Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Union households are amongst the highest savers in the world, but the bulk of those savings are held in bank accounts with short maturities. More investment into capital markets can help meet the challenges posed by population ageing and low interest rates.

(2) Old age pensions constitute an essential part of a retiree's income and for many people, adequate pension provision makes the difference between a comfortable old age and poverty. They are a precondition for exercising fundamental rights laid down in the Charter of Fundamental Rights of the European Union, including in Article 25 on the rights of the elderly which states: 'The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life'.

(3) The Union is facing several challenges, including demographic challenges because of the fact that Europe is an ageing continent. In addition, career patterns, the labour market and the distribution of wealth are undergoing radical changes, not least as a result of the digital revolution.

(4) A substantial part of old age pensions is provided under public schemes. Notwithstanding the exclusive national competence regarding the organisation of pension systems as determined by the Treaties, income adequacy and financial sustainability of national pension systems are crucial to the stability of the Union as a whole. By channelling more of Europeans' savings from cash and bank deposits to long-term investment products, such as voluntary pension products with a long-term retirement nature, the impact would therefore be beneficial both for individuals (who

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would benefit from higher returns and improved pension adequacy) and for the broader economy.

(5) In 2015, 11,3 million Union citizens of working age (20 to 64 years old) were residing in a Member State other than the Member State of their citizenship and 1,3 million Union citizens were working in a Member State other than their Member State of residence.

(6) A portable pan-European Personal Pension Product (PEPP) with a long-term retirement nature will increase its attractiveness as a product, particularly to young people and mobile workers, and will help to further facilitate the right of Union citizens to live and work across the Union.

(7) Personal pensions are important in linking long-term savers with long-term investment opportunities. A larger, European market for personal pensions will support the supply of funds for institutional investors and investment into the real economy.

(8) This Regulation enables the creation of a personal pension product which will have a long-term retirement nature and will take into account environmental, social and governance (ESG) factors as referred to in the United Nations-supported Principles for Responsible Investment, insofar as possible, will be simple, safe, reasonably-priced, transparent, consumer-friendly and portable Union-wide and complements the existing systems in the Member States.

(9) Currently, the internal market for personal pension products does not function smoothly. In some Member States there is not yet a market for personal pension products. In others, personal pension products are available, but there is a high degree of fragmentation between national markets. As a result, personal pension products have only a limited degree of portability. This can result in difficulties for individuals to make use of their basic freedoms. For instance, they might be prevented from taking up a job or retiring in another Member State. In addition, the possibility for providers to use the freedom of establishment and the freedom to provide services is hampered by the lack of standardisation of existing personal pension products.

(10) As the internal market for personal pension products is fragmented and diverse, the impact of PEPPs might be very different across Member States, and the target audience might be equally varied. In some Member States, PEPPs might offer solutions for people who do not currently have access to adequate provisions. In other Member States, PEPPs could broaden the consumer choice, or offer solutions to mobile citizens. However, PEPPs should not aim at replacing existing national pension systems, since it is an additional and complementary personal pension product.

(11) The capital markets union (CMU) will help mobilise capital in Europe and channel it to all companies, including small and medium enterprises, infrastructure and long-term sustainable projects that need it to expand and create jobs. One of the main objectives of the CMU is to increase investment and choices for retail investors by putting European savings to better use. For this purpose, a PEPP will represent a step forward for the enhancement of the capital markets integration due to its support to the long-term financing of the real economy taking into account the long-term retirement nature of the product and the sustainability of investments.

(12) As announced in the Commission's Action Plan on building a CMU of 30 September 2015, 'the Commission will assess the case for a policy framework to establish a successful European market for simple, efficient and competitive personal pensions, and determine whether EU legislation is required to underpin this market'.

(13) In the resolution of the European Parliament of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union[(3)], the European Parliament stressed that 'an environment must be fostered that stimulates financial product innovation, creating more diversity and benefits for the real economy and providing enhanced incentives for investments, and that may also contribute to the delivery of adequate, safe and sustainable pensions, such as, for example, the development of a pan-European Pension Product (PEPP), with a simple transparent design'.

(14) In its conclusions of 28 June 2016, the European Council called for 'swift and determined progress to ensure easier access to finance for business and to support investment in the real economy by moving forward with the Capital Markets Union agenda'.

(15) In the Communication of the Commission of 14 September 2016 Capital Markets Union — Accelerating Reform, the Commission announced that it 'will consider proposals for a simple, efficient and competitive EU personal pension product […] Options under consideration include a possible legislative proposal which could be tabled in 2017'.

(16) In the Communication of the Commission of 8 June 2017 Mid-Term Review of the Capital Markets Union Action Plan, the Commission announced 'a legislative proposal on a pan-European Personal Pension Product (PEPP) by end June 2017. This will lay the foundations for a safer, more cost-efficient and transparent market in affordable and voluntary personal pension savings that can be managed on a pan-European scale. It will meet the needs of people wishing to enhance the adequacy of their retirement savings, address the demographical challenge, complement the existing pension products and schemes, and support the cost-efficiency of personal pensions by offering good opportunities for long-term investment of pension savings'.

(17) The development of a PEPP will contribute to increasing choices for retirement saving, especially for mobile workers, and establish a Union market for PEPP providers. It should, however, only be complementary to public pension systems.

(18) Financial education can support the understanding and awareness of households' saving choices in the area of voluntary personal pension products. Savers should also have a fair chance to fully grasp the risks and the features related to a PEPP.

(19) A legislative framework for a PEPP will lay the foundations for a successful market in affordable and voluntary retirement-related investments that can be managed on a pan-European scale. By complementing the existing statutory and occupational pension schemes and products, it will contribute to meeting the needs of people wishing to enhance the adequacy of their retirement savings, addressing the demographic

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challenge and providing a powerful new source of private capital for long-term investment. This framework will not replace or harmonise existing national personal pension products or schemes, nor will it affect existing national statutory and occupational pension schemes and products.

(20) A PEPP is an individual non-occupational pension product subscribed to voluntarily by a PEPP saver in view of retirement. Because a PEPP should provide for long-term capital accumulation, possibilities for the early withdrawal of capital should be limited and might be penalised.

(21) This Regulation harmonises a set of core features for the PEPP, which concern key elements such as distribution, minimum content of contracts, investment policy, provider switching, or cross-border provision and portability. The harmonisation of those core features will improve the level playing field for personal pension providers at large and help boost the completion of the CMU and the integration of the internal market for personal pensions. It will lead to the creation of a largely standardised pan-European product, available in all Member States, empowering consumers to make full use of the internal market by transferring their pension rights abroad and offering a broader choice between different types of providers, including in a cross-border way. As a result of fewer barriers to the provision of pension services across borders, a PEPP will increase competition between providers on a pan-European basis and create economies of scale that should benefit savers.

(22) Article 114 of the Treaty on the Functioning of the European Union (TFEU) allows the adoption of acts both in the shape of regulations or directives. The adoption of a regulation has been preferred as it would become directly applicable in all Member States. Therefore, a regulation would allow a quicker uptake of the PEPP and contribute more rapidly to address the need for more pension savings and investments in the CMU context. This Regulation is harmonising the core features of PEPPs which do not have to be subject to specific national rules and so, a regulation appears better suited than a directive in this case. On the contrary, the features which are outside the scope of this Regulation (e.g. accumulation phase conditions) are subject to national rules.

(23) This Regulation should lay down uniform rules on the registration, provision, distribution and supervision of PEPPs. PEPPs should be subject to the provisions in this Regulation, relevant sectorial Union law as well as the corresponding delegated and implementing acts. In addition, the laws adopted by Member States in implementation of sectorial Union law should apply. If not already covered by this Regulation or by sectorial Union law, the respective laws of Member States should apply. A PEPP should also be subject to a contract concluded between the PEPP saver and the PEPP provider (the 'PEPP contract'). There is a set of key characteristics of the product that should be included in the PEPP contract. This Regulation should be without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and applicable law. This Regulation should also be without prejudice to national contractual, social, labour and tax law.

(24) This Regulation should make clear that the PEPP contract has to comply with all applicable rules. Moreover, the PEPP contract should set the rights and obligations of

the parties and include a set of key characteristics of the product. A PEPP contract might also be concluded by the representative of a group of PEPP savers, such as an independent savers association, acting on behalf of that group provided that this is done in compliance with this Regulation and applicable national law and that PEPP savers subscribing in this way obtain the same information and advice as PEPP savers concluding a PEPP contract either directly with a PEPP provider or through a PEPP distributor.

(25) PEPP providers should have access to the whole Union market with one single product registration to be granted on the basis of a single set of rules. In order to market a product under the designation 'PEPP', applicant PEPP providers should apply for registration to their competent authorities. This Regulation does not prevent registration of an existing personal pension product which fulfils the conditions laid down by this Regulation. Competent authorities should take a decision for registration if the applicant PEPP provider has provided all the necessary information and if suitable arrangements to comply with the requirements of this Regulation are in place. After a decision for registration has been taken by the competent authorities, they should notify the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(4)] accordingly to register the PEPP provider and the PEPP in the central public register. Such registration should be valid across the entire Union. In order to ensure effective supervision of compliance with the uniform requirements laid down in this Regulation, any subsequent modifications to the information and documents provided in the registration procedure should be immediately notified to the competent authorities and to EIOPA, where applicable.

(26) A central public register should be created by EIOPA to contain information about PEPPs that have been registered and could be provided and distributed in the Union, as well as about the PEPP providers and a list of Member States in which the PEPP is offered. Where PEPP providers are not distributing PEPPs within the territory of a Member State but are able to open a sub-account for that Member State in order to ensure the portability for their PEPP customers, that register should also contain information about the Member States for which the PEPP provider offers sub-accounts.

(27) The way in which institutions for occupational retirement provision (IORPs), as referred to in Directive (EU) 2016/2341 of the European Parliament and of the Council[(5)], are organised and regulated varies significantly between Member States. In some Member States, those institutions are only allowed to carry out occupational pension activities whereas in other Member States, those institutions, including the authorised entities responsible for operating them and acting on their behalf, where IORPs do not have legal personality, are allowed to carry out occupational and personal pension activities. This has not only lead to different organisational structures of IORPs but is also accompanied by different supervision on national level. In particular, prudential supervision of IORPs which are authorised to provide occupational and personal pension activities is broader than of those IORPs which only carry out occupational pension activities.