INVEST EUROPE

Invest Europe response to

European Commission Targeted Consultation on Supplementary Pensions

Questions on PEPP

Question 12- In your view, does the current structure of the Basic PEPP allow for wide uptake by savers across the European Union, helping to ensure adequate income in retirement while also contributing meaningfully to the objectives of the Savings and investments union?

No.

The PEPP under PEPP 2.0 is a cross-sectoral third pillar product that may be offered by, amongst others, banks, insurance companies, pension fund and fund/asset managers. It leans on existing suitable type of third pillar retirement products, such as AIFs, UCITS, IORPs (resembling investment funds) and unit-linked insurances.

However, the excessively overregulated "investment rules" for the "default option" - that involve either guarantees or risk-mitigation techniques - *de facto* render the PEPP to be rather a pension/insurance product that is not only competing with, but also more complex and expensive than existing third pillar pension and insurance products.

For the uptake of a future "PEPP 2.0", investment rules would really need to be made more flexible and fully in line with existing sectorial regulation. For example, eligible investments could be limited to AIFs (with the ELTIF, EuVECA and EuSEF label), as well as UCITS, IORPs and unit-linked insurances. Products will then be fully aligned with sectorial regulation and this would make PEPPs less complex, costly and more interesting for fund/asset managers.

The mandatory risk mitigation techniques and guarantees could be optional just like is currently the case for national third pillar products. The same holds true for the coverage of biometric risks. In practice, fund/asset managers would, for example, develop robo-advice products with a mixture of UCITS (ETFs or not) and AIFs (with ELTIF, EuVECA or EuSEF European labels) that would benefit from a favourable tax treatment. For second pillar PEPP products, existing or slightly amended rules would be more suitable.

Question 13 - Do you consider that the Basic PEPP should necessarily be designed with a built-in lifecycle investment strategy, as a standard feature of the product?

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No. PEPPs are voluntary third-pillar products that directly compete with ETFs. Investing in an PEPP should not be heavier regulated than a direct investment in a low-cost index ETF.

Instead, it should be seen as a wrapper that offers certain advantages. For example, tax advantages, but also the possibility to have a "tontine" built into the accumulation and decumulation phase, i.e. the units in UCITS/AIFs would be passed on to investors of the same age cohort and, therefore, returns could be significantly boosted and the longevity risk issue would be mitigated.

Question 14 - Do you consider that the Basic PEPP should be designed in a way that it can be offered also on an execution-only basis (i.e. without requiring investment advice)?

Yes.

Many third-pillar products that retail investors invest in are execution-only (e.g. UCITS ETFs with low leverage). It would be acceptable to have a generic suitability test, such is the case for ELTIFs, but investment advice prior to investments and prior to decumulation is a deterrence of this product and renders this product to be excessively expensive compared to non-PEPP UCITS and unit-linked products. There is already product governance in place under the PEPP, so a suitability test with product governance would provide for sufficient investor protection.

Question 15 - Do you consider it is useful to maintain the availability of alternative investment options, in addition to the Basic PEPP?

Yes.

It should be possible to invest in AIFs, for examples in AIFs with a European label such as ELTIFs.

Question 16 - In your view, does the sub-account structure align effectively with the specificities inherent in a cross-border product, including how Member States grant tax or other relevant incentives for personal pension products?

Yes.

Sub-accounts are necessary for, amongst others, tax purposes. However, data collection should be done at the EU level and freely available for PEPP providers and distributors. If market players would need to collect data for all Member States themselves, it would render the product too be too complex with sub-accounts.

Question 17 - Do you consider the requirement for PEPP providers to offer sub-accounts for at least two Member States is necessary to foster cross-border provision of PEPPs?

Yes.

If there are no sub-accounts available for multiple Member States, it forces the

product to push for an exit upon migration or to a less favourable alternative.

As such, the number should not be mandatory, but knowledge sharing should be in place on the EU level to ensure that distribution on an EU wide basis can be provided in a cost-effective manner.

Question 18 - Do you consider that the Basic PEPP should continue to be subject to a 1% fee cap?

No.

While the PEPP cost should be a prominent feature of the offer, we do not think it is a good idea for PEPP to only focus on low cost, low value products. Instead, we suggest that the focus of the PEPP should be on value for money, as opposed to low costs. Private equity products have been shown to have very high returns in exchange for a specific fee model that is typically higher than 1%.

Moreover, an exemption in the form of a start-up phase of a couple of years should be in place to allow PEPP providers to scale.

Question 19 - If the fee cap for the Basic PEPP were to be maintained, do you think certain cost components (e.g. taxes, specific distribution costs) should be excluded from the cap, or that other adjustments to the cap should be considered?

Yes. Taxes should be excluded. As a reminder, distribution costs are essential for the product to be offered in the first place. Care should also be taken not to make an appropriate distinction between profit sharing mechanisms, such as carried interest, and fixed costs that are set irrespective of the returns.

The Commission should also consider exempting certain types of performance fees. In 2023, the UK introduced an exemption from the UK's charge cap (which applies to the default funds of DC schemes used for automatic enrolment) for "specified performance-based fees" (under reg. 2(1) Occupational Pension Schemes (Charges and Governance) Regulations 2015), intended to cover "well designed" performance-based fees that are paid when a fund manager exceeds pre-determined performance targets from their charge cap calculations where this is in the best interests of their members. This followed a consultation on how the UK government could broaden the investment opportunities of UK pension schemes, and enable them to "take advantage of the opportunities illiquid asset classes".

We also note that in the UK only certain costs and fees are caught by the cap on charges. Whilst this increases the complexity of applying the cap thresholds, it does mean that transaction and acquisition costs do not inflate the perceived costs of investing in alternative assets. Indeed, these costs would be embedded in the valuations of listed investments as a separate line item for alternative asset classes. In other words, excluding or including certain cost component in an indiscriminate

way can have the effect of making some products appear less costly than others, irrespective of the reality of the fee model.

More generally, and as flagged above, charge caps can contribute to a focus on costs over value among pension providers, particularly where they are not required to disclose other forms of data (e.g. relating to longer-term returns) in a consistent and comparable way.

Question 20 - Under the PEPP Regulation, all investment options shall be designed by PEPP providers. In your view, do the existing risk-mitigation requirements strike an appropriate balance between ensuring consumer protection and maintaining sufficient flexibility and incentive for PEPP providers to offer the PEPP?

No. The mandatory risk mitigation techniques and guarantees could be optional just like it is currently the case for national third pillar products. The current rules act as a real deterrent to the use of PEPP.

Regulators should consider that overprotective measures (the stochastic model) will often lead to a level of "safety" that is linked to so low returns that the product is effectively no longer viable in times of low inflation. Most innovation under a viable PEPP would be expected from fund/asset managers, as insurance companies and (voluntary) pension funds might have concerns with respect to product cannibalization (i.e. a cheaper "competitor" product). The reason fund/asset managers have so far failed to step is linked to a number of reasons, but risk-mitigation requirements is an important one.

Question 21- Do you consider that the Basic PEPP should be explicitly open to use in a workplace context?

Yes. There is no reason not to extend the PEPP to second pillar products.

Question 24 - Do you consider the investment rules in the PEPP Regulation appropriate to support the achievement of adequate long-term returns?

No, the investment limits are all too defensive. Focus should be on suitability test and not on mandatory guarantees or risk-mitigation techniques.

From a strategic point of view, the development of sufficiently flexible EU pension product would, similar to US 401K, foster investments in truly long-term assets. While much needs to be done to achieve this objective, including on the industry side, the European Commission should therefore have as an overarching goal the creation of a pension product that also allows investments, at least in part and based on the profile of the clients, in assets such as infrastructure, venture capital or private equity.

Examples should be drawn in particular on the French insurance model, which is built to make use of citizens' long term savings to make investments in competitive businesses. We also note that the UK government has recently introduced measures to require certain pension schemes to have £25 billion in AUM by 2030, following its pension investment review.

Germany provides a cautionary tale with the so-called "Riester-Rente" which requires a heavy down-side protection leading to excessive costs. This has led to real returns being negative for most products. A large share of the contracts have been cancelled since and just about no new contracts are made. hile we do not wish to downplay the difficulties in setting up these products in a way that is suitable to both the client's liquidity profile and underlying illiquid assets, one could argue that pension savings, with their naturally long-term liabilities, are the ones that are most appropriate to finance long-term innovation.

The main shortcoming of the current PEPP is that it conveys an idea of savings that is hindering the EU's ability to finance its own growth. As recognised in many recent reports, the EU currently lacks sufficient capital to finance the growth of its companies, especially in innovative sectors. Opening the PEPP to alternative products will help achieve these objectives, as we detail in our answer to Question 34.

It is therefore urgent to rethink the model drawing on examples of successful countries. Not building the PEPP to achieve the objective of fostering long-term investments would definitely be a missed opportunity.

Question 25 - Do you consider that PEPP's limited uptake is due to the existence of competing personal pension products across the Member States?

No.

In our view, EIOPA mentioned many valuable points to consider improving the product. However, EIOPA seems to overlook that the PEPP was, initially, pushed by the asset management industry and thought of as a means to enter the European pension market that is traditionally dominated by (voluntary) pension funds and insurance companies. Enabling fund/asset managers to compete with these players is, from a supply-side point of view, essential in making PEPP 2.0 work. For this purpose, the following (additional) points have to be considered:

a) No National Products

Albeit the EIOPA Feedback recommends including "national products" as part of the PEPP, this is rather an ill-considered idea. The PEPP is thought of as a "wrapper product" that shares common standardized or "mandatory" features. Most products that are suitable for PEPPs are European products, such as AIFs, UCITS and unit-linked insurances. The PEPP framework is built upon a cocktail of intermediary regulation that targets PEPP providers that are eligible under EU sectorial laws (e.g. fund/asset managers, investment firms, banks and insurance undertakings), as well

as sales regulation/disclosure that are aligned with EU sectorial laws. Under national law, mainly national products are voluntary pension products. The current sectorial approach ensures that extra product regulation to ensure EU wide investor protection for the PEPP can be kept to a minimum, which leads to a less complex and a less costly product.

b) Abolish complex investment rules for (Third Pillar) PEPPs

The PEPP under PEPP 2.0 is a cross-sectoral third pillar product that may be offered by, amongst others, banks, insurance companies, pension fund and fund/asset managers. It leans on existing suitable type of third pillar retirement products, such as AIFs, UCITS, IORPs (resembling investment funds) and unit-linked insurances. However, the excessively overregulated "investment rules" for the "default option" that involve either guarantees or risk-mitigation techniques) render, de facto, the PEPP to be rather a pension/insurance product that is not only competing with, but also more complex and expensive than existing third pillar pension and insurance products. Hence, for the uptake of a future "PEPP 2.0", the investment rules would really need to be made more flexible and fully in line with existing sectorial regulation. For example, eligible investments could be limited to AIFs (with the ELTIF, EuVECA and EuSEF label), as well as UCITS, IORPs and unit-linked insurances. Products will then be fully aligned with sectorial regulation and this would make PEPPs less complex, costly and more interesting for fund/asset managers. The mandatory risk mitigation techniques and guarantees could be optional just like is currently the case for national third pillar products. The same holds true for the coverage of biometric risks. In practice, fund/asset managers would, for example, develop robo-advice products with a mixture of UCITS (ETFs or not) and AIFs (with ELTIF, EuVECA or EuSEF European labels) that would benefit from a favourable tax treatment. For second pillar PEPP products, existing or slightly amended rules would be more suitable.

c) Mandatory Advice

Prior to entering into a PEPP-related contract, as well as at the start of the decumulation phase, mandatory (costly) advice is required under PEPP 1.0. However, such a requirement is not in place for competing third pillar retirement products. For example, under ELTIF 2.0 there is only product governance and a suitability test in place. These features would work for PEPPs as well.

To reduce costs involved with the PEPP, advice should be optional for PEPP savers. Any PEPP providers and distributors could, alternatively, also develop digital solutions to support PEPP savers in their journey.

Question 26 - To your knowledge, does the existing framework create any obstacles or barriers to the distribution of PEPP, including across providers and Member States?

No, the insurance and fund distribution networks should work fine. UCITS worked

with a fragmented tax landscape, so would the PEPP do.

Question 31 - To your knowledge, has the Commission Recommendation of 29 June 2017 led to the PEPP and other personal pension products being placed on a level playing field in terms of tax treatment?

Yes. Some Member States, such as Luxembourg and Ireland, have acted upon it, but it could lead to more awareness and improvement in other Member States as well.

Question 32 - Would further action at the level of the European Union be necessary to ensure a level playing field in terms of tax treatment between the pan-European Personal Pension Product and other competing personal pension products?

Yes.

Tax incentives are the main reason why private investors commit capital to pension products. At present, occupational pension schemes remain more attractive from a tax perspective in some Member States, such as Ireland, as compared to personal pension products, such as PEPPs.

Without attempting a far-reaching harmonisation of national personal taxation regimes, the European Union should implement rules of equal treatment of comparable pensions products.

Question 33 - Are there any additional issues that you believe should be considered in the review of the PEPP Regulation?

Yes. The text should clarify that PEPPs may have a "tontine feature". This could lead to an additional incentive to invest in PEPPs rather than in national products for tax reasons, as it amplifies returns. Essentially, a PEPP would become a fund/unit-linked product in which units are being allocated to investors of the same cohort if someone passes away. This will then not be available for inheritance, but, of course, the PEPP is voluntary and not all money of an investor should be allocated to this product. Hence, the investor should then choose to invest in such a product with such an option or not. Currently, only the Solvency II directive caters for the tontine, but it could lead to real benefits.

Questions on IORP

Question 34 - Do you consider that a diversified portfolio of assets, including also investments in unlisted securities or alternative assets classes (with proper management and adequate risk safeguards) could enhance long-term returns for scheme members and beneficiaries?

Yes.

A diversified portfolio that includes unlisted securities such as investments in private

equity and venture capital funds—when supported by proper risk management—can enhance long-term returns and better match the long-term liabilities of pension funds. This review is an amazing opportunity to make changes to Article 19 to reflect this – and move away from the current public shares-centric approach.

We suggest that the prudent person principle under Article 19 should not be interpreted in a way that discourages or indirectly restricts investments in long-term assets that contribute to innovation and economic growth. We explain why below.

Current context

Pension funds are natural long-term investors and should be able to benefit from this trend. Yet, as Invest Europe data shows, they are currently missing out.

- While EU pension funds represent 25% of PE/VC fundraising, **non-EU pension funds (mainly from the US) contribute more than twice as much capital to the EU innovation economy.**

- In Germany, for example, pension funds make up less than 1% of the LP base in German VC funds, while **US pension funds indirectly hold about 10% of German unicorns**, representing around €4.7 billion. In contrast, **German pension funds hold just €94 million**, or 0.2%.

Despite this, some IORPs have benefited from investing in alternative asset classes, such as Dutch pension schemes like APG/ABP and PGGM. So far, only pension schemes that have achieved sufficient scale (see Q40, below) have managed to do so. Internationally, Canadian and Australian pension funds (and in the UK, defined benefit schemes, and more recently, certain master trusts) have achieved diversification (and enhanced long-term returns) through investing up to around 30% of their assets in alternative asset classes.

In Europe, the possibility of diversifying the overall assets of pension funds into both public and private equities is clearly made difficult by Article 19 of IORP. The Article has led most small and mid-sized pension funds to invest the majority of their holdings in regulated markets – and diverted them away from taking the necessary steps to build sufficiently diversified alternative portfolios.

If pension funds were allowed to invest more than a small percentage of their assets into alternatives, they would be free to build larger portfolios of alternative assets. This would make them more diversified than they currently are.

Such a change is also vital for the financing of the EU economy. If European pension funds allocated **up to 10% of their assets into long-term private capital**, this could channel approximately **€124 billion** into EU-based growth companies.

While pension funds are currently not always sufficiently equipped to invest in alternatives, they are well placed to access these opportunities through regulated and diversified fund structures such as **ELTIFs**, **EuVECA**, and **AIFs**. These funds are typically long-term in nature, regulated, professionally managed, and diversified

across sectors and geographies. When included in a well-managed portfolio, they offer attractive risk-adjusted returns.

The prudent person principle should reflect that, for long-term liabilities, investing in innovative sectors and growth assets can be an equally ranked prudent choice to other investments.

The "real risk" of private equity

Private equity is often perceived as highly risky. Yet, detailed modelling shows that this risk declines significantly with diversification and appropriate time horizons. Using Invest Europe data and simulations of 50,000 portfolio scenarios, Europe Economics in its Private Equity: Risk Calibration report (commissioned by Invest Europe) found that well-constructed portfolios of PE funds have much lower capital and realisation risk than commonly assumed.

For example, a diversified portfolio of 15 direct funds showed a 99.5% Value-at-Risk (VaR) of just **7-13%**, while portfolios with 10 funds had a VaR of **12-16%**. Larger institutional portfolios (e.g. 25-50 funds) showed **close to 0% VaR**. Even modest diversification—via fund-of-funds structures—can achieve considerable risk mitigation.

This evidence shows that the **current assumptions used in EU regulatory frameworks (e.g. Solvency II risk weights of 39-49%) and which are used by national authorities are significantly overstated** for pension investors with – at least slightly - diversified portfolios.

The real performance of private equity

At the same time, private equity performance – as is already known by the largest pension funds – outperforms listed equity benchmarks over long horizons by an impressive margin. In 2024:

- European Buy-Outs: net IRR of 14.86% since inception, beating MSCI Europe benchmark on 6.21%
- European growth capital net IRR of 14.57% since inception, ahead of MSCI Europe's 7.35% return
- VC net IRR of 18.95% over 10 years, 11.34% since inception, showing maturing of ecosystem

These higher overall performance numbers for all parts of the asset class are both the result of the choice of companies invested in by the fund – in particular start-ups and scale-ups with a real chance of becoming successful – and the active role played by managers in helping these companies grow.

Far from these numbers, heavy investments in low-yielding liquid assets represent a long-term risk for pension funds. **The average real return of EU pension funds over**

the past decade is just 0.9% - a figure that is insufficient to secure future retirement benefits and as such arguably not by any measure living up to the principle of "prudent investments".

A strategic choice must be made

For all reasons described above, we argue that not only unlisted equities should be part of the portfolio of assets, but they will become increasingly relevant for the pension funds to perform better for their stakeholders.

This is largely because there is a natural alignment between the long-term liabilities of pension funds and the long-term outlook of unlisted funds – making pension funds the best placed to be investors in EU businesses through these funds. Arguably, far from being discouraged to invest in long-term unlisted assets, by restricting pension funds to investing predominantly on regulated markets (defined narrowly), pension funds should be encouraged to do so.

Ultimately, transforming the EU pension landscape to mobilise more pension capital into EU unlisted equity should not be seen as an objective only for the pension funds themselves – but also for an EU economy that suffers from a chronical lack of investment in its innovative sectors. It is one crucial objective to enhance the returns of pension's stakeholders; it is another to ensure our continent nurtures the businesses that can bring growth and jobs to citizens more broadly.

Please see in Annex I our suggested changes to Article 19.

Question 35 - Are there in your knowledge any national quantitative or other type of investment rules imposing overly restrictive limits on investments in alternative assets?

Yes.

Many Member States impose **quantitative limits or other national rules** that discourage or effectively block investments in alternative assets such as venture capital and private equity. These restrictions often apply even when fund structures are regulated, diversified, and appropriate for the pension fund's long-term profile.

We give below a few examples but we also share with the European Commission an Annex (Annex II of this document) a more detailed situation of every EU country.

General overview of types of restrictions

Here are the main restrictions we have identified in national law:

- Limits of maximum investments to be made in unlisted equities
- Limits of maximum investments to be made in AIFs
- Concentration limits (maximum investments in a single fund or fund-of-fund)
- Maximum limits to re-commit capital

- Reporting requirements that are not adapted to the investment realities (requirement to report on underlying investments as opposed to reporting at fund level)
- Restrictions on fees and remuneration – that have the effect to push pension funds towards less costly but less valuable assets (while private equity is typically having a higher performance combined with higher costs)

While imposed at national level, we understand most of these restrictions are driven by IORP's prudent person principle. Even when there are no formal legal restrictions, such as in Belgium or in the Netherlands, the IORP "prudent person principle" is acting as a *de facto* limitation.

Italy

- Investments in AIFs are **capped at 20%** of total assets and **25% of the AIF's value**.
- A broader limit of 30% applies to all alternative and non-traded instruments.
- Justifications must be provided even for small, prudent allocations to alternatives.

Denmark

- Strict **pre-marketing rules** make it hard for smaller managers to approach pension funds.
- Pension fund regulation creates **reporting burdens, size mismatches**, and disincentives for investing in VC.
- VC funds seen as too small for large pension tickets; **lack of pooled structures** worsens this issue.

Belgium

- While no formal cap exists, the **FSMA requires that non-listed investments be kept to prudent levels**, which can discourage innovation-oriented allocations.
- Pension reserves are mostly managed by insurers (81%) rather than IORPs, who are subject to more stringent constraints.
- Tax disincentives exist against equity investments, including in private equity.

France

- **Unlisted investment cap at 5%** for many professional pension schemes (e.g. caisses libérales).
- Some schemes may only invest if **another fund commits at the same time**, limiting flexibility.
- **No ability to reinvest fund distributions** until full liquidation of the fund—restricting capital recycling.

Poland

- PPK pension funds can invest only **1% per fund** and face strict cost, liquidity,

and valuation rules that are incompatible with private equity structures.
- Carried interest and standard private equity fee models are essentially not allowed.
- Even when permitted in theory, **foreign currency limits and small fund size** make investments unfeasible in practice.

Spain

- Spanish pension funds are capped at **30%** in non-listed assets, including venture capital.
- **Fee limits** reduce incentives to invest in high-value but higher-cost strategies.
- Even when net returns are superior, the fee cap creates a disincentive to allocate capital to PE/VC.

Germany

- Pension schemes (*Pensionskassen*) have to comply with a limit on all so-called risk investments. This category covers for example, investments in private equity funds, private debt funds, hedge funds, receivables from profit participation rights (*Genussrechte*), and certain types of listed securities.
- While recently increased, this risk investment limit is now at 40% of the restricted assets of the pension schemes, leaving only a small share for each of the asset classes covered.
- Investments in private equity funds and subordinated debt or profit participation rights (*Genussrechte*) are capped at 15% of the restricted assets of the pension schemes.

Overall conclusion

These restrictions are not neutral: they have caused EU pension funds to be structurally underexposed to the asset classes that finance European innovation. This is not only a problem for savers and pensioners, but also a broader economic concern: **EU capital is not financing EU growth**. The fact that **US pensions finance Europe's startups at scale**, while European funds sit on the sidelines, is a sign of market failure. Also, the requirement that IORPs must be invested predominantly in regulated markets (defined narrowly) poses a challenge for many IORPs when it comes to managing investment risk across their portfolios.

While some flexibility could be maintained to reflect local pension fund structures, **such limits should not prevent or disincentivise well-diversified investments in long-term asset classes**, especially when they are aligned with the fund's duration and return objectives.

Invest Europe recommends:

- clarifying Article 19 to ensure that national restrictions must be **proportionate, risk-based, and not structurally exclusionary**.
- including language in Article 19 that **explicitly promotes long-term investment** in regulated fund vehicles aligned with EU growth and innovation

priorities.

- establishing **minimum safeguards** at EU level to prevent over-restrictive national caps that contradict the goal of enabling long-term investment in innovation, growth, and competitiveness.

Question 36 - Do you consider that other factors, such as limited IORPs' expertise with unlisted asset classes, may contribute to the low level of diffusion of these investments among IORPs?

Yes.

Beyond formal regulatory barriers, there are practical and structural issues that discourage IORPs from investing in long-term asset classes such as private equity and venture capital.

Key factors include:

- **limited in-house expertise** to evaluate illiquid asset classes (and limited familiarity with the full range of asset classes) and constraints on their ability to challenge and evaluate the options provided by their professional advisers.
- **governance and resourcing constraints** among smaller IORPs.
- **lack of scale** to access well-diversified alternative asset vehicles.
- a cultural tendency toward **liquidity and low-cost products** over long-term value, which can limit the demand from schemes to invest in more complex, innovative structures, which may involve higher fees and/ or different forms of disclosure.
- **hesitancy** to embrace investment models (e.g. fund-of-funds, long duration vehicles) that fall outside conventional reporting frameworks.
- Lack of familiarity with **requirements specific to IORPs** (e.g. liquidity constraints, charging structures and caps) and therefore limited ability to address these concerns through RfP processes.

In other words, expertise of unlisted equity is naturally limited and there is a real "path dependency" towards short-term assets. This dependency is reinforced by practical factors such as:

- **liquidity constraints** attached to long-term assets
- on average larger **investment tickets** (or more broadly tickets that are not adapted to the overall size of the pension fund)
- different **reporting and look-through demands**
- different **cost structures** and misunderstandings around **profit sharing mechanisms** like carried interest

The result is that even pension boards that are not legally restricted may avoid these assets due to a perceived complexity that is often the result of a **lack of familiarity**. The current IORP wording – and more broadly the architecture of the EU prudential rules – reinforced this.

Moreover, from a cultural perspective, private assets are automatically considered –

and sometimes nicknamed - as "riskier" while their risk can largely be avoided through diversification and liquidity planning measures that most pension funds can put in place relatively easily. As shown above, long-term, private equity portfolios are, for the large and mid-sized institutions that are pension funds, a much more natural fit that short-term equity, with a combination of much higher performance and low risk for sufficiently diversified portfolios.

The Commission should encourage the introduction of changes to pension fund systems that would make investments in long term asset class easier – here are a few examples:

- **Decoupling contribution limits from tax deduction ceilings and ease restrictions on contributions**: Allowing individuals to contribute beyond current annual tax-deductible thresholds, even if the excess is not immediately deductible, would enable greater pension fund accumulation and create more investable capital.
- **Raising tax deduction ceilings for personal pension contributions**: Increasing the maximum amount of tax-deductible contributions to personal pension schemes would incentivise higher voluntary savings. With additional assets under management, pension funds would be better positioned to pursue diversified portfolios, including significant allocations to private capital.
- **Allowing the self-employed to average their pension tax deductions over multiple years**: Self-employed individuals typically experience fluctuating income levels. Enabling them to calculate pension contribution deductions based on multi-year income averages would promote more consistent contributions to pension funds. In turn, this would lead to a larger and more stable base of long-term capital that can be directed toward private capital.
- **(in some cases) Limiting early withdrawals from pension funds**: Limiting the possibility of early withdrawals helps preserve the long-term nature of pension savings, which is essential for enabling investments in assets such as private capital. Ensuring that pension assets remain invested over longer time horizons increases the stability and predictability of capital available for private capital investment.

As noted in response to Q40, pension schemes are typically better placed to invest in unlisted asset classes once they have achieved requisite scale. However, it also remains important for smaller, national pension funds to invest in small-scale venture capital, especially in less developed markets.

Question 37 - Do you consider that the current provisions on risk management in the IORP II Directive and the intervention capacity of supervisory authorities could be further enhanced to strengthen trust in institutions under the scope of the Directive?

Yes, but enhancements must be carefully targeted. The goal should be to reinforce confidence without introducing new disincentives to long-term investing. We support (i) more consistent supervisory expectations across Member States and (ii) clear guidelines for how **risk in long-term, illiquid assets** should be assessed in a portfolio context—not in isolation.

We caution against creating additional reporting or valuation burdens that would further penalise PE/VC-style investments. Risk should be assessed with appropriate reference to:

- the **duration of liabilities**.
- the **diversification** within fund vehicles.
- the **historical risk-adjusted performance** of the asset class.

Question 38 - Do you consider that the introduction of an explicit duty of care provision could further strengthen the level of protection of members and beneficiaries?

Yes.

An explicit duty of care could help clarify that protecting beneficiaries means not only avoiding risk, but also ensuring value and adequacy of returns. We recommend that the duty:

- emphasises **long-term outcomes** rather than short-term volatility.
- clarifies that fiduciary responsibility includes **seeking good value, not just low cost**.
- recognises that diversified long-term investments in innovation-oriented sectors **serve the best interests** of beneficiaries, especially in the face of demographic and inflationary pressures.
- requires firms to support the understanding of beneficiaries, and consider their needs, characteristics and objectives.

Question 39 - Do you consider that national competent authorities are adequately equipped under the Directive to oversee that assets are invested in the best long-term interests of members and beneficiaries as a whole?

No.

Supervisory practices vary significantly across Member States, with some NCAs adopting very conservative interpretations of the prudent person rule. Exchange of best practices could help in that regard.

To support better outcomes, NCAs should be:

- encouraged to adopt a **risk-based approach** that reflects **portfolio-level** risk and long-term time horizons.

- equipped with guidance on **diversification within fund structures**.
- mandated to consider how **overly restrictive interpretations** may undermine long-term returns or block access to EU innovation markets.

Question 40 - Do you consider that the scale of many IORPs may affect their overall investment capacity, for example by reducing their ability to build a diversified portfolio, hindering the performance of the schemes due to cost inefficiencies, or by creating other inefficiencies?

Yes.

Many IORPs, particularly those operating at a national or sectoral level, lack the scale and governance infrastructure to access alternative assets effectively. Barriers include:

- High **due diligence and administrative costs**.
- Lack of access to **pooled vehicles** or outsourced investment solutions.
- Regulatory requirements (e.g. the obligation to invest assets "predominantly on regulated markets, under Article 19 IORP II).
- Levels of expertise within IORPs (e.g. due to smaller, less specialised investment desks), and among their advisers (see Q36, above).

We recommend:

- Supporting **multi-employer structures**, master trusts, or pooled investment platforms.
- Encouraging fund-of-fund or fund-wrapping models to help smaller IORPs gain exposure.
- Promoting the **creation of long-term EU savings products** with private equity components.

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ANNEX I: Proposed changes

Article 19 - Investment rules

1.Member States shall require IORPs registered or authorised in their territories to invest in accordance with the 'prudent person' rule ***and the overall European financing needs*** *and in particular in accordance with the following rules:*
(a) the assets shall be invested in the best long-term interests of members and beneficiaries as a whole. In the case of a potential conflict of interest, an IORP, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries;
(b) within the prudent person rule, Member States shall allow IORPs to take into account the potential long-term impact of investment decisions on environmental, social, and governance factors;
(c) the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole ***while aiming to achieve overall performance that is higher than inflation;***
(d) the assets shall be invested in a diversified manner, with consideration to the liquidity profile of assets depending on the overall portfolio of the IORP. ~~*Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels*~~*;*
(e) investment in derivative instruments shall be possible insofar as such instruments contribute to a reduction in investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of an IORP's assets. IORPs shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;
(f) the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole. ***For investments in funds, the level of diversification within the fund, both in terms of sectors, strategies and geographies, shall be considered in the diversification analysis.*** *Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose an IORP to excessive risk concentration;*
(g) investment in the sponsoring undertaking shall be no more than 5 % of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10 % of the portfolio.
Where an IORP is sponsored by a number of undertakings, investment in those sponsoring undertakings shall be made prudently, taking into account the need for proper diversification. Member States may decide not to apply the requirements referred to in points (f) and (g) to investment in government bonds.
2. Taking into account the size, nature, scale and complexity of the activities of the IORPs supervised, Member States shall ensure that the competent authorities monitor the adequacy of the IORPs' credit assessment processes, assess the use of references to credit ratings issued by credit rating agencies as defined in point (b) of Article 3(1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council (1), in their investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.
3.The home Member State shall prohibit IORPs from borrowing or acting as a guarantor on behalf of third parties. However, Member States may authorise IORPs to carry out some borrowing only for liquidity purposes and on a temporary basis.
4.Member States shall not require IORPs registered or authorised in their territory to invest in particular categories of assets ***nor should they prevent altogether investments in illiquid assets, unless the liquidity situation of the IORP requires it.***
5.Without prejudice to Article 30, Member States shall not subject the investment decisions of an IORP registered or authorised in their territory or its investment manager to any kind of prior approval or systematic notification requirements.
6.In accordance with the provisions of paragraphs 1 to 5, Member States may, for the IORPs registered or authorised in their territories, lay down more detailed rules, including quantitative rules, provided they are prudentially justified, to reflect the total range of pension schemes operated by those IORPs. However, ***considering the overall Union objectives,*** *Member States shall*

take all measures not to prevent IORPs from:
(a) investing up to 70 % of the assets covering the technical provisions or of the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, or through MTFs or OTFs, and deciding on the relative weight of those securities in their investment portfolio. However, provided that it is prudentially justified, Member States may apply a lower limit of no lower than 35 % to IORPs which operate pension schemes with a long-term interest rate guarantee, bear the investment risk and themselves provide for the guarantee;
(b) investing up to 30 % of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed; (c) investing in instruments that have a long-term investment horizon and are not traded on regulated markets, MTFs or OTFs;
(d) investing in instruments that are issued or guaranteed by the EIB provided in the framework of the European Fund for Strategic Investments,
(e) investing in funds that perform a crucial role to finance EU innovation and competitiveness, including but not restricted to European Long-term Investment Funds, European Social Entrepreneurship Funds and European Venture Capital Funds.
7.Paragraph 6 shall not preclude the right for Member States to require the application to IORPs registered or authorised in their territory of more stringent investment rules also on an individual basis provided they are prudentially justified, in particular in light of the liabilities entered into by the IORP.
8.The competent authority of the host Member State of an IORP carrying out cross-border activity as referred to in Article 11 shall not lay down investment rules in addition to those set out in paragraphs 1 to 6 for the part of the assets which cover technical provisions for cross-border activity.

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Annex II - Examples of national barriers to pension funds investments in private equity

Countries examined

1. The Netherlands
2. France
3. Italy
4. Belgium
5. Denmark
6. Finland
7. Czech Republic
8. Poland
9. Spain
10. Portugal

Introduction

All the examples below are based on contributions from national private equity associations. These **qualitative overviews should be combined with a general quantitative assessment**, such as the one done by the OECD in its Annual Survey of Investment Regulations of Pension Providers. Where we felt the OECD document was not complete enough, we indicated it in a separate note.

The absence of a reference to a barrier in a specific country in the examples below, or the absence of a country from this list, should not mean that these barriers do not exist. In other words, this is a non-exhaustive list of issues.

We believe the below gives the European Commission a series of interesting examples of barriers, which also likely exist in countries not covered by this overview. They generally tell the story of an ecosystem that is not designed for pension funds to commit their assets in long-term equity.

As we have flagged in Question 35 of the consultation, issues we have identified are:

- Market knowledge of insurers
- Fragmentation of the market and lack of consolidation
- Limits of maximum investments to be made in unlisted equities
- Limits of maximum investments to be made in AIFs
- Concentration limits (maximum investments in a single fund or fund-of-fund)
- Maximum limits to re-commit capital
- Reporting requirements that are not adapted to the investment realities (requirement to report on underlying investments as opposed to reporting at fund level)
- Restrictions on fees and remuneration – that have the effect to push pension funds towards less costly but less valuable assets (while private equity is typically having a higher performance combined with higher costs)

For some countries (Belgium, the Netherlands, Italy), IORP guidance driving assets towards regulated markets was identified as the main issue, as opposed to specific requirements, showing the relevance of the review.

1. The Netherlands

The main barrier for pension funds appears to be procedural rather than legal.

The Dutch supervisory authority requires pension fund boards to understand the investment products they allocate capital to. As a result, many boards are hesitant to invest in private equity or venture capital, even in allocations of less than 1%, due to a perceived lack of sufficient understanding of these asset classes

2. France

France does not have many "pension funds" as such and the main ones (Agirc-Arrco, caisses libérales, Erafp) are not subject to IORP because they are mandatory basic pension schemes.
Several specific barriers apply to them (not all at the same time because their legal status are not the same):
1/ for all the aforementioned *caisses*, unlisted investment cap at 5% ; for the *caisses libérales* only
2/ they can invest in private capital only if another *caisses libérales* commit at the same time or an other *caisse* is already a LP; and
3/ they cannot re-commit the reimbursements received from funds, including when such reimbursements exceed the nominal commitment - only the final liquidation of a fund allows a *libérale caisse* to reinvest the amounts up to the total authorized envelope.

3. Italy

The Ministerial Decree 166 of year 2019 establishes:

- the general criteria to be observed in the management of Pension Fund assets (see Art. 3, in terms of optimizing the return/risk ratio, portfolio diversification, efficient management, and investment strategies);

- the investment limits for the resources of said Pension Funds.

To this purposes, Article 5, paragraph 1, specifies that "investment in financial instruments not traded on alternative markets and in alternative investment funds (AIFs) is to be kept at prudent levels, must overall remain within the limit of 30% of the pension fund's total assets, and must be adequately justified by the pension fund in relation to its own characteristics and the investment policy it intends to adopt."
However, paragraph 4 of the same Article 5 provides a more detailed regulation of investments in investment funds (UCIs), establishing certain limits and specific requirements, including:

- under letter f), it is provided that investment in AIFs must be "kept within the limit of **20% of the pension fund's total assets and 25% of the AIF's value**";

- **under letter g), it is clarified that investment in non-EU AIFs not marketed in Italy is allowed only in the presence of cooperation agreements between the competent authority of the AIF's country of origin and the Italian authorities**.

Note: the OECD document references are therefore not complete enough to explain the limits in the Italian market.

4. Belgium

Belgian occupational pension funds are subject to a prudent-person investment regime, rather than fixed quantitative limits. The only quantitative limit stems from the IORP Directive itself, i.e. 5/10% in sponsor related investments. No specific caps have been imposed as regards investments in unlisted or alternative assets. Nevertheless, assets should be invested predominantly in regulated markets – any other investments have to be kept to a prudent level and are monitored through the FSMA's risk-based supervision.
Background data
FSMA market overview for 2024 shows that around 49.3% of participants to occupational pension plans do so via a sector plan, whereas 44.6% do so via a single-employer occupational pension plan, showing the fragmentation caused by the opt-out option. Moreover, 85,9% of pension reserves are held via single-employer occupational pension plans, showing the importance of the latter in practice. This fragmentation may constitute a (national) barrier as it hinders the consolidation of asset management activities.
As pointed out above, further consolidation - e.g. via a universal funded supplementary pension scheme - would require less exemptions and opt-outs. Currently, these exemptions and opt-outs lead to fragmentation with the FSMA reporting the following:
- 63,010 employers offer a supplementary pension plan, with 130,436 such pension plans in existence on 1 January 2024; and
- 57 industry sectors offer a supplementary pension plan, with 89 such sector plans in existence on 1 January 2024.

In addition, 81% of all pension reserves are managed by insurance companies rather than pension funds, despite there being only 24 active insurance companies compared to 127 pension funds. This would suggest that not enough pension savings are finding their way to pension funds.
For sake of completeness, note that the law on occupational pension schemes provides for a specific procedure of information, consultation and advice requirements towards employee representative bodies when implementing, amending or terminating company-level occupational pension schemes.
At the end of 2023, Belgian IORPs invested a little more than three-quarters of their assets in undertakings for collective investment (UCITs), mostly in share and bond funds (FSMA source link). Compared to an EEA average of 37.9%, Belgian pension funds, therefore, invest significantly more in investment funds than their peers in other countries. The EC's report (link) explains such distortion as regards direct equity and bond holdings by pointing to the Belgian tax system which discourages investment in equity, including private equity.
Insurance undertakings
Insurance undertakings are not bound by the IORP cap, only by the prudent person principle. In addition, insurance undertakings, contrary to IORPs, often absorb the statutory minimum return guarantee on defined-contribution occupational pensions, thereby relieving employers from the burden of topping up underperforming returns. Coupled with their scale advantages, this makes insurance undertakings the dominant player in Belgium.
For sake of completeness, please note that the Belgian federal coalition agreement of 31 January 2025 provides for a reform of the Belgian pension landscape, including occupational pension schemes. The proposed changes are not yet applicable as they have to pass the legislative process, however, the coalition agreement proposed, amongst other changes, to make sure employees are offered a solid occupational pension for which an employer contribution of at least 3% will be provided by 2035 at the latest. Sectors that do not yet meet the 3% requirement will make an additional priority effort to do so in their sectoral agreements.

OECD: The information related to Belgium is, to our knowledge and based on public available information, correct and up to date.

5. Denmark

There are several issues in Denmark that often go beyond regulatory barriers:

1) **Institutional reluctance to invest in Danish VC**

- Ther are onerous reporting requirements at the portfolio rather than fund level.
- Long fund durations and illiquidity are unattractive to many institutional investors.
- Pension fund managers lack upside participation (e.g., no carried interest).
- There's generally little motivation within institutions to back high-risk/high-reward asset classes.

2) **Structural and regulatory constraints**

- Pension funds are not subject, as in other countries, to specific investment restrictions but the IORP II prudent person principle mean that self-imposed restrictions prevent investments in equity
- **Ticket Size Misalignment:** Typical Danish fund sizes (e.g., <€15m allocations) are too small for major pension funds, who prefer larger commitments or aggregation via fund-of-funds.

3) **Ecosystem and cultural factors**

- As Denmark only has a young ecosystem, there is an insufficient talent pipeline and broader cultural reluctance to take risks
- There is also a lack of Institutional Anchors

6. Finland

There are some quantitative limits or barriers in Finland that can be restrictive specifically targeting

investments in alternative assets for IORPs. The solvency regulation of the Finnish occupational pension scheme, based on Solvency II Directive principles with national specifications, does create some practical limitations as the capital requirements can indirectly limit allocations to alternative assets, even without explicit quantitative restrictions.
Finnish pension schemes are frequent and significant investors in Finnish private equity funds (unlisted equities and private equity funds jointly represented 36% of the total equity holding which is a European high).
Additionally, there are some **diversification limits** in practice, and some pension institutions operate under separate regulatory frameworks with varying investment flexibility. For example, under the Finnish Act on the calculation of the solvency limit of pension institutions and on the diversification of investments (315/2015), employment pension institutions may invest up to 65% of their assets in equity investments (including unlisted equities). Further, up to 5% of a pension institution's investments may be in securities, shares and other similar commitments of the same entity or debtor. However, some major pension institutions such as Keva (formerly Local Government Pensions Institution) and the State Pension Fund (VER) operate under separate legislation with different investment frameworks.

7. Czech Republic

In the Czech Republic, there are several types of entities that can invest into alternative assets, including private equity or venture capital. These include participation pension fund investing into alternative schemes (**Alternative Participation Funds**) under the Act on Supplementary Pension Savings, qualified investor funds (**QIFs**) under the Act on Investment Companies and Investment Funds (**Investment Companies Act**), and finally, entities managing comparable assets pursuant to section 15 of the Investment Companies Act, typically referred to as “mini-funds" or "unregulated structures” (**Comparable Asset Management Structures - "CAMS"**).
All standard pension funds are structured as highly risk-averse and, as a result, may not invest in alternative assets. The only Czech pension fund product currently allowing this type of exposure is the **Alternative Participation Fund**, which is subject to several quantitative and structural limitations set out in national law.
The following table summarizes the most notable restrictions, their rationale, and potential adjustments:

Problem / Restriction	Description	Rationale	Possible Solution
Exclusivity of alternative funds	Only QIFs, Alternative Participation Funds and CAMS can invest in PE/VC; standard funds may not invest in such alternative assets at all	Liquidity and risk concerns	Introduce limited portfolio cap (e.g. 5 %) for standard funds
Minimum investment threshold (applicable to CAMS and QIFs)	For CAMS: EUR 125,000 (unless ≤ 20 investors); for QIFs: EUR 125,000 or CZK 1 million, subject to client assessment	Investor protection	Reduce to e.g. EUR 50,000 or allow partial allocations from standard funds
Liquidity vs. long-term horizon (applicable mainly for Alternative Participation Funds)	Investors can request pension benefit payments relatively flexibly once conditions are met	Protection of participant’s liquidity rights	Consider optional “lock-up” periods with incentives (e.g. yield bonus or tax relief)
Investment questionnaire rigidity (applicable for Alternative Participation Funds)	Participants (even without a conservative profile) cannot switch to pension funds with alternative scheme	Suitability and investor protection	Enable re-profiling of client profile; harmonize EU suitability questionnaire

Problem / Restriction	Description	Rationale	Possible Solution
Quantitative investment limits (applicable for Alternative Participation Funds)	Alternative Participation Funds may lend only to real estate companies they have a share in; strict caps apply: e.g., max 20 % in one investment / foreign investment fund, max 25 % of assets via borrowing, max 55 % of assets in total real estate loans	Risk concentration control	Allow flexibility with supervisory approval and sufficient internal risk governance

In addition to these formal restrictions, the market has suffered a certain reputational damage due to abuses in the largely unregulated segment of CAMS. However, the Czech pension investment framework remains cautious to a degree that may now be counterproductive. For example, alternative participation funds are barred from borrowing for the purpose of acquiring investment instruments, despite the inherently long-term horizon of their liabilities. Moreover, they are strictly limited in providing loans to property companies and constrained in terms of diversification across Alternative Investment Funds.
Given these constraints, the current Czech regulatory environment does impose some excessive limitations on investments into alternative assets, particularly from institutional vehicles such as pension funds. While risk-based supervision remains a cornerstone, we believe it is appropriate to reconsider whether such quantitative restrictions remain justified, especially considering the long-term nature of pension liabilities.

8. Poland

Poland's pension system is based on a three-pillar structure:

A comprehensive overview of the Polish pension system, organized into its traditional three-pillar structure. It includes legal foundations, mandatory and voluntary contributions, funding mechanisms, and asset levels (converted to EUR).

Pillar I – mandatory, pay as you go public pension

- Managed by: ZUS (Zakład Ubezpieczeń Społecznych)
- Model: Defined-benefit, Pay-As-You-Go (PAYG)
- Financing: Current contributions from workforce to retirees
- Legal Basis: Act of 13 October 1998 on the Social Insurance System (Journal of Laws 2023, item 1230)
- Assets: No capital reserves; financed from current revenues
- EUR Asset Equivalent: Not applicable (unfunded)

Pillar II – mandatory, funded capital accounts

- Instruments: OFE (Open Pension Funds), ZUS sub-accounts
- Model: Defined-contribution; funds managed privately
- Reform: Slider mechanism (2014) reduces role of OFE
- Legal Basis: Act of 28 August 1997 on the Organisation and Operation of Pension Funds (Journal of Laws 2023, item 1076)
- Assets: OFE: ~PLN 155–160 billion ≈ EUR 36.5 billion (2024); ZUS sub-accounts are not capital-funded

Pillar III – voluntary, funded private savings

- Includes: IKE, IKZE, PPE, and functionally PPK
- Model: Fully funded, individual/employer-sponsored

- Legal Bases: IKE/IKZE: Act of 20 April 2004 on Individual Retirement Accounts; PPE: Act of 20 April 2004 on Employee Pension Programs; PPK: Act of 4 October 2018 on Employee Capital Plans
- Assets (2024):
    - IKE/IKZE/PPE: ~PLN 55 billion ≈ EUR 12.8 billion
    - PPK: ~PLN 31,91 billion ≈ EUR 7,54 billion
    - Total Pillar III: ≈ EUR 20,34 billion

PPK – Special Note

- Introduced: 2019
- Mandatory for employers to offer; voluntary for employees
- Funded by employee, employer, and State
- Technically not part of Pillar III in 1999 model
- Functionally treated as part of voluntary, capital-funded layer

Demographic Reserve Fund (FRD): special-purpose fund established by the Polish government to help secure the long-term financial stability of the public pension system in response to demographic challenges, such as an aging population and a shrinking workforce.

- **Purpose**: Acts as a financial buffer for the Social Insurance Institution (ZUS) during periods of demographic imbalance, especially when the number of retirees increases significantly compared to contributors.
- **Established**: Created by the **Act of 13 October 1998 on the Social Insurance System**; the fund became operational in 2002.
- **Management**: As of recent years, the FRD is managed by the **Polish Development Fund (Polski Fundusz Rozwoju – PFR)**.
- **Funding Sources**: Includes privatization revenues, state budget transfers, and investment income.
- **Assets (2023–2024)**: Approximately **PLN 44 billion** (≈ **EUR 10.2 billion**).

Note: While **Bank Gospodarstwa Krajowego (BGK)** was previously involved in managing parts of the fund's assets, the management has since transitioned to **PFR**, which now oversees FRD's investment strategy and operations.

Element	Pillar	Mandatory?	Funded?	Legal Basis	Assets (EUR)
ZUS (PAYG)	I	Yes	No	Act on Social Insurance System (1998)	N/A
OFE	II	Yes (2.92%)	Yes	Act on Pension Funds (1997)	€36.5 billion
ZUS sub-account	II	Yes	Notional	Act on Social Insurance System (1998)	N/A
IKE / IKZE	III	No	Yes	Act on IKE (2004)	€12.8 billion
PPE	III	No	Yes	Act on PPE (2004)	Included above
PPK	Hybrid	Employer: Yes / Employee: No	Yes	Act on PPK (2018)	€7,5 billion
FRD	Strategic	No	Yes	Act on Social Insurance System	€10.2 billion

				(1998)	

II. Summary of Legal, Regulatory and other Barriers to Investment in Alternative Assets

1. Open Pension Funds (OFE)

OFE, despite being structured as institutional investors with long-term obligations, are functionally barred from participating in alternative assets, including private equity (PE) and venture capital (VC), due to:

- **The Slider Mechanism ("Suwak bezpieczeństwa") – Article 40c, OFE Act**: This provision mandates a **gradual, automatic transfer of assets** from OFE to ZUS over the final 10 years before retirement. The aim is to secure liquidity for benefit payments, but the result is a **systematic depletion of long-term capital**, incompatible with illiquid asset strategies. As long as this mechanism remains in force, OFEs are structurally excluded from committing capital to PE/VC funds.
- **Low Diversification Thresholds – Article 142(1), OFE Act**: OFEs may not invest more than **2% of their assets in certificates of a single closed-end fund (FIZ)**. Given the ticket sizes typically required in PE/VC fund structures, despite the fact that most of PE/VC managers chose Lux strutures or ASI over FIZ, which is not suitable for private investment funds, this cap renders OFEs unable to provide viable commitments to a single fund.
- **Fee and Expense Restrictions – Articles 136 and 137, OFE Act**:
    - Article 136 sets a **low cap on management fees**—substantially below international norms (commonly 1.5–2.5% of committed capital)—which disincentivizes managers from offering OFE-compatible vehicles.
    - Article 137 prohibits covering such fees from fund assets, thereby **making investments in external PE/VC funds economically unviable** for OFEs.
- **Liquidity Management Requirements – Article 149, OFE Act**: Obligates OFEs to **adjust their portfolios in reaction to market fluctuations**, an approach wholly incompatible with the long-term, illiquid nature of PE/VC positions.
- One significant barrier to Open Pension Funds (OFE) investing in private equity (PE) and venture capital (VC) in Poland stems from the current political climate and limited political will. The country is governed by a coalition, with the Ministry of Family, Labour and Social Policy held by a representative of Nowa Lewica, a left-wing party that traditionally emphasizes social protection and cautious fiscal policy. This ideological stance reinforces an already high level of regulatory protection around OFE assets, limiting flexibility for investment in higher-risk asset classes like PE/VC. For many years, discussions around reforming the OFE system have been difficult or altogether absent, largely because of the politically sensitive nature of the pension pillar. The reluctance to expose retirement savings to perceived market volatility continues to act as a major obstacle to aligning OFE investment strategies with broader capital market development goals.

2. Employee Capital Plans (PPK)

The PPK framework, although voluntary and theoretically more flexible, suffers from structural regulatory incompatibilities with alternative assets:

- **Single Fund Investment Limit – Article 37(7), PPK Act**: Limits exposure to any single investment fund to **1% of the total asset value**. This is below the minimum threshold required by most private equity funds for institutional investors.
- **Fee Structure Caps – Article 37(8)(1), PPK Act**: Caps management fees at 1.5% and performance fees at 20% of profits based on NAV. These constraints do not reflect market practice, where fees are usually based on **committed or invested capital** and structured over a fund lifecycle.
- **Quarterly Valuation and Liquidity Obligations – Article 37(8)(3)-(4), PPK Act**: PE/VC funds, being closed-end and illiquid, **cannot meet the regulatory requirements for liquidity and**

frequent valuation. As a result, even where PPKs are permitted in theory to invest in PE/VC, in practice, **they are locked out of the asset class**.

- In addition to structural and regulatory constraints, PPK funds face **practical investment barriers** arising from both **foreign currency exposure limits** and their **relatively small asset base**. Under current law, a PPK fund may not allocate more than **30% of its net asset value (NAV) to foreign currency-denominated assets**, which poses an obstacle to investing in most international private equity funds, particularly those domiciled in Luxembourg or other OECD jurisdictions. Moreover, the **limited scale of PPK funds** severely constrains their ability to participate in private equity.
- As of Q1 2025, the entire PPK system held only **EUR 7,5 billin** in assets, spread across **21 fund managers**. The largest four managed EUR 200 million, EUR 111 million, EUR 60 million, and EUR 48 million respectively. Given the current **investment exposure limits (e.g., 1% per fund)** and the minimum commitment levels typically required by private equity funds, even the largest PPK vehicles are effectively **priced out of the market**. Until these thresholds and restrictions are amended—and assets under management increase materially—**meaningful participation in PE/VC remains unfeasible** for the PPK system.
- Despite regulatory adjustments, **PPK funds continue to face serious barriers**—not only legal but also practical. Moreover, the **relatively modest size of PPK assets** compounds the challenge. As of **May 2025**, aggregate PPK assets reached approximately EUR 7.5 billion, distributed across **16 fund managers**. The top four managers control around EUR 2.4 billion (PKO, PZU), EUR 1.7 billion, and EUR 1.0 billion respectively. Given the **1% cap per single investment** and standard minimum PE fund commitments (typically ≥ EUR 10 million), only few largest PPK funds **could invest.**
- A key constraint is the **30% cap on foreign-currency assets**, which limits investments in foreign-domiciled private equity funds, such as Luxembourg-based AIFs. **meet investment thresholds**. Until **foreign-currency limits**, **per-investment caps**, and **AUM levels** are materially increased, **meaningful participation in private equity remains unachievable** under the current PPK framework.
- **Stakeholder-Endorsed Proposal: New Investment Vehicle for PPK**

A comprehensive reform package has been developed by market stakeholders—including PPK asset managers, private equity funds, PFR Ventures, and the Polish Financial Supervisory Authority (KNF)—aiming to **create a new investment category tailored to PE/VC within the PPK framework**.

The proposal includes:

- **Introduction of a new legally recognized investment vehicle for private markets**, modeled on international PE/VC structures such as limited partnerships or cooperatives.
- **Amendments to the PPK Act**, specifically to Article 37, in order to exempt this new vehicle from existing restrictions related to liquidity, valuation frequency, and investment exposure limits.
- **Adjustment of investment limits** to allow up to 2% per single investment and a total of 10% per asset class.
- **Management fee structure set at 2%**, based on committed capital, in line with standard PE/VC market practice.
- **Alignment with the target-date fund structure** (fundusz zdefiniowanej daty) of the PPK system to ensure consistency and risk-adjusted asset allocation over time.
- **Supervisory framework based on professional investor criteria**, maintaining appropriate investor protection while allowing access to long-term, less liquid assets.
- A dedicated exemption mechanism for this vehicle from the 30% foreign currency exposure limit and single-investment caps, enabling effective participation in international private equity funds.

Despite the **broad agreement between industry and regulator**, the **legislative process has not commenced**. No proposal has been submitted to the Polish Parliament (Sejm), no formal drafting has been published, and no Regulatory Impact Assessment has been registered. The initiative remains in a pre-legislative state, with no timetable for advancement.

3. Demographic Reserve Fund (FRD) Conservative Mandate

The **Social Insurance System Act** (13 October 1998, Journal of Laws 1998, No 137, item 887) defines the FRD investment framework in **Chapter 6 (Articles 63-65)**, not Article 19. Here are the accurate references:

- **Art. 63** stipulates that the FRD's objective is to invest for "maximum security and profitability." Initially (up to end of 2001), investments were restricted exclusively to Treasury securities. Since then, the FRD may also invest in other low-risk instruments—but the Act does not mandate fixed percentages in a breakdown like 83%, 12%, and 5%.
- **Art. 65** details permissible instruments when using external managers, including:
    1. Treasury bills, bonds, etc.,
    2. Municipal securities,
    3. State-guaranteed debt,
    4. Listed stocks and bonds,
    5. Public company bonds .

This legal provision firmly embeds a conservative investment strategy within the FRD, aimed at maximizing capital preservation, and makes any reorientation toward alternative investments legally infeasible without legislative changes.

V. Conclusion

Poland's pension investment rules, particularly within OFE and PPK regimes, impose **overly restrictive, structurally embedded barriers** to investment in alternative assets. These measures reflect **fiscal priorities and political constraints**, not risk-based supervisory objectives. In the second pillar, **no reform is feasible without first repealing the slider mechanism**. However, in the third pillar, a **practical and regulator-supported pathway exists** through the establishment of a new investment tool for PPKs.

In addition to structural and regulatory barriers, a significant **knowledge gap persists among institutional stakeholders** regarding the mechanisms of investing in private equity and venture capital. Key concepts such as **valuation methodologies**, **performance measurement standards**, and the **nature of capital deployment over time** are not well understood. This contributes to widespread **hesitation toward closed-end fund structures**, particularly due to the **J-curve effect**, perceived opacity, and **limited short-term liquidity**. Without targeted education and increased familiarity with international best practices in alternative investing, even well-designed legal reforms may face implementation challenges or fail to gain institutional traction.

9. Spain

<u>Current context in Spain</u>

Investment by pension funds in Spanish PE&VC managers is significantly lower than in the main European countries, which means that the Spanish PE&VC sector is smaller and limited as a channel for business financing of special relevance to boost entrepreneurship, innovation and economic activity in Spain and, by extension, in Europe. In 2024, pension funds in Spain only accounted for only 4.6% of the new resources raised by Private Capital (a far cry from other markets as the European average is above 20%), amounting to €211 million out of a total of €4,553billion. This places them as the fifth-largest source of funding, behind family offices, public investments, fund of fund and non-financial corporations. Furthermore, of the total capital raised by pension funds, only 21% originates from domestic pension funds, highlighting a reliance on external funds for this type of investment.

<u>Existing restrictions</u>

1. **Fee framework**

In Spain, there are cascading commissions when establishing the remuneration of pension fund managers (art. 84). Fully eliminating limitations on waterfall or cascading fee structures can enhance the appeal of private capital investments for pension fund managers. A more flexible fee framework would facilitate the flow of pension capital into private markets, where higher fees and performance-based compensation are typically associated with more attractive returns.

Pension fund managers are encouraged to invest in other assets with lower net returns, but with lower fees and other costs. This accumulation regime is not contemplated in the main countries of our environment such as UK, France, Germany, Italy and Luxembourg, where the search for the best interest of the pension funds and their participants ("Prudent Man Rule") prevails.

2. **Diversification, dispersion, and alignment criteria** (art. 72):

The current regulation of Spanish pension funds and plans maintains that at least 70% of the assets of pension funds be invested in securities and financial instruments susceptible to generalized and impersonal trading admitted to trading in regulated markets or multilateral trading systems, in derivative instruments traded in organized markets, in bank deposits, in mortgage-backed loans, in real estate and in real estate collective investment institutions. Excluded from this percentage are the investment of pension funds in other entities, such as those regulated in Law 22/2014, including venture capital entities. Therefore, pension funds have a **maximum of 30% of their assets to devote to investment in assets such as venture capital funds**.

The existing criteria governing diversification, dispersion, and alignment of Spanish pension fund investments limit the permissible investment range. Changes with a positive impact on take-up could include setting broader allocation thresholds or even establishing a minimum allocation to private capital, tailored to the pension saver's time horizon until retirement and individual risk profile. Such an approach would enable greater portfolio diversification and enhance the potential for long-term returns, particularly by incorporating less liquid but higher-yielding asset classes

3. **Revision of limits and investment coefficients of open pension funds (art. 76)**:

In accordance with the provisions of Article 76 of the Spanish Pension Plans and Funds Regulations, personal or occupational pension funds may materialize their investments (in whole or in part) in one or more open pension funds, provided that their control committee so agrees. These open pension funds have enormous potential to be able to concentrate investments in collective investment institutions, PE&VC entities, closed-end investment entities and similar foreign entities or, in general, to undertake other types of investments in a more concentrated manner.

In order to give them greater leeway for action, these should not be subject to the diversification coefficients at destination, on the outstanding securities of the IIC (*Instituciones de Inversión Colectiva*), ECR (*Entidades de Capital Riesgo*), EICC (*Entidad de inversion colectiva de tipo cerrado*) or similar foreign entity in question. In addition, the agreement of the Control Committee of the investor pension funds should not be required for investments to be made through an open-ended pension fund, provided that the final exposure is in accordance with the provisions of the corresponding investment policy.

10. Portugal

Portugal limits itself to establishing a 10% cap for the investment of pension funds (open or closed) in non-harmonized investment funds.

11. Germany

- Pension schemes (Pensionskassen) have to comply with a limit on all so-called risk investments. This category covers for example, investments in private equity funds, private debt funds, hedge funds, receivables from profit participation rights (Genussrechte), and certain types of listed securities.
- While recently increased, this risk investment limit is now at 40% of the restricted assets of the pension schemes, leaving only a small share for each of the asset classes covered.

- Investments in private equity funds and subordinated debt or profit participation rights (Genussrechte) are capped at 15% of the restricted assets of the pension schemes.