as referred to in Article 5 of Directive (EU) 2016/2341;	institutions for occupational retirement provision (IORP), insofar as they manage personal pension products;

c. Article 2(1)1a of the FIDA regulation (opt-in system) – [Council General approach](#)

A Member State may decide to apply this Regulation to customer data on pension rights in occupational pension schemes, in accordance with Directive 2009/138/EC and Directive (EU) 2016/2341 of the European Parliament and of the Council.

Where a Member State adopts a decision in accordance with this paragraph 1a of this Article, such a decision shall apply to: (a) institutions for occupational retirement provision that are registered or authorised in their territories in accordance with Directive (EU) 2016/2341; and

(b) insurance undertakings which have received authorisation in their territories in accordance with Article 14 of Directive 2009/138/EC to operate occupational retirement provision business. A Member State decision shall apply to all financial institutions listed in points (a) and (b) of this paragraph Article when acting as data holders or data users, with exception of entities referred to in Article 2(3), points (b) and (c) of Regulation (EU) 2022/2554. Where a Member State decides to exercise the option foreseen adopts a decision in accordance with the first subparagraph of this paragraph 1a, the Member State shall notify the Commission, the EBA and EIOPA of its decision and provide relevant information concerning its decision, including the date from which Member State decision applies. Where a Member State decides to exercise the option foreseen adopts a decision in accordance with the first subparagraph of this paragraph 1a, the competent authorities specified in Article 17(4) shall be responsible for carrying out the functions and duties provided for in this Regulation as regards customer data on pension rights in occupational pension schemes.

The EBA shall make the decision adopted in accordance with paragraph 1a publicly available in the electronic central register in accordance with Article 15.

d. Article 2(1) of the [PEPP regulation](#)

‘personal pension product’ means a product which:

- (a) is based on a contract between an individual saver and an entity on a voluntary basis and is complementary to any statutory or occupational pension product;
- (b) provides for long-term capital accumulation with the explicit objective of providing income on retirement and with limited possibilities for early withdrawal before that time;
- (c) is neither a statutory nor an occupational pension product;

About PensionsEurope

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

PensionsEurope has **25 member associations** in 19 EU Member States and 3 other European countries³. PensionsEurope member organisations cover different types of workplace pensions for approximately over **90 million people**. Through its Member Associations PensionsEurope represents approximately **€ 5 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **14 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

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

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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³ EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland.