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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION RECOMMENDATION of 29.6.2017 on the tax treatment of personal pension products, including the pan-European Personal Pension Product

Delegations will find attached document C(2017) 4393 final.

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COMMISSION RECOMMENDATION

of 29.6.2017

on the tax treatment of personal pension products, including the pan-European Personal Pension Product

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on the tax treatment of personal pension products, including the pan-European Personal Pension Product

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Personal pensions have an important role to play in linking long-term savers with long-term investment opportunities.
- (2) With the purpose of providing savers with an income in retirement, products which are considered under national law as personal pension products can help address the demographic challenges of aging populations, evolving working patterns among the workforce, but also secure adequate replacement rates in the future as a complement to state-based or occupational pensions. A better offer of personal pension products will help households to meet their retirement goals.
- (3) The pan-European Personal Pension Product (PEPP) initiative is part of the Capital Markets Union, aiming to mobilise capital in the Union and channel it to all companies, including SMEs, infrastructure and long term sustainable projects that need this capital to expand and create jobs.
- (4) In its Resolution of 19 January 2016¹, 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 PEPP, with a simple transparent design".
- (5) In its conclusions of 28 June 2016², 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".

¹ European Parliament resolution 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 (2015/2106(INI)), point 20.

² European Council, Conclusions of the meeting of 28 June 2016 (EUCO 26/16), point 11.

- (6) The development of a future PEPP contributes to increased choices for retirement saving and to building a Union market for personal private pensions.
- (7) Tax incentives play an important role in encouraging the take-up of personal pension products (PPPs) in a number of Member States. Tax incentives for PPPs can take different forms. In many Member States the contributions paid for PPPs qualify for some form of tax relief. Similarly, in many Member States the investment results of the PPPs are not subject to tax, either on the basis of an explicit exemption or de facto exemption, if the provider is subject to tax but can deduct from the tax base the dotations to the pension reserve. Tax incentives may also be granted in the decumulation phase, by applying a favourable tax rate to the out-payment of the personal pension.
- (8) The national treatment principle, stemming from Articles 21, 45, 49, 56 and 63 of the Treaty on the Functioning of the European Union and interpreted by the Court of Justice of the European Union³, applies to PEPP savers. Therefore, it should be possible for a PEPP that is objectively comparable to a PPP marketed in a given Member State to benefit from the same tax relief granted to the PPP in that Member State. This also applies if the PEPP is provided by a provider from another Member State⁴.
- (9) Following the launch of the PEPP, Member States are encouraged to extend the benefits of the tax advantages they grant to national PPPs also to the PEPP, so that a future PEPP can fall within the scope of existing national tax incentives for PPPs even when it does not fulfil all the national criteria for tax relief.
- (10) Member States should inform the Commission on the implementation of this Recommendation.

HAS ADOPTED THIS RECOMMENDATION:

1. SUBJECT MATTER

This Recommendation concerns Member States' application of tax rules to individuals who qualify as PEPP savers.

2. RECOMMENDATION

³ See, for example, paragraph 94 of case C-385/00 *De Groot* ECLI:EU:C:2002:750, paragraph 20 of Case C-520/04 *Turpeinen* ECLI:EU:C:2006:703, and paragraph 51 of case C-527/06 *Renneberg* ECLI:EU:C:2008:566.

⁴ CJEU, Case C-422/01, *Skandia Ramstedt* ECLI:EU:C:2003:380, where the CJEU ruled in paragraph 62 that: "*Article 49 EC precludes an insurance policy issued by an insurance company established in another Member State which meets the conditions laid down in national law for occupational pension insurance, apart from the condition that the policy must be issued by an insurance company operating in the national territory, from being treated differently in terms of taxation, with income tax effects which, depending on the circumstances in the individual case, may be less favourable.*"

- 2.1. Member States are encouraged to grant PEPPs provided under Regulation (EU) .../... of the European Parliament and of the Council⁵ the same tax relief as the one granted to national PPPs, once these PEPPs are launched on the personal pension market, even in those cases where the PEPPs product features do not match all the national criteria required by the Member State to grant tax relief to PPPs.

Where Member States have more than one type of PPP, they are encouraged to give PEPPs the most favourable tax treatment available to their PPPs.

- 2.2. In order to accelerate the creation of a single market for personal pensions, Member States are encouraged to exchange best practices regarding the taxation of PEPPs and PPPs, with a view to aligning their national criteria for granting tax incentives as much as possible and facilitating the portability of such products.

That exchange could take place through an expert group of Member States' representatives, established by the Commission.

3. FOLLOW-UP

Member States are invited to inform the Commission on the measures taken in order to comply with the present Recommendation, as well as on any changes made to such measures, at the latest three years after the entry into application of Regulation (EU) .../...⁶.

4. ADDRESSEES

This recommendation is addressed to the Member States.

⁵ See Commission Proposal for a Regulation of the European Parliament and of the Council on a pan-European Personal Pension Product (PEPP), COM/2017/343 final of 29.6.2017, 2017/0143 (COD).

⁶ See Commission Proposal for a Regulation of the European Parliament and of the Council on a pan-European Personal Pension Product (PEPP), COM/2017/343 final of 29.6.2017, 2017/0143 (COD).

Done at Brussels, 29.6.2017

For the Commission

Valdis Dombrovskis
Vice-President

