



CEIOPS-OP-03-08 (final)
31 March 2008

**Initial review of key aspects
of the implementation of
the IORP directive**

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1. Introduction

The IORP Directive¹ (or “Directive”) was published in the Official Journal on 23 September 2003, with implementation required on 23 September 2005 at the latest. The Directive provides Member States, and latterly the EEA countries², with a regulatory and supervisory framework for the institutions for occupational retirement provision as a first step towards an internal market in occupational retirement provisions.

The requirement to implement the Directive led to the decision by CEIOPS to create the CEIOPS’ Occupational Pensions Committee (“OPC”). The OPC was set up in February 2004 to deal with the challenges of the implementation of the Directive, to develop a common understanding of its requirements, and to develop ways in which supervisors can co-operate and exchange information on cross-border and related issues. This led first to the publication of the Budapest Protocol in February 2006 which governs supervisory arrangements and the exchange of information between home and host state supervisors of cross-border IORPs.

In order to ensure a consistent implementation of the Directive, the OPC identified a number of workstreams in areas where the implementation may have given rise to a difference in approach. The workstream areas were chosen on the basis that members wanted to create a common understanding on specific issues. Each workstream consisted of a small group (typically three to six members), usually with a specific interest in the issue, but the results were analysed and discussed by all the OPC members at their full meetings. CEIOPS is aware that some occupational schemes lie outside the scope of the directive, but the focus of this report is primarily that of the IORPs that are regulated by the Directive.

The workstreams gathered evidence by issuing questionnaires to CEIOPS members and requesting information. Supervisors have been co-operative and diligent in responding to the questionnaires, for which CEIOPS is very grateful. The information provided gave both CEIOPS and its OPC a substantial insight into the current situation. Firm conclusions can be drawn on some of the workstreams, whereas conclusions in other workstreams point to the need for further analysis or clarification.

¹ Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision, OJ L 235/10.

² For ease of reference, the terms ‘Member states’ and ‘states’ in this document refer to both member states and EEA countries

2. Executive summary

The output from each workstream is a summary paper on findings, containing both the analysis and the conclusions of the research undertaken. This report provides an early overview of the key aspects of Member States' experience of the implementation of the Directive.

This report recognises that Member States have had less than two years' experience since implementing the IORP Directive and that difficulties persist in at least one state in relation to infringement proceedings. Many of the workstreams' findings are that it is too early to tell whether the implementation has generated issues that in turn give rise to the need for legislative change. Therefore, proposals for change are only made where there is a comprehensive set of findings which indicate that such clarification is needed. Some specific suggestions are made below where there is a sufficiency of both findings and analysis.

While the report identifies some implementation issues which may pose an obstacle to integration, a key message which emerges is that, for the most part, implementation has not led to major difficulties. Member States have incorporated the provisions of the Directive into national law and practice and supervisors have worked together to build a common understanding of what is required of them. In this context, the presumption should be that of minimum evidence-based change to a broadly successful Directive, even though further work is needed for some workstreams.

Under the Directive, the Commission is mandated to review in 2008 how the IORP Directive has been implemented, particularly in relation to the calculation of technical provisions in cross-border matters, the application of investment rules and custodianship³. The intention is that the findings that are mentioned in this report, which represent the practical experience of the participating countries, will inform the Commission for their 2008 review. These findings include a request to the Commission for urgent clarification on several issues where this report identifies such a need. The findings should also provide a suitable foundation for taking forward further work within CEIOPS.

³ Article 15(6) and article 21(4). Additionally, article 21(3) allows Member States to address difficulties in relation to the implementation to the Commission that need to be clarified urgently.

3. Background to the report

The Directive acknowledges in its recitals that a genuine internal market for financial services is crucial for economic growth and job creation in the Community and that this Directive represents a first step on the way to an internal market for occupational retirement provision organised on a European scale⁴. The recitals also acknowledge the increasing reliance on occupational retirement pensions as a complement to pressurised social-security systems and that, in accordance with the principle of subsidiarity, Member States should retain full responsibility for the organisation of their pension systems, as well as for decisions on the role of each of the three ‘pillars’ of the retirement system⁵.

The context of seeking to promote convergence at the supervisory level whilst also respecting the diversity of pension arrangements will inevitably give rise to conflicting priorities, just at the time as pay-as-you-go pensions are coming under increasing pressure and there is increasing reliance on work-based provision. A considerable part of the diversity arises from the very different historical, social and cultural situations across the Member States. There are wide variations in the extent of mandatory state provision and hence reliance on occupational schemes. Some states permit only defined contribution (DC) pension schemes, others only permit defined benefit (DB) pension schemes. Some states allow ‘hybrid’ forms (often in the form of a basic DB scheme topped up by a DC scheme) and many allow combinations of these three types of pension schemes. A few states effectively have neither of the two main types of provision. There are different definitions in place for the categories of DB, DC etc. The governance structures of IORPs vary considerably as does the extent to which employers and social partners are involved.

The Directive, by virtue of the option it explicitly grants, allows for states to implement its provisions in accordance with their existing national priorities and preferences so the question arises as to whether these diverse approaches inherently give rise to difficulties in practice. The workstreams of the OPC provide for an early analysis to this question.

This report covers the following workstreams:

- legal relevance of the IORP Directive;
- exemptions for small institutions;
- ring-fencing;
- information to be provided to members and beneficiaries;
- reporting requirements;
- ‘fully funded’ and the calculation of technical provisions;
- insolvency protection institutions;
- subordinated loans;
- investment regulations;
- custodianship; and
- cross-border activity.

⁴ Recitals 1 and 6

⁵ Recital 9

3.1. Format of the report

Section 4 summarises the key findings from each workstream, indicating where more work is needed. The summaries are cross-referenced to relevant appendices to the report, where full conclusions from each workstream can be found⁶. Section 5 draws out conclusions as to issues which may require either action and further work within CEIOPS, or resolution at Commission or political level. Section 6 outlines the next steps.

⁶ Please be aware that the underlying reports to this report and the appendices reflect the actual situation on the date that is mentioned in the relevant appendix. Changes to national law and regulations that occurred after these dates have not been taken into account. Answers to questionnaires that were received after the mentioned dates have not been taken into account, unless stated otherwise.

4. Summary of the workstream findings

The key findings of each workstream are presented in the order that the issues arise in the Directive.

4.1. Scope and application of the Directive

Articles 2 to 5 of the Directive provide for the scope and application of the Directive, which includes options for Member States to choose whether or not to apply the Directive, in whole or in part, to the occupational-retirement-provision business of insurance undertakings that are covered by the Life Directive (2002/83/EC); to small institutions and to statutory schemes. The following workstreams relate to these articles:

- o Legal relevance of the IORP Directive; and
- o Exemptions for small institutions.

4.1.1. Legal relevance of the IORP Directive

This workstream has collated relevant European legislation that Member States use to provide the legal and supervisory framework for their occupational pension provision, as used in annex 3 – legal form of the IORP – to the Budapest Protocol. This annex is regularly updated. The workstream also collated data regarding personal pensions provision, thus providing a larger overview. Appendix 1 contains the summary table as it is valid on March 1st, 2008.

CEIOPS has concluded that the work may be adopted as a description of legal frameworks relevant to all the occupational pension provision in individual Member States as it stands and will continue to update this data on Member States' behalf.

4.1.2. Exemptions for small institutions

This workstream has considered Member States' use of the exemption within the Directive which allows for small institutions (defined as less than 100 members) to be excluded from most of its provisions so long as they do not operate cross-border. A large majority of states do not apply the exemption with only four at present having some form of legislative exemption. In some, competent authorities have been given the power to apply the exemptions, but this has not been exercised.

CEIOPS considers that this workstream is complete and that there are no particular problems as a result of the implementation, with no further action needed. See Appendix 2 for the full conclusions of this workstream.

4.2. Ring-fencing

The concept of ring-fencing is found in several parts of the Directive⁷. The Directive does not provide a definition of the term and ring fencing can take different meanings depending on the context where it is used.

The workstream found that the phrase 'ring-fencing' can have different meanings in Member States' own legal frameworks.

There is, nonetheless, a recognition of ring-fencing as a possible regulatory tool for compliance purposes and also particularly where rights and benefits of pension scheme members and beneficiaries need to be protected. It also found that in essence, ring fencing in various states involves the separation of assets and liabilities, possibly involving also separation of management in certain cases. But, there is a lack of clarity and some divergence around the legal conditions and practical consequences of employing this regulatory tool. The uncertainty also expresses itself around cross-border activities where there is some diversity of approach.

About half of the respondent countries make no provision in their legal framework for using ring-fencing to support the full funding requirement, or to support a requirement from a host supervisor to apply investment rules. Some states indicated that ring-fencing is or may be applied immediately when an IORP notifies the competent authority of its intention to operate cross-border.

Moreover some states do not retain the separateness of assets, even with ring-fencing, when particular stress situations occur, leading to divergences on the legal consequences on ring fenced assets in stress situations with different outcomes for member and beneficiary protection.

CEIOPS concludes that the diversity of legal framework and practical application is not an issue in most respects, but that clarification is needed to improve how the ring-fencing provisions in the Directive are working, especially in relation to the legal implications for ring fenced assets in stress situations. See Appendix 3 for the full conclusions of this workstream.

4.3. Information issues

Articles 11 to 13 of the Directive relate to various information requirements that an IORP should adhere to, both in relation to its members and beneficiaries and in relation to its supervisory authority. The scope is that of information to members and beneficiaries (articles 11 and 12) and information to the competent authorities (article 13). The following workstreams relate to these articles:

- Information to be provided to members and beneficiaries; and
- Reporting requirements – information to be provided to supervisory authorities.

4.3.1. Information to be provided to members and beneficiaries

This workstream's aim was to give an overall picture on the implementation of the minimum information requirements as provided under Article 11 of the Directive,

⁷ Article 3 (operation of first and second pillar); Articles 4, 7, (separation from insurance business); Article 16(3) (supporting the full funding requirement for cross-border schemes); Article 18(7) (application of specific investment rules in the event of cross-border) and article 21(5) (request from host state to home state for ring fencing).

which requires information to be given to members and beneficiaries and generally on request.

The workstream found some states had put in more detailed requirements, such as requiring more detailed information on joining a scheme, or had made the information mandatory to send, rather than 'on request' and the workstream sets out these differences as a matter of fact.

There were differences in approach also on benefit information. Here the workstream concluded that these reflect the differences in the type of provision generally, across the member states, with more detailed regulation falling on DB schemes but it could be useful to analyse some aspects of the different approaches.

In the future it could also be useful to collect and analyse the additional information requirements that IORPs have to provide to members and beneficiaries, especially in the perspective of cross-border activities. It could also be useful to monitor the information requirements in relation to cross-border cases as both home and host supervisor may be involved in a case where the information requirements are part of social and labour law. See Appendix 4 for the full conclusions of this workstream.

4.3.2. Reporting requirements – information to be provided to supervisory authorities

The analysis of this workstream shows that reporting requirements differ widely between Member States. This difference does not only apply to the amount of information/documents that have to be submitted to the supervisory authority but also to the content of information/documents, the time interval/frequency and the institution/party on which the reporting obligation lies. Some Member States also reported different reporting requirements for different types of schemes.

CEIOPS concludes that further analytical work may be beneficial. Whilst this workstream has concentrated on fact-finding to date, further work could focus on the rationale behind the individual approach each Member State has chosen. See Appendix 5 for the full conclusions of this workstream.

4.4. Funding issues

The articles 15 to 17 of the Directive relate to the minimum protection that an IORP should provide to their members and beneficiaries. However, protection includes not only an adequate amount of liabilities (article 15), sufficient and appropriate assets to cover these liabilities (article 16) and minimum capital requirements (article 17), but also any additional protection mechanisms that the IORP, the plan sponsor, the pension scheme or an external institution may offer to IORP's members and beneficiaries. The following workstreams relate to these articles:

- 'Fully funded' and the calculation of technical provisions;
- Insolvency protection institutions; and
- Subordinated loans.

4.4.1. 'Fully funded' and the calculation of technical provisions

The diversity and variations in approach to the calculation of technical provisions emerged as a strong theme from the work undertaken in this workstream which examined how states have implemented the technical provisions' articles of the Directive. These variations could be linked back to the types of occupational provision (DB/DC) and a diversity of occupational pension provision and providers. There may be a link also to the strength of pension promise, although further research and analysis is needed to consider the impact of this on how a state determines its framework for technical provisions.

Given this diversity, much more work is needed to gather the evidence of why these differences exist. In particular, it is clear that comparing just one or two components of technical provisions is too simplistic and that a holistic view of a large number of factors is necessary. The OPC also recognises that there is an important question to be answered as to whether the diversity of approach in itself impacts adversely on members and beneficiaries, or whether in fact IORP members and beneficiaries ultimately receive a similar level of protection, albeit by diverse routes. This diversity does not seem to have had an impact on the ability of IORPs to function cross-border, although it is still early days in the process of forming cross-border arrangements. The diversity could give rise to regulatory gaps and overlaps and may even give rise to regulatory arbitrage, although also in this respect it is still early days to assess the magnitude or effect of such issues.

CEIOPS concludes that further analytical work is needed to ensure that the complexities of this important area are fully understood. To date this work has formed the foundation of the OPC Solvency sub-committee, covering in particular differences in:

- the reserving method and the component parts of the calculation of technical provisions – the discount rate (fixed or variable) and whether allowance is made for salary increases, inflation and other factors;
- the standards of funding – from specific quantitative rules with reserving, solvency buffers and stress testing to stating precisely the liabilities to be covered to a principles based approach not expressed in a quantitative way;
- recovery plans – from immediate or no time periods through to specific years (up to 15) or no specified years but more a case by case approach with intervention by the supervisory authority to a greater or lesser degree;
- adjustments to funding/benefits – the variables here relate to new capital or assets; potential decreases in benefits; additional payments by the plan sponsor or employee;
- other means (apart from the funding standard in the Directive) of protecting the pension promise to members such as supplementary solvency buffers, statutory powers to call upon the employer covenant, and/or insolvency protection institutions.

See Appendix 6 for the full conclusions of this workstream.

4.4.2. Insolvency Protection Institutions

Statutory insolvency protection institutions to which membership is compulsory by law for either IORPs or employers that use an IORP for implementing occupational retirement provisions exist in a small minority of states in order to ensure back up and delivery of the pension promise in the event of sponsoring employer insolvency.

CEIOPS considers that further work on this subject should be part of the overall research into the various mechanisms used in order to ensure that members' and beneficiaries' benefits are protected. As such, this subject has been taken up by the OPC Solvency sub-committee. See Appendix 7 for the full conclusions of this workstream.

4.4.3. Subordinated loans

The key finding of the workstream on subordinated loans is that there is fundamental divergence of approach between Member States about the treatment of subordinated loans under the IORP Directive. Some Member States are of the opinion that loans are not permitted at all, while others are of the opinion that subordinated loans are permitted.

It was suggested by those members that permit them, that subordinated loans have the potential to serve as a useful part of the security mechanisms. Other states, that do not permit subordinated loans, were not in the position to comment on their potential as a security mechanism.

This is clearly an area that would benefit from further clarification, as it is necessary to explore the extent, if any, to which subordinated loans, as used in different Member States, fulfil the characteristics necessary to make them compliant with the IORP Directive. See Appendix 8 for the full conclusions of this workstream.

4.5. Investment rules

Article 18 of the Directive covers the minimum investment rules that an IORP must adhere to and the options Member States have in setting additional investment requirements. The workstream on investment regulations has produced a comparison of Member States' investment rules.

Investment regulations

Article 18 of the Directive requires Member States to regulate investment according to a set of framework principles based on the 'prudent person' approach, complemented with a quantitative requirement regarding self investment⁸. The workstream found that the introduction of the prudent person rule did impact many countries' regulatory frameworks. However, only five Member States opted for the pure prudent person rule, i.e. enforcing no other quantitative limits other than the self-investment limit. A persistence of quantitative investment limits can be observed, nevertheless the application of qualitative rules is developing.

⁸ Additional quantitative requirements have to be prudentially justified and generally take the form of distinct boundaries in respect of permitted investment in asset classes (ie bonds, equities, etc).

The investment approach of each Member State needs to be viewed alongside the overall framework of occupational pensions in that state. DB versus DC, for example, can mean a very different investment approach although these differences, which may be appropriate in the context of the arrangements and related legislation, were not explored by the workstream.

Around a quarter of Member States use the possibility provided by Article 18(7) of the Directive to impose as a host country some additional investment limits⁹.

The workstream has concluded that, despite the divergence between investment requirements, these seem not to hinder the convergence process towards a Common Market and cross-border activities of IORPs.

The practical implementation of the Directive has, nonetheless, raised a few issues, although these are not pressing. The workstream has found that there is a lack of common understanding of some terms such as 'risk capital markets', relevant to article 18(5) which does not allow states to prevent institutions located in their territory from investing in such markets. There is some divergence over the definition of what a risk capital market is, which is why these are subject to different investment regulations, hence the need for clarification. There are also some divergent practices around the principle in article 18(1) where states seek to ensure that IORP assets are properly diversified to prevent over-reliance on a particular asset or issuer. The range of scope of the single issuer rules point to a lack of common understanding. Further analysis in these areas would be helpful. See Appendix 9 for the full conclusions of this workstream.

4.6. Custodianship

Article 19 of the Directive does not require the appointment of depositary/custodian. States may elect to ask IORPs to appoint a depositary/custodian or not. The workstream on custodianship has compared the approaches taken by Member States to the use of custodians by IORPs. As might therefore be expected, divergent approaches exist in relation to the appointment of a custodian and the kind of body which is appointed to fulfil this role, including the functions that it performs. Diversity also exists around the role of competent authorities, some of whom play a role in the process of the custodian's appointment. The OPC does not consider the divergence of practice to be an issue

The Directive offers to European custodians/depositaries the opportunity for cross-border activity without the obligation to have a registered office or branch in the same state as the IORP. In relation to cases where a custodian/depositary is located in another Member State from the IORP, it is useful to improve the co-operation between the IORP Supervisory Authority and the other European custodian/depositary Supervisory Authority (especially if this is not a CEIOPS member) in particular to guarantee the appropriate application of article 19(3) of the Directive in the case of freezing of the assets.

Having analysed the findings, CEIOPS concludes that further work is needed. See Appendix 10 for the full conclusions of this workstream.

⁹ Article 18(7) allows the member states to impose additional investment regulations on guest IORPs operating in their territory. According to the directive such limits are only acceptable if the same or stricter rules are imposed on the IORPs based in their own country.

4.7. Cross-border arrangements

Article 20 of the Directive sets rules for IORPs which wish to operate cross-border, including the procedure that needs to be followed before a cross-border activity can be started. The workstream on cross-border activity has started to identify potential issues in this area on the basis of a theoretical analysis, when many states did not have yet practical experience of cross-border activity. Since then, cross-border activity has evolved and the analysis has been refreshed by very recent work on the practical experience of implementation. This shows that some 9 states now have experience as 'home' states [with 65 cases notified] and a total of 18 states have experience as a host state supervisor.

Initially, the workstream found that there are no reported difficulties with notification procedures, time limits, or the supporting Budapest protocol for the information exchange between the home and host state competent authority. Therefore, these aspects were not explored further.

However, the work identified that there are differences in approach arising from diverse definitions and it became necessary therefore to carry out further work as to improve the common understanding of cross-border arrangements and to reinforce the Budapest protocol.

Key differences have been identified in the approach taken by states to determining what cross-border activity is. Just over half of member states report that the social and labour law of another EU state applicable to the pension scheme/plan is critical to determining whether a cross-border arrangement exists. Other states rely on the location of the sponsoring undertaking as a decisive factor. A small number look at the location of the members, in combination with either social and labour law or with the location of the sponsoring employer.

In relation to determining the host state, there is a similar diversity of approach.

Such different understandings of the concept of cross-border activity and the host state lead to different notification practices and the possibility of states having competing views as to who the home or host state is. Also, IORPs in some states are subject to the more stringent requirements that the Directive imposes on cross-border arrangements which would not be considered to be cross-border in other states. In our view it is necessary to resolve these definitional issues as soon as possible.

Given the importance of this area, CEIOPS agrees that this preliminary analysis can benefit from further work in relation to the monitoring of market developments. However, market information by itself cannot resolve the differences identified in the definitions. There is therefore also an urgent need for clarification around key terms.

See Appendix 11 for the full conclusions of this workstream.

5. Conclusions relating to possible changes to supervisory practice or legislation

The conclusions can be further summarised as follows:

5.1. Workstreams that are complete

Two workstreams – **Legal Relevance of the IORP Directive** and **Exemptions for small institutions** are complete. No further work is proposed, other than to keep the valuable information resource on 'legal relevance' up to date.

5.2. Workstreams that have informed the work of the OPC SSC

The findings of the **'fully funded'/technical provisions, insolvency protection institutions** and **subordinated loans** workstreams pointed to the need for more analytical work in this important area due to the diversity in approaches. As a result, this has informed the drafting work of the OPC Solvency sub-committee.

5.3. Workstreams needing further analysis by CEIOPS

In respect of **reporting requirements – information to supervisory authorities** – there is wide diversity between the reporting requirements each Member State applies. This diversity may have the potential to create an unlevel playing field between Member States. To find out whether the creation of an unlevel playing field as a result of reporting requirements is significant, further investigations and analysis will be necessary.

The workstream on **information to members and beneficiaries** concluded that different approaches are used in the provision of minimum information and some aspects of this work could benefit from further analysis. In the future, it could be useful to collect and analyse the additional information requirements that IORPs have to provide to members and beneficiaries, especially in the perspective of the cross-border activities. It could also be useful to monitor the information requirements for cross-border cases, as practical experience of cross-border arrangements develops and both the home and the host supervisor may be involved in a case where the information requirements are part of social and labour law.

In respect of **Custodianship** – variances in the appointment and in the role of custodians exist, but this is not an issue for CEIOPS. As regards the location, the Directive allows custodian/depositary and IORP to be located in different Member States. In these cases, cooperation between the competent authorities of the custodian and of the IORP could be encouraged, mainly to guarantee the appropriate application of article 19(3) of the Directive¹⁰. If this is not possible, this may be an issue that requires legislative change.

CEIOPS considers that further analysis would also be helpful around the reasons for the different approaches to the appointment of a custodian; the differing

¹⁰ Article 19(3) requires Member States to take the necessary steps to enable it to prohibit the free disposal of assets held by a depositary or custodian located within its territory at the request of the institution's home Member State.

scopes of custodians and the rules regarding conflicts of interest or incompatibility; and the powers and procedures followed by competent authorities in case of prohibition of the free disposal of assets held by a foreign custodian.

5.4. Workstreams where clarification is needed at the European level

Four workstreams concern areas where CEIOPS needs urgent clarification, although CEIOPS recognises that, in respect of these areas, more analysis relating to implementation also needs to be undertaken. These workstreams are:

- **Cross-border activity** – the practical experience to date will be monitored going forward but the preliminary analysis captured in this report has highlighted some genuine definitional differences. As such, the workstream could benefit from urgent clarification of these.
- **Subordinated loans** – there is fundamental divergence of approach between Member States about the treatment of subordinated loans under the IORP Directive. Further clarification is needed as to the extent, if any, to which subordinated loans, as used in different Member States, fulfil the characteristics necessary to make them compliant with the IORP Directive.
- **Ring-fencing** – there is scope for clarification of the intended purposes of ring-fencing under the Directive, within the context of the current arrangements.
- **Investment regulations** – article 18(5) does not allow states to prevent institutions located in their jurisdiction from investing in 'risk capital markets', but CEIOPS has found divergence over the definition of what a risk capital market is, and there may need to be clarification of this definition. There are also some divergent practices around the scope of article 18(1), the single issuer rule, which points to a similar lack of common understanding.

6. Overall conclusion and next steps

CEIOPS' work to date with regard to occupational pensions shows that there is considerable diversity in the way some key aspects of the IORP Directive have been interpreted and implemented, but provides little evidence of major issues arising from these differences. There is also some significant scope for further analysis. CEIOPS has identified some issues where action appears to be needed for clarity and for supervisory convergence.

With this report, CEIOPS requests the Commission to provide and/or ensure urgent clarification at a European level on those issues where such a need is identified (see paragraph 5.4).

Furthermore, CEIOPS herewith mandates the OPC :

- to continue to investigate the underlying reasons for existing diversity, and
- to monitor the evolution of practice and issues and to continue its analysis so as to identify any further issues that might require clarification.

Appendix 1 Legal Relevance of the IORP Directive

[CEIOPS-OP-49-07; 12 October 2007]

The workstream on Legal Relevance of the IORP Directive was performed by Hungary. The workstream contains no written conclusions, but the end result is the table that contains all non-state pension institutions/schemes, occupational ones and as well as individual ones. The aim of the table is to have a full picture of the non-state pension sector taking into consideration the relevant EU level regulations. The table gives an overview on the non-state pension institutions/schemes, and determines which fall under the scope of the IORP Directive, and which do not.

It must be noted that this overview is only valid for a limited period of time, considering the fact that Member States may change their legislation continuously. The overview presented here represents the situation as per March 1st, 2008.

Last update: March 10, 2008

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
AUSTRIA	Pensionskasse	Aktiengesellschaften gemäß dem Pensionskassengesetz	Joint-stock company according to the Federal Act on the Establishment, Administration and Supervision of Pensionskassen	DB and DC	DIRECTIVE 2003/41/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
AUSTRIA (continued)	Betriebliche Kollektivversicherung	Aktiengesellschaften gemäß dem Versicherungsaufsichtsgesetz	Joint-stock company according to the Insurance Supervision Act	DB and DC	DIRECTIVE 2002/83/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 November 2002 concerning life assurance	
BELGIUM	IRP (Institutions de Retraite Professionnelle)/ IBP (Instelling voor Bedrijfspensioenvoorziening)	legal forms possible until 01/01/2012 : ASBL (Association Sans But Lucratif)/ VZW (Vereniging Zonder Winstoogmerk) or AAM (Association d'Assurances Mutuelles)/ OVV (Onderlinge Verenigingsvereniging) new legal form since 01/01/07 : OFP (Organisme de Financement de Pensions)/ OFP (Organisme voor de Financiering van Pensioenen)	non-profit organisation mutual insurance association Organisation for Financing Pensions	types of schemes: DB DC mixed DB/DC scope of schemes: employer, industry-sector, self-employed (some are per profession but not necessarily) (an IORP may manage several types of schemes with different scopes)	Directive 2003/41/EC (IORP)	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
BELGIUM (continued)	entreprise d'assurance/ verzekeringsonderneming	société par actions/ vennootschap op aandelen or société coopérative/ coöperatieve vennootschap or AAM (Association d'Assurances Mutuelles)/ OVV (Onderlinge Verenigingsvereniging)	limited partnership with a share capital cooperative partnership mutual insurance association	same as above through group insurance + individual life insurance	Directive 2002/83/EC (life assurance)	
	fonds d'épargne-pension / pensioenspaarfonds	organisme de placement collectif en valeurs mobilières (OPCVM) / instelling voor collectieve belegging (ICBE): organismes de placement collectif publics à nombre variable de parts (SICAV) / openbare instellingen voor collectieve belegging met veranderlijk aantal rechten van deelneming (BEVEK)	Undertakings for Collective Investment in Transferable Securities (UCITS): open-end investment company	individual pensions savings	Directive 85/61/EC (UCITS)	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
BULGARIA	Пенсионно-осигурително дружество	Акционерно дружество	Joint Stock Company	DC – voluntary occupational plans	EC Directive 2003/41	All pension schemes (i.e. occupational pension schemes, voluntary individual pension schemes as well as mandatory schemes) are managed within pension funds which are legal persons. The pension funds are established and managed by Pension Insurance Companies, which are Joint Stock Companies. The pension insurance companies manage <i>separate</i> pension funds for voluntary schemes (<i>individual and occupational pension funds</i>) and for mandatory schemes (<i>universal and professional pension funds</i>)
	Пенсионно-осигурително дружество	Акционерно дружество	Joint Stock Company	DC - voluntary personal plans	None	
	Пенсионно-осигурително дружество	Акционерно дружество	Joint Stock Company	DC - mandatory personal plans	Regulation 1408/71 Regulation 574/72	
DENMARK	Firmapensionskasse	Pensionskasse	Company Pension Fund	Defined contribution	IORP	
	Firmapensionskasse	Pensionskasse	Company Pension Fund	Defined benefit	IORP	
	Livsforsikringsselskab	Aktieselskab	Life Insurance Company	Defined contribution	Life insurance directive	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
DENMARK (continued)	Livsforsikringsselskab	Aktieselskab	Life Insurance Company	Unit Link	Life insurance directive	
	Tværgående pensionskasse	Pensionskasse	General Pension Funds	Defined contribution	Life insurance directive	
	Tværgående pensionskasse	Pensionskasse	General Pension Funds	Unit Link	Life insurance directive	
FINLAND	ETA-lisäeläkesäätiö	eläkesäätiö	company pension fund	Defined benefit	2003/41/EC	independent legal entity
	ETA-lisäeläkekassa	eläkekassa	industry-wide pension fund	Defined benefit	2003/41/EC	independent legal entity
FRANCE	assureur vie	Société anonyme	Stock company	All institutions are able to sell schemes like "Article 83", "article 39" or "contrats Madelin"	It is up to the institution to decide about the regulatory framework (life directive or IORP directive, with application of its article 4)	"Article 83" and "contrats Madelin" = defined contributions "Article 39" = defined benefits
		Société d'assurance mutuelle	Mutual insurance company			
	Institution de prévoyance	Institution de prévoyance	Paritarian institution ruled by the "social protection code"			
	« mutuelle »	Mutuelle du code de la mutualité	Mutual company ruled by a specific code			

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
GERMANY (SEE REMARKS!)	Pensionskasse	Aktiengesellschaft	Joint-stock company	Occupational pension schemes	Directive 2003/41/EC	
		Versicherungsverein auf Gegenseitigkeit	Mutual insurance association			
		Körperschaft des öffentlichen Rechts	Corporation under public law			
		Anstalt des öffentlichen Rechts	Institution under public law			
	Pensionsfonds	Aktiengesellschaft	Joint-stock company	Occupational pension schemes	Directive 2003/41/EC	
		Pensionsfondsverein auf Gegenseitigkeit	Mutual pension fund association			
	Direktzusage (book-reserve schemes)			Occupational pension schemes	According to Article 2 excluded from the scope of Directive 2003/41/EC.	Since this is a further type of implementing occupational retirement provisions the German name is mentioned in column 2a for the sake of completeness although it's not an institution.

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
GERMANY (continued)	Unterstützungskasse	Gesellschaft mit beschränkter Haftung Eingetragener Verein Stiftung	Limited liability company Registered association Foundation	Occupational pension schemes	According to Recital (16) and Article 2 excluded from the scope of Directive 2003/41/EC.	
	Lebensversicherungsunternehmen (Direktversicherung – direct insurance)	Aktiengesellschaft Versicherungsverein auf Gegenseitigkeit Körperschaft des Öffentlichen Rechts Anstalt des öffentlichen Rechts	Joint-stock company Mutual insurance association Corporation under public law Institution under public law	Occupational pension schemes	Directive 2002/83/EC	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
GREECE	ΤΑΜΕΙΑ ΕΠΑΓΓΕΛΜΑΤΙΚΗΣ ΑΣΦΑΛΙΣΗΣ (Τ.Ε.Α.)	Νομικά πρόσωπα ιδιωτικού δικαίου (ν.π.ι.δ.) μη κερδοσκοπικού χαρακτήρα.	Non-profit private entities with legal personality.	Occupational Insurance Funds are established on a voluntary basis in each company or sector(s) of employment on the initiative either of employees or employers or through an agreement between employees and employers as well as on the initiative of self-employed or independent professionals or farmers or their associations. Depending on the type of arrangement, Occupational Insurance Funds can provide benefits in kind or in cash, in the form of annuity or as a lump sum. Occupational Insurance Funds that provide retirement benefits operate on a funded basis (DC pension schemes).	Directive 98/49/EC Directive 2003/41/EC	Occupational Insurance Funds are independent legal entities.

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
GREECE (continued)	ΑΣΦΑΛΙΣΤΙΚΕΣ ΕΠΙΧΕΙΡΗΣΕΙΣ			Group Insurance Contracts concluded between the employer and the insurance company in the sectors VII "management of group pension funds" or IX "works similar to social security".	Insurance Directives Directive 98/49/EC	
HUNGARY	magánnyugdíjpénztár	magánnyugdíjpénztár	(association-like special legal form)	Individual DC	No relevant prudential EU legislation applicable 1408/71 Regulation	Part of the social security system 2 nd pillar (World Bank)
	önkéntes nyugdíjpénztár	önkéntes nyugdíjpénztár	(association-like special legal form)	Individual DC	No relevant prudential EU legislation applicable	3 rd pillar (World Bank)
	nyugdíjbiztosítás	- életbiztosító rt. - biztosító egyesület	Life Insurance company - joint-stock company - association	Pension insurance	Directive 2002/83/EC	
	foglalkoztatói nyugdíjszolgáltatás	Foglalkoztatói nyugdíjszolgáltató rt.	Joint stock company	Occupational DB/DC	Directive 2003/41/EC	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
IRELAND	Occupational Pension Scheme	Trust	Trust	Defined Benefit/Defined Contribution, Hybrid Schemes and Trust Retirement Annuity Contracts	Directive 2003/41/EC	In Ireland the pension scheme is the institution for occupational retirement provision. Legal separation of pension fund assets from all other assets is achieved via the trust mechanism under which all pension schemes are set up.
	Personal pension	Contract	Contract	Individual Retirement Annuity Contracts/Personal Pensions	Life Directive	
	Personal Retirement Savings Accounts	Contract	Contract	Individual retirement savings accounts	Life Directive	
	Social Welfare Pensions	Statute	Statute	Pay as you go basis		
ITALY	Fondi pensione negoziali	Associazione/fondazione	Association/foundation	Occupational, DC	IORP Directive	Independent legal entity set up as a result of an agreement between employers and trade unions at industry level (also company, group, or regional funds are possible and have in fact been instituted).

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
ITALY (continued)	Fondi pensione aperti	Patrimonio di destinazione autonomo istituito da una società finanziaria in modo separato rispetto al patrimonio della stessa	An autonomous pool of assets instituted by a financial company separately from its own assets	Occupational and personal, DC	IORP Directive	Pension funds instituted by financial intermediaries (banks, insurance companies, etc) as segregated assets. They can host both occupational and personal schemes.
	Fondi pensione preesistenti autonomi	Associazione/fondazione	Association/foundation	Occupational, DC, DB closed to new members	IORP Directive	Pension funds instituted before 1993 as an independent legal entity
	Fondi pensione preesistenti (non autonomi)	Fondi pensione interni ai bilanci delle società promotrici	Book reserve	Occupational, DC, DB closed to new members	IORP Directive not applicable	Non-autonomous pension funds instituted before 1993 as book reserves within the balance sheet of an employer (typically a bank).
	Piani pensionistici individuali (Pip)	Patrimonio di destinazione autonomo istituito da una compagnia di assicurazione in modo separato rispetto al patrimonio della stessa	An autonomous pool of assets instituted by an insurance company separately from its own assets	Personal	Directive 2002/83/EC concerning life assurance	Personal retirement plans based on individual life insurance companies
LATVIA	Privātais pensiju fonds	Akciju sabiedrība	Stock company	DC schemes	2003/41/EC 98/49/EC	
				DB schemes	2003/41/EC 98/49/EC	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
LIECHTENSTEIN	Pension Funds (Pensionskasse)	Stiftung	Foundation	<ul style="list-style-type: none"> - DB or DC - collective foundation or captive foundation 	No relevant prudential EU legislation applicable	Beside the first pillar PAYG statutory pension system, Liechtenstein has also mandatory second pillar occupational pension provisions, complementary to the first pillar. For each employee for whom an employer has the obligation to pay contributions to the social insurance (1 st pillar), he has also the obligation to pay to a 2 nd pillar DB or DC scheme (beside some exceptions; minimum contributions are stipulated by law). The relevant law is the "Gesetz vom 20. Oktober 1987 über die betriebliche Personalvorsorge" (BPVG).

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
LIECHTENSTEIN (continued)	Pensions funds (Pensionsfonds)	Stiftung, Aktiengesellschaft, Europäische Aktiengesellschaft, Genossenschaft Europäische Genossenschaft	Foundation, Limited company, Societas europa, Cooperative society Societas Cooperativa Europaea	- DB or DC - biometrical risk or not call for additional cover or not	2003/41/EC	For an employee having the obligation to pay contributions to the social insurance (1 st pillar), only voluntary contributions can be made into a pension plan according to the "Gesetz vom 24. November 2006 betreffend die Aufsicht über Einrichtungen der betrieblichen Altersversorgung" (Pensionsfondsgesetz; PFG), with which directive 2003/41/EC was implemented. The mandatory part has to be paid into a pension plan according to the BPVG.
LITHUANIA	Pensijų asociacija	Asociacija	Association	Occupational pension fund	Directive 2003/41/EEC	
	Gyvybės draudimo įmonė, vykdanči profesinių pensijų kaupimo veiklą	Akcinė bendrovė/ Uždaroji akcinė bendrovė/ Europos Bendrovė	Public limited liability company/ Private limited liability company/ European company (<i>Societas Europaea</i>)	Life assurance contract under which occupational pensions are accumulated	Directive 2003/41/EEC (Article 4)	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
LITHUANIA (continued)	Valdymo įmonė	Akcinė bendrovė/ Uždaroji akcinė bendrovė	Public limited liability company/ Private limited liability company/	Pension funds accumulating part of the State social insurance contributions (2 nd pillar)		The regulation for the management of pension funds is in accordance with the 85/611/EC directive
	Gyvybės draudimo įmonė	Akcinė bendrovė/ Uždaroji akcinė bendrovė/ Europos Bendrovė	Public limited liability company/ Private limited liability company/ European company (<i>Societas Europaea</i>)	Pension funds accumulating part of the State social insurance contributions (2 nd pillar)		The regulation for the management of pension funds is in accordance with the 85/611/EC directive
	Valdymo įmonė	Akcinė bendrovė/ Uždaroji akcinė bendrovė	Public limited liability company/ Private limited liability company/	Supplementary voluntary accumulation pension fund (3 rd pillar)	Directive 85/611/EEC	
	Gyvybės draudimo įmonė	Akcinė bendrovė/ Uždaroji akcinė bendrovė/ Europos Bendrovė	Public limited liability company/ Private limited liability company/ European company (<i>Societas Europaea</i>)	Life assurance contract (3 rd pillar)	Directive 2002/83/EEC	
LUXEMBOURG	Fonds de pension (CSSF)	Sepcav and assep	Pension savings companies with variable capital and pension savings associations	Occupational pension schemes	Directive 2003/41/EC	Authorised and supervised by CSSF

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
LUXEMBOURG (continued)	Fonds de pension (CAA)	Association d'assurances mutuelles, société coopérative, société coopérative organisée comme une société anonyme ou association sans but lucratif	Mutual insurance associations, co-operative companies, co-operative companies organized as a public limited company, charitable associations	Occupational pension schemes	Directive 2003/41/EC	Authorised and supervised by Commissariat aux Assurances
	Assurances de groupe	Entreprise d'assurances / Contrats d'assurance groupe	Insurance company/ Group insurance contracts	Occupational pension schemes	Directive 2002/83/EC	
	Régime interne de pension	NA Provisions au bilan	NA Book-reserve schemes	Occupational pension schemes	No relevant prudential EU legislation applicable	
	Contrat de prévoyance-vieillesse	Produits de prévoyance-vieillesse représentés par des produits d'assurance ainsi que par des produits bancaires investis dans des organismes de placement collectif agréés	Pension products represented by insurance products as well as by banking products invested in licensed units for collective investment	Individual retirement schemes	No relevant prudential EU legislation applicable to the pension product. To the provider: Directive 2002/83/EC for underlying insurance contracts, Banking Directive 2006/48/EC and UCITS directive (2001/108/EC)	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
MALTA	Retirement Scheme	Trust Contractual	Trust Contractual	Trust Deed Contract between the employer and the Retirement Scheme Administrator	Directives 2003/41/EC and 98/49/EC	A Retirement Scheme of a contractual nature consists of a separate pool of assets with no legal personality with the purpose of providing retirement benefits.
NETHERLANDS	Pensioenfonds ('pension fund')	Stichting	Foundation (Various legal forms are permitted, but pension funds almost exclusively prefer a Foundation.)	Occupational pension schemes	IORP Directive (2003/41)	As for occupational pension schemes, the social and labour law and the information requirements are the same for insurers and pension funds.
	Verzekeraar ('insurance company' or 'insurer')	Naamloze vennootschap	Public limited company	Occupational pension schemes Personal pension schemes	Life Directive (2002/83)	
NORWAY	Foretakspensjons-ordninger	Pensjonskasser Livsforsikrings- selskaper	Pension funds Life insurance companies	Defined benefit schemes	1) 2003/41/EC 2) 2002/83/EC	
	Innskuddspensjons-ordninger	1) Pensjonskasser 2) Innskuddspensjons-foretak 3) Livsforsikrings-selskaper 4) Banker 5) Forvaltningsselskap for verdipapirfond	1) Pension fund, 2) Defined contribution pension undertakings, 3) Life insurance companies 4) Banks 5) Companies which manage securities funds	Defined contribution schemes	1) 2003/41/EC 2) 2003/41/EC 3) 2002/83/EC 4) 2006/48/EC relating to the banking sector 5) 2001/108/EC and/or 85/611/EEC relating to UCITS	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
POLAND	pracowniczy fundusz emerytalny (occupational pension fund)	fundusz emerytalny	pension fund (in Polish legal framework is registered as separate legal entity)	Pracownicze programy emerytalne (Occupational Pension Plans)	Directive 2003/41/EC Activities and supervision of institutions for occupational retirement provision (IORPs)	There are four legal forms of occupational pension plans in Poland which could be freely chosen by employer as plan sponsor
	zakład ubezpieczeń na życie (insurance undertaking)	spółka akcyjna lub towarzystwo ubezpieczeń wzajemnych	joint-stock company or mutual insurance society	Pracownicze programy emerytalne (Occupational Pension Plans)	Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance	
	fundusz inwestycyjny otwarty lub specjalistyczny fundusz inwestycyjny otwarty (investment fund)	fundusz inwestycyjny	investment fund (in Polish legal framework is registered as separate legal entity)	Pracownicze programy emerytalne (Occupational Pension Plans)	Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)	
	zarządzający zagraniczny (foreign manager)	Not specified – all form of IORPs notified by relevant authorities from other Member States		Pracownicze programy emerytalne (Occupational Pension Plans)	Directive 2003/41/EC Activities and supervision of institutions for occupational retirement provision (IORPs)	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
PORTUGAL	Fundos de pensões fechados (closed pension funds)	Fundos de pensões	Pension funds	DB / DC	IORP Directive	Occupational schemes
	Adesões colectivas a fundos de pensões abertos (collective membership of open pension funds)	Fundos de pensões	Pension funds	DB / DC	IORP Directive	Occupational schemes
	Contratos de seguro de grupo (group insurance policies)	Contratos de seguro	Insurance policies	DB / DC	Life Directives	Occupational schemes
	Planos de poupança-reforma (saving-retirement schemes)	1) Fundos de pensões 2) Contratos de seguro 3) Fundos de investimento	1) Pension funds 2) Insurance policies 3) Investment funds	DC	-	Individual schemes
	Adesões individuais a fundos de pensões abertos (individual membership of open pension funds)	Fundos de pensões	Pension funds	DC	-	Individual schemes
	Contratos de seguro individuais (individual insurance policies)	Contratos de seguro	Insurance policies	DC	Life Directives	Individual schemes
ROMANIA	Administrator al unui fond de pensii administrat privat	Administratorul unui fond de pensii administrat privat - Societate pe actiuni	the administrator of a privately administrated pension fund- joint stock company	hybrid DC (personal, mandatory, minimum benefit established by Law, funded pension scheme with automatic enrollment)	it implements the provisions of the 98/49/CE Directive	Second pillar (World bank classification)
	Administrator de fonduri de pensii facultative	Administratorul de fonduri de pensii facultative - Societate pe actiuni	the administrator of voluntary pension funds - joint stock company	DC (hybrid, voluntary, unprotected, funded pension scheme)	Directive 2003/41/EC (IORP Directive)	Third pillar (World Bank classification)

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
SLOVAKIA	dôchodková správcovská spoločnosť	akciová spoločnosť	joint stock company	DC (personal, mandatory, unprotected, funded pension scheme with automatic enrollment)*	None**	Second pillar (World bank classification)
	doplňková dôchodková spoločnosť	akciová spoločnosť.	joint stock company	DC (hybrid, voluntary, unprotected, funded pension scheme)*	Directive 2003/41 (IORP Directive) ***	Third pillar (World Bank classification)
SLOVENIA	Pokojninska družba	Delniška družba	Joint-stock company	-	Directive 2003/41/EC	
	Zavarovalnica	Delniška družba	Joint-stock company	-	Directive 2003/41/EC	
	-	-	-	Vzajemni pokojninski sklad (Mutual pension fund)	Directive 2003/41/EC	Mutual pension fund is not a legal entity
SPAIN	Fondo de Pensiones de empleo	Fondo de Pensiones de empleo	IORP	Occupational pension scheme	41/2003 Directive (IORP Directive)	
	Fondo de Pensiones personal	Fondo de Pensiones personal	Personal Pension Fund	Individual and associated pension scheme	Pension Plan and Fund Act (Texto Refundido de la Ley 8/1987, de regulación de Planes y Fondos de Pensiones, de 29 th of november 2002)	In practice, Spanish legislation in force applies the same regulation to occupational and personal funds; therefore we could consider that IORP Directive is applicable to second and third Spanish pillars.
SPAIN (continued)	Seguros colectivos	Collective Life Insurance	Collective Life Insurance Contract	Insurance Policy	Life Insurance Directive, 2002/83/EC, in general	2 nd pillar; it's an alternative to pension fund vehicle

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
	PPSE (Employer Social Prevision Plan)	Collective Life Insurance	Collective Life Insurance Contract	Insurance Policy	Life Insurance Directive, 2002/83/EC, in general	2 nd pillar; it's an alternative to pension fund vehicle
	PIAS (Systematic Plan for saving)	Individual Life Insurance	Individual Life Insurance Contract	Insurance Policy	Life Insurance Directive, 2002/83/EC, in general	3 rd pillar
	PPA (Prevision Plan Assured)	Individual Life Insurance	Individual Life Insurance Contract	Insurance Policy	Life Insurance Directive, 2002/83/EC, in general	3 rd pillar
SWEDEN	Livförsäkringsbolag	Aktiebolag	Proprietary life insurance company	Defined contribution / defined benefit	Life insurance directive	"Article 4" May offer life insurance (separate) as well
	Livförsäkringsbolag	Ömsesidigt bolag	Mutual life insurance company	Defined contribution / defined benefit	Life insurance directive	"Article 4" May offer life insurance (separate) as well
	Tjänstepensionskassa	Understödsförening	Occupational pension fund	Defined contribution / defined benefit	IORP	
	Pensionsstiftelse	Stiftelse	Pension foundation	None, investments only	IORP	Linked to companies who have technical provisions as DB book reserves (outside of IORP directive scope)
UNITED KINGDOM	Occupational DB scheme	Trust	Trust	DB	IORP	In the UK the pension scheme is classed as
	Occupational DC scheme	Trust	Trust	DC	IORP	

1. NAME OF THE COUNTRY	2. Types of the private pension institutions			3. Types of pension schemes	4. The relevant EU regulation (directives and EC regulations)	5. Remarks (optional)
	2a. Domestic name	2b. Legal form (domestic)	2c. Legal form (English)			
	Occupational Hybrid scheme (legally classified in UK as DB but has some guarantees and some money purchase elements)	Trust	Trust	DB/DC	IORP	the institution. As such there is no legal separation. Legal separation of pension fund assets from all other assets is achieved via the trust mechanism under which all pension schemes are set up.
	Personal pension scheme	Contract	Contract	DC	Life Directive	

Remarks:**Finland:**

Finland did not apply the Article 4 of IORP directive to insurance companies and for that reason there are no individual pension schemes / insurance companies managing these individual schemes to mention in this table.

For the information: Second pillar voluntary supplementary pension insurance may also be arranged by

a. Group pension insurance - contract between employer and life insurance company or

b. Individual pension insurance - contract between individual and life insurance company.

In both cases insurance company are covered by Directive 2002/83/EC. The insurance company may be with a concession in Finland or a company operating in another EU Member State.

Germany:

General remark:

The table only covers occupational pension schemes.

For individual pension provisions (third pillar), in principle any form of private assets may be used to secure a reasonable standard of living in old age, although there are, of course, differences in the appropriation, period in which the capital is tied up, opportunities and risks. In addition to life insurance policies, shares and share-based investment funds, it is primary real estate and other investment funds, fixed-interest securities and long-term bank deposits accounts which are suitable for pension provision.

Since the beginning of 2002, the state has provided incentives for the establishment of fully funded private pensions. The so-called "Riester" products are basically offered by life insurance companies, banks and other credit institutions, capital investment companies and financial service providers. The institutions that offer certified "Riester" products (which take the form of private annuity insurance, bank savings plans and investment fund saving plans) are covered by their relevant sector EU regulation. Furthermore, with the switch over to taxation upon receipt at the beginning of 2005, the tax concessions for payments made into pension plans were substantially improved and in this regard the Basis-pension ("Rürup-Rente"), a private, fully funded annuity insurance, was established. A Basis/"Rürup" annuity policy will be taken out with a private life insurance undertaking which is covered by the Life Directive [see also Germany's National Strategy Report of Old Age Pension Provisions].

Slovakia

* see Private Pensions. OECD Classification and glossary. OECD 2005.

http://www.oecd.org/document/42/0,3343,en_2649_37411_34768618_1_1_1_37411,00.html (7/8/2007)

** However, the relevant provisions of mainly anti-discrimination directives were implemented into the Slovak 2nd pillar law. The list of transposed directives includes: Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, Council Directive 98/52/EC of 13 July 1998 on the extension of Directive 97/80/EC on the burden of proof in cases of discrimination based on sex to the United Kingdom of Great Britain and Northern Ireland, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

*** Apart from the IORP directive, also the relevant provisions of other directives, mainly from the field of anti-discrimination and employee protection were implemented into the Slovak 3rd pillar law. The list of transposed directives includes: Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, Council Directive 87/164/EEC of 2 March 1987 amending, on account of the accession of Spain, Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the

event of transfers of undertakings, businesses or parts of undertakings or businesses, Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer,

Concluding remarks

The table summarizes the information on the non-state pension institutions and schemes of the Member States. These data are just for information; they are the matter of fact so there are not particular conclusions of the results of this questionnaire. However, there could be made some considerations as the following:

1. The table reflects the diversity of the non-state pension systems. The information on the elements of the pension system of the member States could be helpful for the other member States to identify the foreign institutions and schemes.
2. Most of the pension institutions and schemes are covered by adequate prudential EU level directive. Some of institutions and schemes are excluded by conscious decision (e.g. book-reserve schemes). However, there are some kinds of institutions and schemes – mainly in the new Member States - that are neither covered by EU level prudential legislation, nor explicitly excluded from the scope of the IORP Directive. Although these institutions fall out of the power and mandate of CEIOPS, they should be taken into consideration as essential parts of the pension system of the concerned countries. In case of such a decision, CEIOPS could also deal with these institutions and schemes.

Appendix 2 Exemptions for small institutions

[CEIOPS-OP-29-07; v4; 8 February 2008]

The IORP Directive allows Member States to exclude small institutions from its scope, i.e. institutions that manage schemes with less than 100 members in aggregate. The workstream on small institutions investigated whether or not Member States had chosen to exclude small institutions.

The workstream on small institutions was performed by Hungary.

- I. The large majority of the countries decided not to exclude small institutions from the applicability of the Directive. It means in case of these countries all IORPs are treated in the same way.
- II. There were two countries where the small institutions are not excluded generally, however the exclusion is possible.
- III. There were four countries that exclude the small institutions in some way.

The results are summarized in the table bellow. There were three kinds of answers to the first questions: small institutions are excluded, they are not excluded, or they are not excluded but exclusion is possible.

Country	Small institutions excluded?			Notes
	Yes	No/but possible	No	
Austria			No	No, since it is according to Federal Act on the Establishment, Administration and Supervision of Pensionskassen not possible for investment and risk sharing groups to have fewer than 1.000 members (A Pensionskasse consists of at least one investment and risk sharing group).
Belgium			No	
Bulgaria			No	
Denmark	Yes			
Finland			No	
France			No	
Germany			No	
Greece			No	Article 5 of the Directive 2003/41/EC does not apply for Greece, given the fact that there is no legal possibility for the establishment of institutions with less than 100 members in total (small institutions).
Hungary			No	
Ireland	Yes			
Italy		No/but possible		No, but according to our legislation (Legislative Decree 252/2005 art. 15 quinquies as modified by Decree n 28/2007 art. 5, implementing the

Country	Small institutions excluded?			Notes
	Yes	No/but possible	No	
				Directive 2003/41/EC) Covip could, by means of a regulation, identify rules of the primary and secondary law not applicable to small institutions. Actually, Covip has not exercised yet this power.
Latvia			No	
Liechtenstein			No	
Luxembourg		No/but possible		No, but the law implementing the Directive leaves the possibility, by way of a Grand Ducal Regulation, to exclude from the scope of the law or certain aspects thereof pension funds in the form of sepcavs or aseps which operate pension schemes which have less than 100 members in aggregate. For the moment, no such regulation has been implemented in Luxembourg.
Malta			No	
Netherlands			No	In The Netherlands, all IORPs (also the small institutions) fall within the scope of the IORP Directive ¹¹ .
Norway			No	
Poland			No	
Portugal			No	
Slovakia			No	Actually no IORPs with less than 100 members
Slovenia			No	
Spain			No	
Sweden	Yes			Exclusion is only in case of Pensions Foundations
United Kingdom	Yes			The UK has no general exemption for institutions of less than a specific size but does make use of the Article 5 exemption but where it is used the definition of small scheme (fewer than 12 members and subject to further conditions) is specific to the legislative context.

¹¹ For the sake of completeness: 5 small Dutch "savings funds" (a special purpose vehicle), in total representing pension schemes for 57 members as of January 1st, 2004, have been excluded from the IORP Directive.

Appendix 3 Ring-fencing

[CEIOPS-OP-17-07; v2; July 2007]

The IORP Directive includes various references to ring-fencing. However, no definition of the term 'ring-fencing' is included in the Directive. Therefore, a workstream on ring-fencing was set up in order to:

- a) arrive at a clear and common understanding amongst Member States of what is ring-fencing in terms of the Directive;
- b) assess and analyse what ring-fencing requirements are applied or intended to be applied (if any) by Member States in terms of the Directive;
- c) assess how ring-fenced assets are affected in the event of problematic financial situations and determine the legal consequences arising in such circumstances.

The workstream on ring-fencing was performed by Malta (coordinator), Belgium and Netherlands.

Section 3 – Conclusions

3.1 (a) The replies provided confirm that ring-fencing is, to some extent, a subjective area given that countries can adopt different approaches to ring-fencing and given the lack of guidelines available on this aspect. Whilst there seems to be some element of common grounds on certain aspects, like for example, regarding the basic definition and application of ring-fencing and the rationale for adopting ring-fencing measures, there may be divergences on others, like for example, on the legal consequences and on the approach taken for ring-fencing in the area of cross-border business. There may accordingly be scope for further clarifications on this area.

(b) There may also be scope to ensure harmonisation of the legal implications of ring-fenced assets in order to ensure that the appropriate safeguards are commonly adopted in practice. This is particularly so, given that there are some countries which, as indicated in the findings of the research undertaken still allow, notwithstanding ring-fencing, all the assets used or pension rights of the scheme to be reduced in stress situations. The implications of this also need to be seen with reference to the fully funding requirement included in Article 16 (3) of Directive. There seems accordingly to be scope to address this aspect given that the safeguards expected from ring-fencing may in practice not work as expected in certain scenarios or countries thus, raising issues for cross-border provision.

3.2 The following main conclusions may also be derived:

- a) in general, there seems to be agreement regarding the form of ring-fencing which in essence involves the separation of assets and liabilities possibly involving also separation of management;
- b) ring-fencing is recognised as being a regulatory tool which apart from aiding the regulator from a compliance aspect it can also be used to protect scheme members by, for example, limiting risks of contagion;

- c) separation of assets and liabilities is commonly applied as a ring-fencing measure between the 1st and 2nd pillar pensions in the case where arrangements falling within these two pillars are operated by the same IORP – this activity being however one which occurs only in a very small number of countries;
- d) whilst few countries have applied the Directive to insurance undertakings carrying out both insurance as well as ORP business, the main ring-fencing requirements applicable in this regard reflected mainly the requirements to effect separation of assets and liabilities and to separate management between the two activities of the insurance undertaking;
- e) there is some diversity in the approach adopted with respect to the application of ring-fencing of assets and liabilities in the case of cross-border activities;
- f) additional ring-fencing measurements other than those referred to in the Directive are sometimes applied in order to provide additional safeguards. One particular additional ring-fencing requirement relates to the separation of assets of the IORP from assets of the service providers although this could possibly be already dealt with in other financial services legislation;
- g) different legal consequences may apply depending on how ring-fencing is provided for in terms of law and depending in which scenarios ring-fencing is adopted. This has important implications given that it affects the effectiveness or otherwise of the safeguards intended by ring-fencing in practice.

3.3 It is suggested that the issues raised could be addressed as follows:

- a) Level 3 Guidance could be issued to provide guidance on the meaning and scope for ring-fencing in terms of the Directive. Further details could be provided in this regard as to what Member States are expected to do or to provide for in their regulatory framework in order to adequately cater for this area. Guidance could also be provided particularly with reference to Article 16(3) and 18(7) of the Directive – paragraphs 2.8, 2.9 and 2.10 refer. Another area where guidance could be helpful relates to the identification of any other recommended possible forms of ring-fencing the adoption of which is recommended – paragraph 2.14 refers. The Level 3 guidance provided in relation to the areas identified, would improve the understanding of Member States on ring-fencing enhancing supervisory convergence on this area.
- b) Level 3 Guidance or regulations could be issued to clarify or cater for the implication of ring-fencing in terms of law so that there are no doubts or divergences between Member States as to the legal implications of ring-fenced assets in stress situations. The aim of any such Level 3 Guidance or regulations would be to ensure that adequate and common safeguards are applied in practice so that the ring-fenced assets are afforded adequate protection in case of problematic situations – paragraphs 2.16 to 2.17 refer.

Appendix 4 Information to be provided to members and beneficiaries

[CEIOPS-OP-56-07; REV3; 28 February 2008]

Article 11 [1 – 5] of the IORP Directive ('information to be given to the members and beneficiaries') requires that each member state shall ensure that every institution located in its territory provides at least the information set out in Article 11 in relation to

- Annual report and accounts
- Changes to pension scheme rules
- Statement of investment policy principles
- Detailed information in relation to the target level of retirement benefits; benefits on cessation of employment; the range of investment options [where the member bears the risk if applicable] and the portfolio, risk exposure and costs; arrangements on transfer of pension rights.

Most information must be given on request, within a reasonable time.

Also, members have an entitlement to an annual statement with a brief description of the situation of the institution, and the level of financing of their accrued entitlements, and, each beneficiary is entitled to information on benefits on retirement or when they become due, and corresponding payment options.

The workstream was led by Hungary.

Summary of Responses

Under Article 11 member states must require their IORPs to provide a minimum floor of information to their members and beneficiaries.

The majority of states do allow for accounts and reports to be sent on request, with a small number requiring the information to be given on an automatic basis. All states required changes in pension scheme rules to be available for members but there were differences in approach relating to when and how quickly the information had to be given, and what constituted a 'change'. There were also variations in who was responsible for ensuring that the information was given, and how much detail the information contained.

States were more evenly split on the IORP requirement to provide a statement of investment policy principles on request – although the majority of states adhere to giving this information on request. There were also minor differences on the timing of the information and who was responsible for giving the information.

Detailed information on request is necessary around the provision of retirement benefits – the approach here was linked to the type of scheme, and the legislative framework behind DB/DC. There was a divergence of approach around information given on target level of benefits, on termination of employment, on investment portfolio [where the member bears the risk], and on arrangements for transfer of pension rights. Generally, most states required

detailed information on the target level of benefits in respect of defined benefit schemes.

The workstream found varying levels of detail and with the responsibility for giving the information varied from IORP, management company or trustee and there were some variations in the timing/speed in which information has to be provided to the members and beneficiaries.

The information requirements for each state were located in their prudential law, or, their social and labour law, and, in a very few states, there were parts of the information requirements in both areas. A home supervisor might have some ambiguities about the nature of a provision that the IORP breaches and as a consequence different views could exist whether or not the host supervisor has the power to intervene directly in the concrete case. The practical working of this in respect of cross-border cases could benefit from a watching brief.

Conclusions

Each country has its own special solution on providing information on benefits that reflects the differences in the legislation on benefits in general. Although there are in most countries some common issue like the types of benefits, the amount of benefit payable, the conditions of different types of benefit, etc., it is not possible to make general description about the various information requirements.

The majority of the issues covered by this survey are just matter of facts, and they are just for information. It seems that no further analyses are needed at this stage. There are only very few experiments on the cross-border issues, and much less in connection with supervision of information requirements. However, in the future it could be useful to monitor the actual supervisory practice on information requirements where the possibility of colliding competencies between supervisors exists. In the future it also could be useful to analyze some aspects of the different approaches further.

Appendix 5 Reporting requirements

[CEIOPS-OP-28/07; Rev. 6; 07 March 2008]

Article 13 (3) of the IORP Directive ('information to be provided to the competent authorities') requires that the competent authorities, in respect of any institution located in their territory, have the necessary powers and means to obtain regularly:

- the statement of investment-policy principles;
- the annual accounts and the annual reports; and
- all the documents necessary for the purposes of supervision.

The primary aim of the workstream on reporting requirements was to analyse the similarities and differences in the implementation of the reporting requirements across the Member States.

The workstream on reporting requirements was performed by Germany (coordinator), Latvia and Luxembourg.

2.1 General results

The analysis shows that reporting requirements differ widely between Member States. This difference does not only apply to the amount of information/documents that have to be submitted to the supervisory authority but also to the content of information/documents, the time interval/frequency and the institution/party on which the reporting obligation lies. Some Member States also reported different reporting requirements for different types of schemes. The following paragraphs briefly summarize the main findings of the questionnaire. For detailed information please see chapter 3.

The majority of countries receive at least the following documents/information:

- Annual accounts and annual reports
- Statement of investment-policy principles
- Actuarial valuations and assumptions and actuarial report
- Detailed auditor's report and certificate of the auditor
- Whistle-blow reports
- New pension schemes
- Information about composition of membership, contributions and benefits, investment and risk management, assets, funding and solvency requirements, investment income losses, net asset value.

However, in general a lot of further information/documents have to be provided to the supervisory authority, depending on the special reporting framework of the Member States and the supervisory authorities.

In general, supervisory authorities receive the information/documents regularly, in most cases annually and quarterly respectively. However, a small number of countries reported more frequent reporting requirements for some financial information, namely monthly/weekly/daily information, whereas two countries receive most information/documents only on request.

Most Member States will have received annual information within four months after the end of the financial year and quarterly information within one month after the end on the quarter.

In most countries, the relevant information/documents are submitted to the supervisory authority by the IORP. However, in some countries the reporting obligations lie on other parties, like e.g. the trustees of the IORP, the pension fund manager/managing company/managing entity, the pension fund administrator or the custodian bank. In very

rare cases and depending on the document to be submitted, the reporting obligation can also be fulfilled by e.g. the auditor in the case of the auditor's report or the actuary in the case of actuary's report.

2.2 Conclusion

Supervisory reporting is an important component of supervisory practices. Therefore, differences in reporting requirements are one indicator of differences in supervisory practices.

The analysis of the answers to the questionnaire on information to be provided to the supervisory authorities showed that the reporting requirements differ widely between Member States. While on the one hand some supervisory authorities frequently receive a lot of detailed information/documents on the other hand other supervisory authorities receive most information/documents only on request.

Whether these wide differences have the potential to create an unlevel playing field between Member States, needs further consideration and analysis which was not the aim of the questionnaire up to now. Instead the workstream has only focused on the information/documents to be submitted to the supervisory authority, but did not explore in detail the rationale behind the individual approach each Member State has chosen.

Appendix 6 ‘Fully funded’ and the calculation of technical provisions

[CEIOPS-OP-27-07; Rev 2; 20 August 2007]

The IORP Directive has significant sections dedicated to the calculation of technical provisions and the funding arrangements for occupational pension schemes.

The primary aim of the workstream on fully funded (including the calculation of technical provisions) was to promote a better understanding among member states and other interested parties in how the technical provisions part of the IORP directive has been implemented.

The workstream on fully funded was performed by the United Kingdom (coordinator), France, Germany, Netherlands and Norway.

1.1 *The aim of the workstream*

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Our key finding is that conclusions should not be drawn on the basis of incomplete evidence or partial analyses. It is clear that there is great variety in the means by which the funding obligations under the IORP directive are met in different member states. Any recommended changes must consider all the different means i.e. all the ‘building blocks’ of a prudential supervisory framework for IORPs; it would be misleading to draw conclusions based on only one or two means.

3 Conclusions

In this workstream, we have sought and received information on:

- the calculation of technical provisions;
- the calculation (or valuation) of assets;
- how member states have implemented the requirements to have at all times sufficient and appropriate assets, encompassing the approach towards recovery plans in case of temporary underfunding (article 16);
- the special situation of risk coverage and/or guarantees provided by IORPs requiring additional regulatory own funds;
- the requirements placed on IORPs operating cross-border;
- the means, other than technical provisions, funding and regulatory own funds, of protecting members.

In each of these areas, there was generally speaking substantial diversity in their treatment by member states. This diversity does not seem to have had an impact on the ability of IORPs to function cross-border, although it is still early days in the process of forming cross-border arrangements. The diversity does seem to trigger ‘regulatory arbitrage’, although also in this respect it is still early days to assess the true size of this development.

We stated initially that we were concerned to avoid conclusions based on incomplete evidence or partial analyses. Assessing the local prudential frameworks should be based on a comprehensive analysis encompassing all the 'building blocks' of a prudential supervisory framework, including further analysis of the requirements for technical provisions of cross-border schemes. Further guidance may be needed after such comprehensive analysis.

In our view, the issues raised in this workstream would benefit from:

- the contributions of others such as professional experts, trade bodies and others;
- further investigation into whether the diversity of approach within the IORP framework is nevertheless providing similar levels of protection in each member state. In other words, that there is greater equivalence in the overall level of member protection than in the treatment of specific components such as the calculation of technical provisions, means of valuing assets and length of recovery plans (although opinions vary between member states about the potential use of recovery plans when operating cross-border);
- alternatively, whether the diversity of approach is indicative of diversity in the level of protection.

Particularly in the absence of further investigation we would recommend against drawing conclusions on the basis of incomplete evidence which can only provide a partial analysis.

Appendix 7 Insolvency Protection Institutions

[CEIOPS-OP-13/06; Rev. 4; 26 February 2008]

The workstream on insolvency protection institutions has investigated which member states have special insolvency protection institutions that protect the interests of members and beneficiaries in the event of insolvency of the employer and how these insolvency protection institutions work. The workstream only took into account statutory insolvency protection institutions to which membership is compulsory by law¹² for either IORPs or employers who use an IORP for implementing occupational retirement provisions.

The workstream on insolvency protection institutions was performed by Germany (coordinator) and the United Kingdom.

3. Summary of responses

Only two countries (Germany and the United Kingdom) have implemented a statutory insolvency protection institution which protects the interests of members and beneficiaries in the event of insolvency of the employer and to which membership is compulsory by law for either IORPs or employers that use an IORP for implementing occupational retirement provisions.

The German Pensionsversicherungsverein auf Gegenseitigkeit (PSVaG) that was introduced in 1974 was conceived as a way of retaining necessary public support for book reserve funding which is still the main type of implementing occupational pensions in Germany. The membership is compulsory for all employers that use the following types of implementing occupational retirement provisions¹³: Pensionsfonds, Unterstützungskassen, Direktzusage (book reserves) and under special conditions Direktversicherung (direct insurance).

The UK Pension Protection Fund (PPF) was introduced in 2005 to provide protection for members of schemes whose employers become insolvent on or after 6 April 2005 and the scheme is found to be underfunded. The Financial Assistance Scheme is in place for schemes where wind up commenced prior to this date.

The following table summarises the main differences between the two institutions.

	Germany	UK
Name	Pensions-Sicherungs-Verein Versicherungsverein auf Gegenseitigkeit (PSVaG)	Pension Protection Fund (PPF)
Legal status	Mutual insurance association	Public corporation, a self-financed

¹² There is one country where strong tax incentives exist that encourage the use of insolvency protection, especially for book reserves. In this case, practice is that labour agreements agree on the use of insolvency protection. As this protection is not compulsory, this situation was not included in this workstream.

¹³ Of these four types of implementing occupational retirement provisions only Pensionsfonds fall under the scope of the IORP Directive.

	Germany	UK
		public body sponsored by the Department for Work and Pensions
Membership	Compulsory for all employers that provide occupational pensions by the following implementation types: <ul style="list-style-type: none"> - Pensionsfonds, - Direktusage, - Unterstützungskasse and - under special circumstances Direktversicherung 	Compulsory for all defined benefit or „hybrid“ (mixed defined benefit / defined contribution) schemes, except a number of mainly public sector schemes
Introduction	1974	April 2005
What is covered?	Beneficiaries and members with vested entitlements of the implementation types subject to statutory insolvency insurance as mentioned above	All members of all defined benefit schemes or the defined benefit element of „hybrid“ schemes
Financed by?	Premiums paid by employers that provide occupational retirement provisions via the implementation types subject to statutory insolvency insurance as mentioned above	Partly by the assets transferred from schemes for which the PPF has assumed responsibility, and partly by an annual levy raised on eligible pension schemes
Who pays?	Employers	Pension schemes
Funding system?	In 2006, the partially funded contribution model (Rentenwertumlageverfahren) was replaced by a complete capital coverage system.	Not pre-funded; the main funding stream will be calculated and set each year in the light of the PPF's view of the current amount of risk in the pensions system
Cross-border activities affected?	According to section 118e (3) of the Insurance Supervision Law BaFin shall determine under which implementation type, within the meaning of section 1b (2) to (4) of the Act to Improve Occupational Retirement Provision, the institution domiciled in another Member/Signatory State shall be classified. BaFin shall inform both the institution and the PSVaG about the determination. Depending on the result of this determination the German employer would be obliged to pay premiums to the PSVaG.	The PPF levy is based on the number of members throughout the EU. It is charged on those schemes which are registered and approved in the UK. Therefore, the members receive the protection of the PPF, even where those members are based in another member state.
Part of relevant social and labour law?	Yes	No
Changes planned?	No.	No

Appendix 8 Subordinated loans

[CEIOPS-OP-42-07, final (revised); 10 March 2008]

This workstream raised the question as to whether or not the IORP Directive allows IORPs to use (subordinated) loans. Some Member States are of the opinion that loans are not permitted at all, while others are of the opinion that subordinated loans are permitted.

As it is necessary that any uncertainties as to the effects of the Directive are solved, a workstream was set up. With the results of the workstream, the OPC wanted to seek a common view as to whether or not the use of subordinated loans should be allowed under the Directive, and, if they should be allowed, to suggest a common definition of the characteristics for permissible subordinated loans. Those states that do not permit subordinated loans did not complete all questions.

The workstream on subordinated loans was performed by Netherlands (coordinator) and Sweden.

2. Key findings

Our key finding is that there is fundamental divergence of approach between Member States about the treatment of subordinated loans under the IORP Directive. This makes it necessary to cover this issue in the upcoming evaluation report to the Commission, including a proposed way of taking forward the issue.

2.1. Convictions regarding the use of subordinated loans

There seem to be two main convictions regarding the use of subordinated loans:

1. The first conviction is that subordinated loans, in all cases, are nothing but a specific kind of loan, which means that IORPs are not allowed to enter into subordinated loans under the IORP Directive. In some countries, the use of subordinated loans is unlawful. Under the Directive, borrowing is only possible temporarily and for liquidity purposes and subordinated loans should then fulfil that criterion. As the subordination of subordinated loans only has added value if the contract lasts for at least several years (see the minimum duration of 5 years of the Life Directive), subordinated loans will not be able to meet the 'temporarily'-subcriterion.
This conviction is shared by 7 countries that do not allow subordinated loans and (at least) 4 countries that have no regulation that explicitly covers subordinated loans.
2. The second conviction is that since subordinated loans are considered to be own funds under the Life Directive (if they fulfil special conditions), they should not be treated as loans under the IORP Directive. The subordination should ensure that the rights of members and beneficiaries of an IORP can not be reduced as a result of the redemption of subordinated loans. Thus, the risks related to subordinated loans are perceived to be at least similar (and

maybe even equal) to the risks related to the capital of an IORP. Accordingly, it is argued that the IORP Directive should contain no rules or limitations for the use of subordinated loans (other than the limitations of the Life Directive). This conviction is shared by the 10 countries that allow subordinated loans and (at least) 1 country that has no regulation that explicitly covers subordinated loans.

In order to determine the approach to be adopted, it might be interesting to consider the background to the creation of the Directive. The origin of the prohibition of loans might lie with the UCITS Directive¹⁴, which contained a prohibition of loans as a result of the wish to protect investors' interest by limiting (or even prohibiting) the leveraging of the investment portfolio. Similar to the UCITS Directive, insufficiently controlled leverage was considered to possibly create threats to the financial future of an IORP and thus to the security of the rights of members and beneficiaries. This led, on the one hand, to the approval of the use of derivatives under the strict condition that these are only allowed in so far as they contribute to a reduction of investment risks or facilitate efficient portfolio management. On the other hand, borrowing was prohibited, except temporarily and for liquidity purposes.

2.2 A proposed way of dealing with subordinated loans

The draft analysis of the questionnaire on subordinated loans was discussed at the OPC meetings of 6 - 7 September 2007 and 29 – 30 November 2007.

It was suggested at these meetings by those members that permit them, that subordinated loans have the potential to serve as a useful part of the security mechanisms¹⁵. For example, several member states (f.i. Sweden and the Netherlands) consider that subordinated loans can play an important role to correct a situation of insufficient funds to cover required additional buffers. Subordinated loans could also serve as a possibility for a plan sponsor to provide additional funding to the IORP, apart from the premium commitments. Other states, that do not permit subordinated loans, were not in the position to comment on their potential as a security mechanism.

Whereas part of the members of the OPC do not share the view that subordinated loans could form a part of the security mechanisms, the OPC agreed that further clarification is needed as to the extent, if any, to which subordinated loans, as used in different Member States, fulfil the characteristics necessary to make them compliant with the IORP Directive. Within this exploration, changes to the IORP Directive may be considered.

¹⁴ Directive 85/611/EEC, OJ 20-12-1985, L375/3 Other Directives, like the Banking Directive (Directive 2006/48/EC, OJ 30-6-2006, L277/1) and the Capital Requirements Directive (Directive 2006/49/EC, OJ 30-6-2006, L277/201) also mention subordinated loans, yet allow their use.

¹⁵ The security mechanisms are the other means, i.e. apart from the funding standard in the IORP Directive, of protecting the pension promise to members.

Appendix 9 Investment Regulations

[CEIOPS-OP-12/06; Rev. 6; 19 July 2007]

The IORP Directive provides for investment rules, both mandatory (self-investment) and optional. The workstream on investment regulation was set up to obtain an overview of the investment rules applicable in the Member States and to find out how supervisors go about the prudent man principle.

The workstream on investment regulations was performed by Belgium (coordinator), Latvia and Luxembourg.

1.3 General conclusion

1.3.1 Level of convergence

The introduction of the prudent person rule did impact many countries' regulatory framework. However, only 4 (+1) Member States opted for the pure prudent person rule, enforcing no other quantitative limits than the self-investment limit imposed by the Directive itself. A persistence of quantitative investment limits can be observed. Nevertheless, the application of qualitative rules is developing.

Most of the investment limits are related to investments on regulated markets, often imposing different restrictions for different types of asset categories. Bond investments are overall less restricted, which is admitted by the Directive, whereas loans and real estate are most restricted, probably because of their relative bad liquidity.

1.3.2 Common market

The analysis of the investment regulation should be assessed within the overall regulatory framework of each Member State. Occupational pension systems differ widely between Member States, may serve different purposes and do not have the same importance everywhere. Also one should bear in mind that there are different mechanisms to protect the members of the occupational pension plans. This report does not examine whether investment regulation is different for different types of schemes, e.g. DB versus DC, for investment return protected versus unprotected schemes, in case of investment choice, personal contributions, insolvency guarantee systems, etc.. This should be borne in mind while in reading the conclusions.

1.3.3 Suggested solutions

While analysing each Member States' replies to this survey on investment regulation it became clear that in certain fields such as the definition of risk capital markets and the scope of the single issuer rule, there is a lack of common understanding. Therefore OPC feels that there is room for further clarification of these issues. The differences that could be observed between Member States seem not to hinder the common market and the cross-border activities of IORPs. However, further analysis should point out the best way to clear these issues.

Appendix 10 Custodianship

*[CEIOPS-OP-09-06; Final document; and
CEIOPS-OP-39-07; 27 July 2007]*

The IORP Directive leaves Member States the freedom to make the appointment of a custodian/depositary mandatory or voluntary..

The workstream on custodianship was performed by Italy.

General conclusions

1) Replies provided by CEIOPS members to the questionnaire on custodian/depositary pointed out that the appointment of a custodian/depositary is compulsory in the majority of countries (16), considering the custodian/depositary a crucial prudential safeguard for IORP members. In the other cases the appointment could be made on voluntary basis. In general it is also foreseen (15 countries) the possibility to appoint more than one custodian/depositary.

On this regard, Directive 2003/41/EC differs from the Directive 85/611/ECC (UCITS Directive): in fact, according to IORP Directive, Member States are free to ask IORP the appointment of a depositary/custodian while in the case of UCITS Directive the appointment of a custodian/depositary is compulsory.

2) With regards to the typology of eligible custodian/depositary, there is an heterogeneous list of eligible entities across the States. Normally the entity is a credit institution. In some countries, the custodian/depositary can also be an asset management company, an investment firm, an insurance company, an investment brokerage company or another financial institution. Only 10 States have specific rules regarding incompatibility and conflicts of interests between the custodian and the IORP asset managers.

3) The role of the custodian is not specified in the Directive. Also under this aspect the Directive 2003/41/EC differs from the UCITS Directive where the custodian/depositary is entrusted with safekeeping of UCITS assets and it has also to perform a series of controls for the sake of investors.

4) Opportunities of cross-border activities are offered by the Directive 2003/41/EC to the European custodians/depositaries, which can offer their services to a foreign IORP, without the obligation to have a registered office or a branch in the same State of the IORP. Also under this point, the Directive 2003/41/EC differs from the UCITS Directive because in the latter case it is specified that the depositary must have its registered office either in the same Member State as the authorised fund manager, i.e. the Member State where the UCITS is authorised, and in the Member State where UCITS has a branch.

5) The implementation of article 19(3) of the Directive has been realized in the regulatory framework of each State by granting the relevant powers to the competent Authorities that could, on request, prohibit the free disposal of assets held by a another European custodian. A complete list of these competent Authorities has been provided.

Items for further work

At the moment it is too early to say if the regulation provided for by the IORP Directive could create problems under the supervisory point of view. On this regard, taking into account differences among the regulatory framework of Member States with respect to the custodian/depositary, further attention may be given to the following issues:

- analyze powers and procedure followed by competent authorities in the case of prohibition of the free disposal of assets by foreign custodian;
- reasons for different approach to the appointment of a custodian;
- rules disciplining competences of custodian/depositary;
- rules regarding conflicts of interest or incompatibility.

In relation to the cases where a custodian/depositary is located in another Member State from the IORP it could be useful to consider the possibility to enhance the cooperation between IORP Supervisory Authorities and foreign custodian/depositary Supervisory Authorities (especially in the case that this is not a CEIOPS member), in particular to guarantee the appropriate application of article 19(3) of the Directive and to share information on experiences related to the prohibition of the free disposal of assets held by another European custodian. If it not possible this may be an issue that needs a legislative change.

Appendix 11 Cross-border activity

*[CEIOPS-OP-13-07; rev 1; 6 July 2007
and CEIOPS-OP-07/08; 11 February 2008]*

The IORP Directive sets rules for cross-border activities, including the procedure that needs to be followed before a cross-border activity can be started. The workstream on cross-border activity started to identify potential issues in this area, and supplemented the early work-stream work with some extra practice oriented questions. Although some states have yet to have practical experience in cross-border activity, there is now enough experience to draw some early conclusions which are based on practical experience.

The workstream on cross-border activity was performed by Belgium (coordinator), Luxembourg, Netherlands and the United Kingdom.

1. Background

In most countries the occupational pension provision is an integral part of the country's pension system, consisting of a first pillar (legal pensions), a second pillar (occupational pensions) and a third pillar (private pensions)¹⁶. Within the European Union, there is not a common agreement as to the precise meaning of these pillar arrangements. The structure and organisation of a country's pension system is the result of a combination of economical, financial, social, labour and fiscal matters. Some of these matters are subject to EU harmonisation, others are solely national competence.

The conditions in which the occupational pension promise is made are part of the labour contract and are subject to social and labour legislation. The choice of a service provider, even a foreign one, should not affect the pension promise made.

Although the IORP Directive is a financial services directive¹⁷, it touches on social matters, which are not harmonised.

In one moment in time, a Member State involved in a cross-border notification as a Host Member State, has to determine the content of its social and labour law relevant to the field of occupational pensions and has to pass on this information to the Home Member State Competent Authority as part of the notification procedure. The Occupational Pensions Committee is collecting this information for the purpose of exchange of information.

2. Outline of issues

Early on in the workstream, there was considerable work undertaken to identify theoretical difficulties arising from how to determine the social and labour law

¹⁶ A different pillar structure, based on the World Bank model, is in place in the new EU Member States.

¹⁷ It is, however, not a Lamfalussy directive.

applicable in complex situations – for example – where the employer and employee work and/or live in different states.

Theoretical concerns were also raised in relation to how to interpret Article 20 of the directive, so that the starting point for the notification procedure and the key terms of host state and sponsoring undertaking and its location were being understood in the same way.

The concern was expressed that where member states have adopted different approaches to the same terms, there could be regulatory gaps such as the situation where a home member state identifies an activity as cross-border but a host member state decides otherwise.

In order to assess how much of these early concerns were happening in practice, the workstream supported a round of supplementary questions designed to uncover market experience and definitional issues.

Key findings

65 cases of cross-border activity now exist in the EU, across 9 home states and some 18 host states. 2 states have between them between 20-30 cases and 7 states have between 1 – 5 cases.

Most member states (11) assess an activity of an IORP to be a cross-border activity if the IORP manages a pension scheme/plan ruled by the social and labour law of another EU Member State. The "nationality of the scheme" is regarded as being decisive.

Some Member States (8) do not take the "nationality of the scheme" into account, but regard the location of the sponsoring undertaking a decisive factor in assessing whether an activity is cross-border or not. If the sponsoring undertaking is based in a different country than the IORP, a cross-border case is identified.

Two member states take the location of the members of the scheme into account. However, this aspect is only assessed in combination with other criteria i.e. the applicable social and labour law or the location of the sponsoring undertaking.

A few Member States indicate that they use other factors.

Once a case is assessed to be a cross-border activity, question is which criterion is decisive to identify the host member state i.e. which member states are to be notified. Member states largely indicated that they determine which member states are to be notified according to the same criteria as those used for assessing whether a cross-border situation exists.

Where the "location of the sponsoring undertaking" is considered to be the decisive factor, only one country requires a separate corporate entity for an employer to be in a cross-border situation. The factor "who actually pays in the contributions" does not seem to be decisive.

Where the "nationality of the scheme" is considered to be the decisive factor, most Member State supervisors leave the decision on "the nationality of the scheme" to the IORPs and/or employers/employees. The supervisors in these

Member States do not regard it their task to determine "the nationality of the scheme". It is up to the private sector parties to decide on this issue, based on local and international law. However, 2 states consider this as the mandate of the home supervisor; 2 states see this as the mandate of the host supervisor and 1 state puts responsibility on the relevant Government Ministry.

Definition in local regulation

Most Member States do not have a clear-cut definition of "cross-border activity" and/or "host member state" in their local legislation, other than that outlined in the IORP Directive. However, those Member States which have developed a clear-cut definition have mostly underlined the social and labour law criterion as a decisive factor.

The differences in approach do mean that in 2 cases, where the home state has notified, the host state will not recognize the arrangement [the arrangement contravenes the host state social and labour law].

Conclusion

The answers to the questionnaire indicate that there are different understandings of the concept of cross-border activity. Consequently, this leads to different notification practices, different legal requirements for IORPs and potential regulatory and/or supervisory gaps or overlaps. In order to make possible a uniform treatment of the notification process it does seem necessary to resolve these definitional issues.

The OPC recommends therefore work is done on both determining the facts and on analysis, in order to fully understand the consequences of these different approaches, and that the definitional issue is also urgently addressed.