

European Institutions for Occupational Retirement Provision

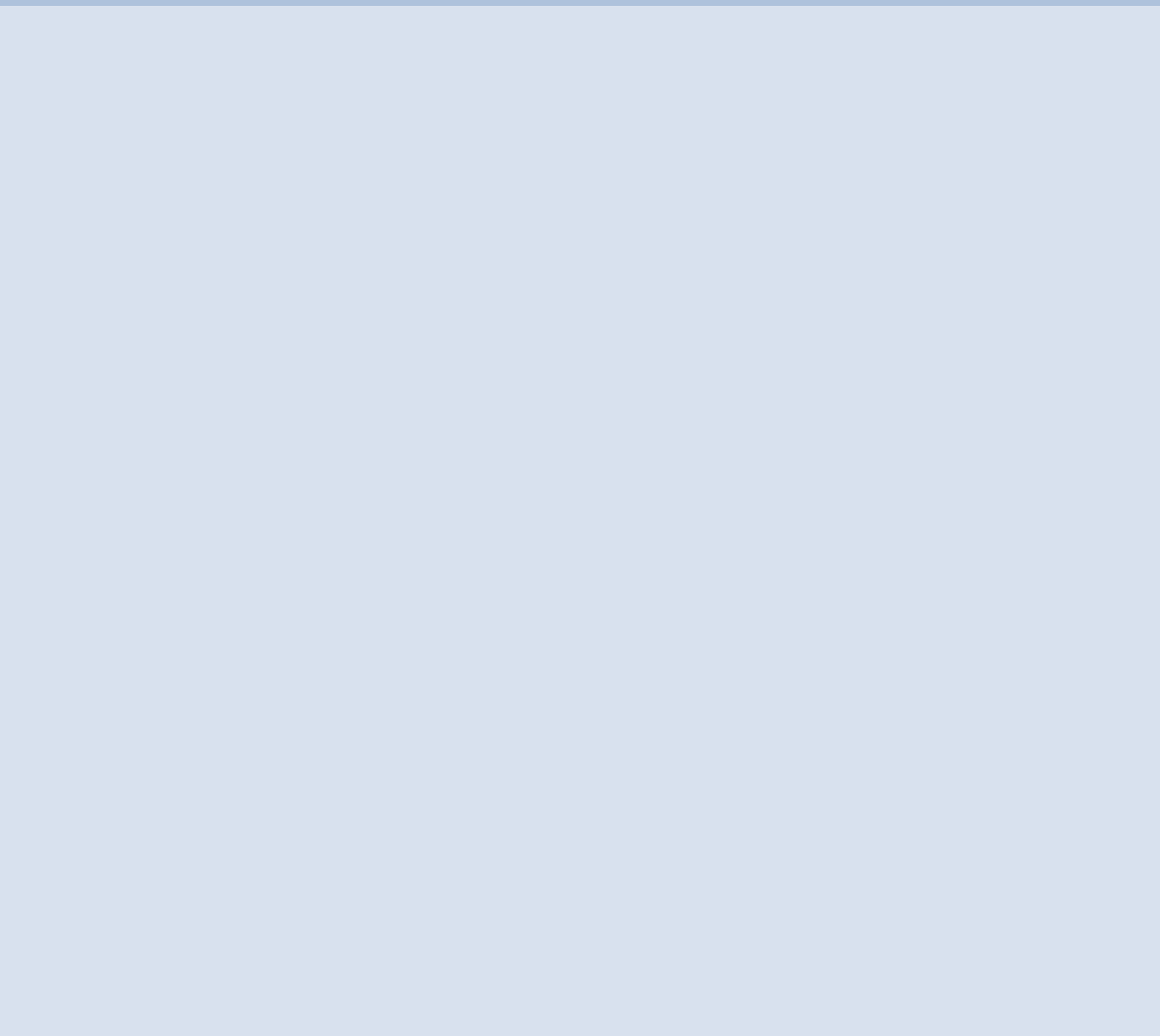


European Federation
for Retirement Provision

October 2003

The EFRP model for pan-European pensions

EIORP 2005



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Foreword

Although the title of our new Report, “EIORP 2005” looks clearly towards the future I will start by looking backwards.

In July 2000, the EFRP published a report with the ungainly title “A European Institution for Occupational Retirement Provision (EIORP)”. The brainchild of our first Working Group set up in 1999, it seemed to catch the tide of history. Shortly after its publication, and after decades of deadlock, there followed wave after wave of activity at EU level. This was accompanied by increasing awareness at Member State level that pensions are an issue. People even went onto the streets to demonstrate.

The EFRP has always recognized the strategic need for pan-European pension funds. Our 2000 Report was an initiative to move matters forward in the absence of any EU-wide framework. Although enthusiastically received, its practical proposals sometimes appeared to have been outstripped by the very developments we so welcomed.

In 2001 the EFRP called together a second Working Group. It met with prudential and tax authorities in Ireland, the Netherlands and UK to assess the feasibility of implementing the proposal on the basis of voluntary and bilateral agreements. Then, armed with this field experience it revisited the EIORP 2000 concept and also took into account recent developments. This was part of a broader, international dialogue. We think our time spent in sowing ideas across Europe is now beginning to bear richer fruit.

Today, the world looks very different from 2000 – a brand new pension funds Directive is in place and the EU institutions display vigour in tackling the problems facing pan-European pension provision. In particular, the European Commission’s dynamism, as exemplified by its pursuit of Member States using unjustifiable tax obstacles to block pan-European pensions, deserves applause.

By 23 September 2005 every Member State must have implemented the Directive. It is also the deadline for all those who want to be sure there is an ‘EIORP-friendly’ framework across Europe. There could therefore be no better time for the launch of our second Report, “EIORP 2005”.

It shows that only by building upon the EIORP concept of 2000 can all the diverse developments at EU-level be fused into a single, coherent solution.

Our EIORP 2005 proposal addresses the needs of millions of European citizens and their employers. It provides a solution for both mobile and non-mobile employees. The companies and workforces which can benefit from EIORPs may be small or located exclusively in a single Member State. Yet, multi-national companies have already tested the waters of pan-European pensions and cross-border operations. They are most likely to be in the first wave of ‘EIORP pioneers’. However, any company seeking to provide occupational pensions in a cost effective way whilst guaranteeing quality should find the concept of an EIORP worthy of consideration. In short EIORP 2005 is for everyone.

Finally, on behalf of the EFRP, I would like to thank the members of the second Working Group for their hard work: Chairman John FEELY (Abbey – IRL), Carine BEIDAS (Chartered Tax Adviser, formerly Barclays PLC – UK), Simon GILLIAT (Watson Wyatt – UK) and Marie-Christine WITTEMAN (MCW Consult – NL). In addition, thanks are due to the supporting expertise of Ruth GOLDMAN (Linklaters – UK), Jane MARSHALL (Hammonds – UK), Roger KOCH (EFRP, Brussels) and Chris VERHAEGEN, (EFRP, Brussels). A debt of gratitude is, of course, also due to the members of the first Working Group¹ whose groundwork, as this Report demonstrates, has withstood the test of time.

Alan PICKERING
Chairman EFRP

1. Chairman: Ray MARTIN (Scottish & Newcastle plc. – UK); Simon GILLIAT (Watson Wyatt – UK); Ruth GOLDMAN (Linklaters – UK); Henk MARIUS (Shell Pensioenfonds b.v. – NL); Jane MARSHALL (Hammonds – UK) and Joachim SCHWIND (Pensionskasse Hoechst V Vag, – D).

Glossary

ECJ	European Court of Justice
EIORP	European Institution for Occupational Retirement Provision – an IORP which can provide retirement benefits into a Member State other than its home State
EU	European Union
home State	the Member State in which an IORP has its registered office and main administration, or if it does not have a registered office its main administration ²
host State	the Member State, other than the home State, whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members ³

2. Definition of “home Member State”, Article 6(i) of the IORP Directive.

3. Definition of “host Member State”, Article 6(j) of the IORP Directive.

IORP	Institution for Occupational Retirement Provision ⁴
IORP Directive	Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision ⁵
MNC	multi-national company
regulation	the rule-making activity of a Member State
retirement arrangement	all arrangements relating to the provision of retirement benefits, including method of operation of the IORP as well as benefit structure
regulatory own funds	additional assets above the technical provisions acting as a buffer to absorb discrepancies between anticipated and actual expenses and profits – required if an IORP itself underwrites biometric risk cover, guarantees a given investment performance or level of benefits ⁶
sponsoring undertaking	any entity which pays contributions into an IORP either in its capacity as an employer or as a self-employed person ⁷
supervision	the monitoring and enforcement role by Member States' competent authorities
Tax Communication	Commission Communication "The Elimination of Tax Obstacles to the Cross-border provision of Occupational Pensions", COM(2001)214, adopted 19.04.2001 ⁸

4. Note the definition of IORP in the Directive, Article 6(a). See Section 3.2.1 of this Report.

5. Published in Official Journal L 235/10, 23.09.2003

6. Article 17(1) of the IORP Directive.

7. Definition of "sponsoring undertaking", Article 6(c) of the IORP Directive.

8. Published Official Journal, C 165/4, 08.06.2001

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Executive Summary

In July 2000, the EFRP published its Report “A European Institution for Occupational Retirement Provision (EIORP)”. A series of important EU-level developments has led the EFRP to update it.

The 2000 Report outlined a strategy for dealing with the national obstacles blocking the emergence of EIORPs wanting to operate on the basis of a single fund. Central to the EFRP’s proposal was the idea of national sections. These enable one and the same pension fund to comply simultaneously with the rules of different Member States, i.e. multi-jurisdictional compliance, without the fund having to be broken up into national mini-funds.

This new Report builds on EU-level developments between 2000 and 2003 in the fields of financial services and taxation. It aims at ensuring that by 23 September 2005, the deadline by which every Member State must have laws implementing the IORP Directive, there is a practicable concept for a pan-European pension fund: **EIORP 2005**.

The case for pan-European occupational retirement provision restated

Economies of scale, the forthcoming demographic imbalance, the EU single market as well as the need to enhance EU competitiveness: all those arguments in favour of EIORPs are as valid in 2003 as in 2000.

For **governments**, the EIORP model offers tax neutrality, ensures effective fiscal supervision and prevents tax evasion. It will bring **advantages both to employers and employees** because EIORPs generate cost savings, enhanced investment returns and promote intangible benefits such as a consistent benefits philosophy and improved risk control.

For **financial service providers** EIORPs offer new market opportunities not only for servicing those pan-European pension funds but also structuring new products so that the benefits of EIORPs will become available to all companies, be they small, medium or large.

The IORP Directive

The IORP Directive means that Member States now accept a system of **mutual recognition** of each other's **prudential supervision**. As a result, an EIORP need only report to one supervisor and, in essence, comply with one set of prudential rules no matter where it operates in the EU. This is a major advance on the position in 2000.

The Directive also creates the basis for an **EU-wide start-up procedure** for EIORPs. This procedure includes the information exchange on social and labour law aspects enabling EIORPs to comply with the relevant host State regulation.

The only caution the EFRP would urge concerns the issue of ring-fencing: this concept should not be misused to break up an EIORP into national mini-funds.

Taxation developments

Some important developments have made national tax obstacles in the way of EIORPs less solid than some governments probably would like.

The European Commission's **Tax Communication** delivered a noteworthy legal analysis of the tax obstacles faced by would-be EIORPs. Important aspects of this analysis were endorsed by the **European Court of Justice** in its Danner and Skandia judgements.

Although these developments have not changed the law, they have clarified it. Their effect is to narrow down the scope of Member States to block the emergence of EIORPs.

In February 2003 the Commission started a string of **infringement proceedings** to force Member States to eliminate discriminatory regulation against cross border providers of occupational pension schemes.

The EIORP concept updated – EIORP 2005

The EIORP 2005 Report uses these developments to take forward the EFRP blueprint of 2000. The core of the concept remains that of notional, national sections within a single, indivisible fund.

This Report provides more detail and outlines how a functioning and efficient pan-European pension fund would look once the IORP Directive has been implemented. It puts forward two general principles for designing national sections: the requirement for notional identification of assets and the need to respect fund integrity. It also suggests plan administrators for each section, responsible for communicating with its members, the national tax authorities and any other interested party.

The model focuses in particular – but not exclusively – on taxation aspects since these have been identified as the major hurdle for EIORPs.

No tax harmonisation is needed.

The EFRP proposal provides a solution which ensures that Member States retain both effective fiscal control and their tax revenue.

Its starting point is that the national section for a Member State in which the EIORP is active is to behave and be treated exactly as if it were an IORP located in that State. **Tax neutrality** is achieved by ensuring that the national section applies the tax rules of its corresponding Member State.

Members would join the national section of the Member State in which their salaries are taxed. Mobile employees would not be compelled to change sections.

In respect of **tax relief on contributions** it means that contributions are deductible across borders. As to the **taxation of benefits**, the basic principle is that each national section should be taxed as if the benefit was being paid from an IORP located in that Member State. Although bilateral taxation agreements are to be taken into account, the basic principle remains valid.

EIORPs can also pay the yield tax across borders for those national sections corresponding to a Member State where this tax is levied. The same principle applies to the withholding tax on investment income.

It is important to note that the EIORP as a legal structure located in one Member State, its home State, remains liable to tax in that State and must be able to benefit under bilateral tax treaties arrangements with those host States in respect of which the EIORP operates national sections.

Issues, such as language requirements, pan-European members' governance and surplus aspects are not yet addressed at EU-level but the EFRP maps a way forward which can be matter for further discussion.

All this leads EFRP to conclude that the way forward for pan-European pension funds is now open.

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*1. Background to this Report*⁹

1.1. Objective: EIORP 2005

In July 2000, the EFRP published its Report “A European Institution for Occupational Retirement Provision (EIORP)”. It met with widespread interest, receiving support from both the European Commission¹⁰ and European Parliament.¹¹

Shortly after July 2000, and after many decades of waiting, there followed a series of important developments at EU-level affecting occupational pensions.

They include:

- In April 2001, the European Commission issued its Tax Communication.
- In October 2002 and in June 2003, the ECJ handed down two important judgments on discriminatory tax obstacles faced by cross-border occupational pension arrangements.
- In February 2003 and July 2003, the Commission launched infringement proceedings against several Member States over discriminatory tax treatment arising in relation to non-domestic occupational pension funds.
- On 23 September 2003, the IORP Directive came into force.

The current Report is the result of the further investigations by the EFRP to determine the impact of these developments on the EIORP proposal of 2000, modifying it where appropriate.

The aim is to ensure that by 23 September 2005 at the latest, i.e. the deadline for implementing the IORP Directive, pan-European pensions can be a reality.

9. Note: All references to Articles in the Report are to those of the IORP Directive unless stated otherwise.

10. Section 5, Tax Communication.

11. Resolution 12, van den BURG Report, Official Journal, C 177 E/302, 25.07.2002.

1.2. Starting point: EIORP 2000

In 2000, the EFRP set out a blueprint for an EIORP which could mimic the effect of a single license in the absence of any EU-level legislative framework. It identified four sets of national obstacle in the way of EIORPs:

- prudential supervisory requirements
- social and labour law
- taxation
- members' governance (including language issue)

The EFRP solution was an EIORP with the following characteristics, it would:

- be set up in one Member State according to the legislation of that State and could provide services into other Member States
- have a single, undivided pool of assets and liabilities
- be structured into national sections, each of which would be tax approved by and comply with the relevant rules of each State.

In this way the fund, as a single pool of assets and liabilities, would achieve economies of scale, allow reduced running costs by centralizing the fund administration and, at the same time, respect all relevant national rules for each Member State.

The key idea was that of *national sections*. These enabled multi-jurisdictional compliance without compromising the integrity of the EIORP's fund.

The EFRP concept of 2000 was innovative and forward-looking. This Report builds on that work and provides further detail taking into account subsequent developments.

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2. The case for pan-European occupational retirement provision restated

The case for pan-European occupational retirement provision remains as valid in 2003 as in 2000.

2.1. Economic considerations

The expected demographic imbalance in the years to come will drive significant growth in retirement systems and assets to fund them throughout Europe.

Occupational retirement arrangements have an economic impact. At the end of December 2001, total EU pension funds assets amounted to € 2,288 billion.

Pension funds assets relative to GDP currently range from a very low level in countries such as France, Greece and Italy to over 100% in the Netherlands. For the entire EU average pension assets amount on average to less than 26% of GDP.

2.2. Single market objective long overdue

A single market for financial services is a long-standing EU-policy goal. The road map to achieve this goal is the European Commission's Financial Services Action Plan¹². This identifies the IORP Directive as a number one priority. Making pan-European pension arrangements available is necessary for the free movement of labour.

However, national sensitivities and complexity surrounding various aspects of pensions have resulted in years of delay in bringing occupational pension funds into the single market.

The developments of 2000 to 2003 signal that this deadlock is being broken.

12. http://europa.eu.int/comm/internal_market/en/finances/actionplan/index.htm#plans

2.3. The need to enhance competitiveness

According to the Lisbon strategy the EU should become the world's most dynamic, competitive and knowledge-based economy¹³. Applied to occupational retirement arrangements such an objective requires that they provide:

- an appropriate level of benefits to employees
- on a sustainable and cost-effective basis whilst generating
- a deep pool of capital for business, enabling the economy, and in particular small and medium-sized companies, to grow.

2.4. Challenges and opportunities

There are other challenges and opportunities which make this initiative to create EIORPs timely:

- Single market integration has been reinforced by the introduction of the **Euro**. More than ever, European business wants to utilize the cost efficiencies inherent in an EIORP to allow it to operate on a truly pan-European basis.
- The EU is about to welcome **new Member States**. Not to make full use of the expanded opportunities for labour mobility and free movement of capital and services would itself be a loss.
- Over the long term, occupational and personal pension arrangements are set to play an enhanced role in the response to the challenge of **ageing populations**.

2.5. Responding to the needs of governments

The EIORP concept meets the needs of national governments and their tax authorities. The EIORP model provides:

- **tax neutrality** for cross-border pension provision.
The basic principle is that Member States would be able to maintain their own approach to taxation of pension arrangements for residents in their own State even if the EIORP is located in another Member State. This essential element preserves the integrity of Member States' tax base.
- **effective fiscal supervision and prevention of tax evasion** through the exchange of information between the EIORP and the respective tax authorities in the host States.
- effective **payment of due taxes** so that Member States need not fear a loss of tax revenue if the EIORP is located outside their territory.
- **reduced compliance costs** for Member States since they can deal with centralised institutions instead of drawing information from individual tax payers.
- help for Member States to **avoid EC Treaty infringements** while preserving the coherence of the host State tax system.
- cost effectiveness contributing to **Member States' competitiveness**.

13. Lisbon Summit, 23 and 24 March 2000

2.6. Responding to the needs of employees

Employees in MNCs are interested in a single **consistent benefit structure** that enables cross country comparison and additional mobility.

Although they may depend on the Member States involved, a coordinated approach to retirement provision across Europe has other advantages for employees:

- **Increased efficiency** in occupational pension provision will result either in improved benefits or lower contributions.
- If an MNC has small workforces in some countries but larger ones elsewhere, the small workforces can enjoy the benefits associated with **being part of a large-scale operation** as well as the **professional service level** of a single pan-European retirement fund.
- Mobile employees can **avoid complex series of transfers** from one pension arrangement to another and will have a 'one-stop-shop', obviating the need to correspond with multiple IORPs to determine pension benefits and information.
Repeated transfers between IORPs of accrued pension entitlements in DB schemes can be disadvantageous to employees. To avoid occurrences of 'pension loss' in those schemes the European Commission is working towards promoting an EU-level set of requirements on pension portability.¹⁴
- Centralizing their benefits within one single EIORP also means dealing with just **one pay-out institution**.

2.7. Responding to the needs of employers

The EIORP model addresses the needs of both large and medium and small sized MNCs. This may be particularly the case for those with small workforces in some Member States and larger ones in other Member States.

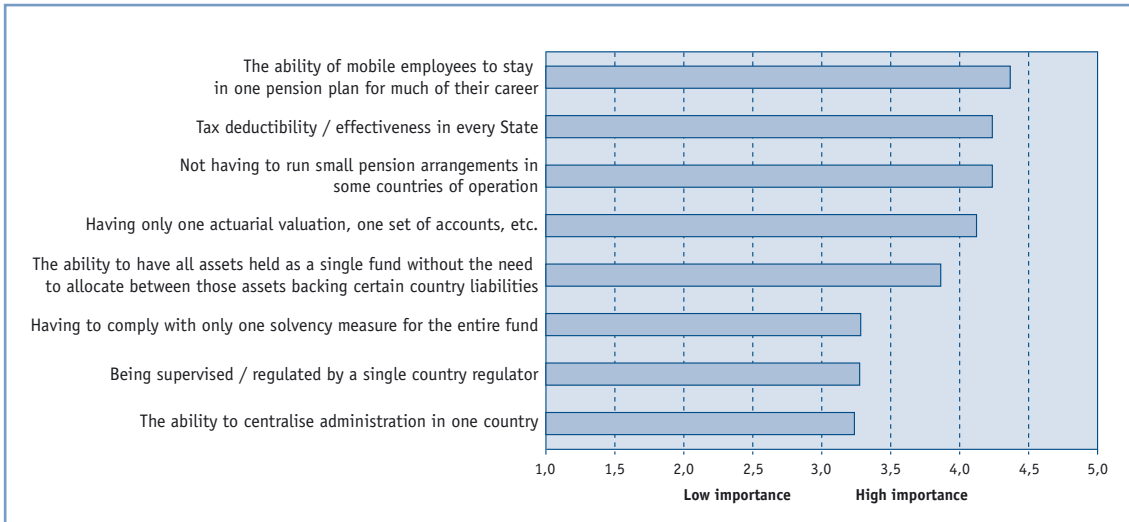
It may also be that in the first instance it will be MNCs which will be among the first wave of 'EIORP pioneers' because some of them have already tested the waters of pan-European pensions. But the analysis and proposals set out in this document are of wider significance.

14. Communication from the Commission, "Second stage consultation of social partners on measures to improve the portability of occupational pension rights", of 15 September 2003.

2.7.1. Survey

The EFRP surveyed a small number of major MNCs and asked them to rate the importance of key aspects of EIORPs. It showed all aspects were rated relatively high denoting the urgency and relevance of the matter.

Key aspects of pan-European pension arrangements



Employers can benefit from the EIORP model as follows:

- a **better choice of financial services** providers for the development and management of their pan-European pension arrangements.
- a better choice should logically lead to **increased efficiency**.
- the possibility of **greater returns linked to lower costs**

Pooling the assets and liabilities in one single financing vehicle provides the bulk of the gains.

2.7.2. Analysis of those benefits

• cost savings

The Second Working Group carried out an informal case-study of the potential cost savings involved. The main areas in which these could be achieved were:

- Investments, e.g. investment fee reductions, better manager selection, reduced number of managers, better control and monitoring, more effective asset strategy, reduced transaction costs
- Administration
- Compliance, e.g. actuarial, accounting
- Expatriates, e.g. top-up arrangements
- Governance

The Working Group concluded that, on a conservative estimate, annual savings achievable could be some **15 basis points** (0.15%) of pension fund assets. These lay primarily in the areas of investment and administration.

Assuming an equivalent level of direct savings across European pension funds as a whole, EIORPs could deliver MNCs projected annual savings in excess of € 3 billion.

- **enhanced investment returns**

Of even more significance are the potential enhanced investment returns and the ability to smooth out the ups and downs in solvency capital requirements by having one fund of assets and liabilities.

It is believed that these benefits could be much larger than the savings in direct costs. Assuming enhanced investment performance of a further 30 basis points (0.30%), total annual savings could add up to € 10 billion.

- **intangible benefits**

Additional, intangible benefits were identified, including the following:

- **operational risk control**

If it were possible to combine European pension liabilities, employers would be able to focus their attention on a single plan. This should reduce the likelihood of both financial and public relations damage that may result from poor governance.

- **consistent benefits philosophy**

The relative value of retirement benefits in different countries is now more transparent following the introduction of the Euro. Sponsoring employers wish to provide a consistent overall level of retirement benefits to their employees across Europe in line with their reward objectives and business strategy, and taking into account the different social security arrangements. This would simplify communication to employees, reduce the risk of unhelpful comparisons between countries and help create a single culture within the business.

What MNCs think about pan-European pension funds:

“Clear economies of scale and scope; increase in efficiency; increase in transparency; increase in mobility of personnel across Europe; after the introduction of the Euro – all of this is a Must!”

“Being able to implement a more consistent pension and benefits policy across the whole Group in Europe.”

“The possibility to co-ordinate and control what is happening is most important.”

“We are moving towards a total remuneration approach to compensating our employees, DC retirement benefit etc. In order to communicate effectively to our employees the value of their ‘package’ we need a consistent administration approach e.g. interactive electronic delivery of personal information/online investment switching etc. A single administration platform interfaced with our global HR system would be very efficient.”

2.8. Opportunities for financial services providers

Financial service providers increasingly operate on a pan-European basis whether through insurance, UCITS or general fund management. The creation of EIORPs can only serve to increase the number of opportunities for financial services providers operating within Europe. EIORPs will need professional fund management, administration, risk insurances and other technical services which are typically provided by financial services organisations.

Furthermore, it is likely that small and medium sized MNCs will look for more packaged type arrangements which are likely to be provided by pan-European financial services organisations.

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3. EU-level developments – IORP Directive

3.1. IORP Directive

The main development in the field of prudential supervision was the adoption of the IORP Directive¹⁵ which entered into force on 23 September 2003 and should be implemented by 23 September 2005.

To understand the significance of the Directive and why the EFRP 2000 concept remains relevant, particularly as regards national sections, it is useful to review how the Directive deals with EIORPs.

3.2. The IORP Directive and EIORPs

The IORP Directive lays the foundations for EIORPs by introducing a system of mutual recognition based on minimum common rules regarding prudential matters, which will allow an IORP to provide services across borders, i.e. become an EIORP.

Yet its significance for EIORPs goes beyond prudential aspects. The Directive, in conjunction with the Tax Communication, helps identify the extent to which a Member State can apply and enforce its social and labour law in a cross-border context.¹⁶

The following outlines the Directive's implications for EIORPs.

15. Other developments concerning the prudential rules and financial services aspects of IORPs relate to the new legislative and supervisory approach which should now apply throughout the entire financial services sector as a result of the extension of the 'Lamfalussy procedure' originally developed for European securities markets. As the effects of this are medium to long term they will not be further considered.

16. Section 3.4, Tax Communication.

3.2.1. Organization, structure and operating conditions

For a body to be an IORP under the Directive, it must supply retirement benefits, its operation must be funded and there must be a workplace connection.¹⁷ With one exception, which concerns the undefined notion of ‘ring-fencing’¹⁸, the Directive is non-prescriptive as regards organizational structure and legal form.

Retirement benefits are defined in broad terms.¹⁹ A Member State may, in the light of its own social policy objectives, add requirements concerning the product to be supplied to members in its territory.²⁰ These extra rules must be respected by domestic and non-domestic EIORPs providing services into that State.²¹ As these concern only product design, an EIORP providing them remains free to take any form allowed under its home State law.²²

The Directive also lays down basic conditions for setting up and operating IORPs.²³ A Member State may ‘top up’ these rules – but only for IORPs located in its territory.²⁴ As a host State, it cannot impose extra operational rules on non-domestic EIORPs.

3.2.2. Investment rules

The investment rules are based on the prudent person concept.²⁵ More detailed rules, including quantitative ones, are possible only if prudentially justifiable and if certain strict conditions are met.²⁶

But host States can impose a limited number of the extra quantitative rules on non-domestic EIORPs.²⁷ To ensure compliance, a host State may request the home State to require the EIORP to ‘ring-fence’ the assets corresponding to the activities carried on in the host State.²⁸ However the decision whether to ‘ring-fence’ lies with the home State.²⁹

3.2.3. Technical provisions and regulatory own funds

The rules on technical provisions and regulatory own funds are a minimum standard. A home State can supplement them for its own IORPs but not for EIORPs located elsewhere.³⁰

However, every EIORP must ensure that its cross-border operations are fully-funded at all times.³¹ A home State may require ‘ring-fencing’ to ensure compliance.³²

17. Article 6(a).

18. See Recital 38 (ring-fencing of schemes) and Articles 3 (assets and liabilities), 4 (ring-fencing of assets and liabilities plus separate management and organization), 7 and 16(3) (assets and liabilities), 18(7) (assets only) and 21(5) (assets and liabilities). There is no general concept of ‘ring-fencing’ in EU law. The EFRP recommends that great care is taken when implementing this concept and that a one-size-fits-all approach is avoided, see Section 3.3.

19. Article 6(a) and (d).

20. Article 20. See also Section 3.4, Tax Communication.

21. Article 20. Note Article 14(4)(d) and also Recital 9. It should be self-evident from the logic of the Directive as well as a consequence of the legal competences retained by Member States, that a home State may impose its own social and labour law upon IORPs located and providing services within its territory.

22. Articles 2 and 6(a). Note Recital 8.

23. Articles 7, 8 and 9.

24. Article 9(3).

25. Article 18(1).

26. Article 18(5).

27. Article 18(7).

28. Article 18(7), final sentence, and Article 21(5).

29. Article 21(5).

30. Article 15(5) for technical provisions and Article 17(3) for regulatory own funds.

31. Article 16(3).

32. Article 16(3).

3.2.4. Information rules

The Directive's rules regarding information to be supplied or made available to members and beneficiaries can be supplemented.³³ Furthermore, host State information rules may be imposed on EIORPs wanting to provide services into that State.³⁴

3.2.5. Supervisory regime for EIORPs

Each Member State must have adequately empowered competent authorities to supervise compliance with the Directive.³⁵

The Directive is based on the 'home State supervision' concept as regards prudential rules, i.e. an EIORP answers only to its home authority even in respect of any host State prudential rules that may apply to it.

In cross-border situations, host State authorities have an "ongoing" supervisory role as regards compliance by a non-domestic EIORP with their social and labour law.³⁶ However, the Directive foresees enforcement via a cooperative arrangement³⁷ in which the home State has a lead role as enforcer³⁸ with a residual role for the host State supervisor as a last resort.³⁹

In addition to the supervisory aspect, the Directive will also put in place a general cooperative framework to monitor and ensure uniform application of the Directive.⁴⁰

3.2.6. Cross-border procedures for EIORPs

An IORP wanting to take up cross-border sponsorship, i.e. wanting to become an EIORP, or an EIORP wanting to take up a new sponsor outside its home State must use the notification procedure.⁴¹

At first glance, notification seems cumbersome – especially as it is on an individual sponsor-by-sponsor basis.⁴² However, the wording describing the procedure is sufficiently open to allow streamlining of each individual step once Member State authorities have gained confidence in it and their counterparts. This means that it is feasible that EIORPs with a proven track record could benefit from accelerated notification.

Notification requires host States to identify their social and labour law relevant to occupational pensions as well as their rules on information or investment applicable to non-domestic EIORPs.⁴³ Once passed to the home State authority, they are communicated to the EIORP.⁴⁴

The social law provisions may detail such matters as the nature and level of benefits, retirement age, qualifying beneficiaries and so forth. A Member State tempted to inflate them to block access by non-domestic EIORPs risks infringing the EC Treaty.⁴⁵

33. Article 11(1), see wording "at least".

34. Article 20(7).

35. Article 13.

36. Article 20(9), first sentence.

37. Article 20(9), second and third sentences.

38. Article 14(4)(d).

39. Article 20(10).

40. Article 21.

41. Articles 20. Note that a mandatory precondition for using this procedure is the possession of an authorization (Articles 9(5) and 20(2)). The concept of authorization is not defined in the Directive.

42. Article 20(2).

43. Article 20(5).

44. Article 20(5).

45. See Section 4.2.1. below.

3.3. The EIORP concept in the light of the IORP Directive

The viability of the EFRP's EIORP concept has been enhanced by the IORP Directive:

- There is now an EU-wide procedure for starting up as an EIORP.
- It achieves the single supervisor objective as regards prudential rules.
- In general, it eliminates the need for multi-jurisdictional compliance as regards financial services aspects. Exceptions are possible quantitative investment rules and information rules.
- It facilitates the emergence of a cooperative framework on social and labour law aspects, one in which an important role is envisaged for the home State authority.

However, substantive social and labour laws and tax remain national competences and, therefore, multi-jurisdictional compliance is still needed in respect of them. This is why the EFRP concept of national sections continues to be relevant.

In this context the EFRP urges caution when addressing the issue of ring-fencing in its various appearances throughout the Directive. A context-sensitive approach should be taken⁴⁶: the lightest form of ring-fencing which achieves effectively the purpose in hand should be chosen. This would satisfy the proportionality principle as developed by the ECJ.

A one-size-fits-all blanket approach that threatens the integrity of the EIORP's single fund by breaking it up into 'mini-funds' should be avoided. If not, the significant economies of scale which the IORP Directive aims at facilitating will never be achieved⁴⁷ and a Member State tempted to view the use of 'mini-funds' as a simple way of achieving ring-fencing risks infringing the EC Treaty.⁴⁸ The EFRP believes that in many situations its concept of a 'national section' should suffice.⁴⁹

The use of national sections in conjunction with the approach of the IORP Directive on host State social and labour law represents a significant advance on the 2000 EIORP proposal. No special bilateral agreement need now be sought with host State supervisors on social and labour law: an EIORP simply complies with the information the host State provides.

46. For example, the object of ring-fencing in Articles 3, 4 and 7 has nothing to do with ensuring multi-jurisdictional compliance since those Articles apply equally to purely domestic operations where the object is simply to keep different kinds of economic operation separate. This is different from the object in Articles 16 or 18.

47. Recital 36.

48. A form of ring-fencing imposed by a Member State on non-domestic EIORPs which demands a splitting of funds could mean discrimination in favour of domestic IORPs and EIORPs as they may not be under an obligation to split their funds. A Member State should therefore identify the interest it seeks to protect by requiring 'ring-fencing' and choose a proportionate technique for achieving that objective, where this can be done without splitting the fund this approach should be preferred. To do otherwise creates a risk for the Member State that it infringes the EC Treaty.

49. See Section 5.

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4. *EU-level developments* – *taxation*

The period 2000 to 2003 saw the publication of the Commission's Tax Communication, two important ECJ judgments and a wave of infringement proceedings initiated by the Commission.

4.1. The Commission's Tax Communication

The Tax Communication, which expressly supplemented the IORP Directive⁵⁰, identified two sources of tax obstacle to cross-border provision of occupational pensions:

- *tax discrimination*: Member State tax rules which discriminated against non-domestic IORPs.
- *system diversity*: The diversity of Member State systems relating to IORPs gives rise to problems of double (non-)taxation.

The Commission's analysis of ECJ case law on **tax discrimination** concluded that all national restrictions impeding cross-border provision of occupational pensions without objective justification infringe the EC Treaty.

As regards particular issues, the Commission argued as follows:

- **Cohesion of tax system and securing the national tax base**⁵¹
Member States may not argue that lost tax revenue justifies discrimination. More, generally, the Commission argued that purported justifications based on fiscal cohesion fail.

50. Section 1, Tax Communication.

51. Section 3.3, Tax Communication.

- **Tax as an instrument of Member State social policy**

The Commission recognized the role tax rules can play as a system of incentives to reflect Member State social policy preferences. However, these rules must meet certain conditions in order not to discriminate against non-domestic EIORPs.⁵²

- The Commission distinguished **two categories of employee**⁵³:

- *'non-mobile'*: These are employees who are either resident or employed in one Member State and who want to join IORPs established in other States. The Commission argues that Member States may put conditions for deductibility of contributions paid into an EIORP established across border. Those conditions should apply equally and to the same extent as to domestic IORPs.

These may relate to, for example, the nature and level of benefits, age of retirement, qualifying beneficiaries and the conditions should be proportionate to the objectives to be achieved.

- *'mobile'*: These are employees from one Member State who are already members of IORPs located in that State and who move to another Member State, perhaps only temporarily. A host State cannot refuse to grant tax deductibility to the contributions into an EIORP established in another Member State on the grounds that the non-domestic scheme does not meet host State tax rules.

- **Fiscal supervision and information**⁵⁴

The Commission argued that effective supervision in cross-border occupational pension may be achieved by means other than by discriminatory rules. In particular, reference was made to the possibility of using the Mutual Assistance Directive⁵⁵ or by requiring individual IORPs to provide information.

52. Section 3.4, Tax Communication. In this section, the Communication also addresses the use of taxation as a tool to enforce proper prudential supervision. In its view, the forthcoming IORP Directive would remove any grounds for discriminating in the tax treatment of contributions to non-domestic pension funds.

53. Section 3.7, Tax Communication

54. Section 3.5, Tax Communication.

55. Council Directive 77/799/EEC, OJ 27.12.1977, L 336, p15.

4.2. European Court of Justice (ECJ) tax cases

Between 2000 and 2003 the ECJ delivered its judgments in the cases of *Danner* (C-136/00)⁵⁶ and *Skandia and Ramstedt* (C-422/01)⁵⁷. Both cases found the discriminatory treatment of contributions to non-domestic IORPs unjustifiable under the EC Treaty.

Although Advocate-General JACOBS did so in *Danner*, the Court in neither case referred explicitly to the Commission's Communication. Yet the rulings are exactly what would have come out from adopting the reasoning of the Commission Communication. Especially in the *Skandia* case the ECJ gave a widely applicable ruling stating that Member States are not allowed to treat pension institutions established across border differently from the domestic operators for the sole reason the former are established in another Member State.

4.3. European Commission's infringement proceedings

In its Communication, the Commission declared it would use infringement proceedings to make Member States dismantle unjustifiable discriminatory tax obstacles.

In February 2003, the Commission sent a reasoned opinion to Denmark and launched infringement proceedings against Belgium, Spain, France Italy and Portugal.

In July 2003, the Commission decided to refer Denmark to the ECJ and launched infringement proceedings against the UK and Ireland.

4.4. Other developments

In June 2001, the Mutual Assistance for the Recovery of Claims Directive⁵⁸ (MARC) was amended to extend its scope to cover income and capital taxes. It could be used by a Member State to ensure that tax is collected on benefits paid by non-domestic pension funds as well.

Next to the Mutual Assistance Directive⁵⁹, which was highlighted in the Tax Communication⁶⁰, MARC provides Member States with yet another instrument for securing tax revenues even in cross-border situations.

56. Judgment of 3 October 2002.

57. Judgment of 23 June 2003.

58. Council Directive 2001/44/EC of 15.06.2001 amending Directive 76/308/EEC (OJ L 73, 19.03.1976, p. 18) on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties. Amending Directive published in Official Journal L 175, 28.06.2001 pp. 17-20 and entered into force on 18.07.2001.

59. Council Directive 77/799/EEC of 19.12.1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation published in Official Journal 27.12.1977, L 336, p. 15.

60. Section 4.2., Tax Communication

4.5. The EIORP concept in the light of the developments as to tax – Conclusion

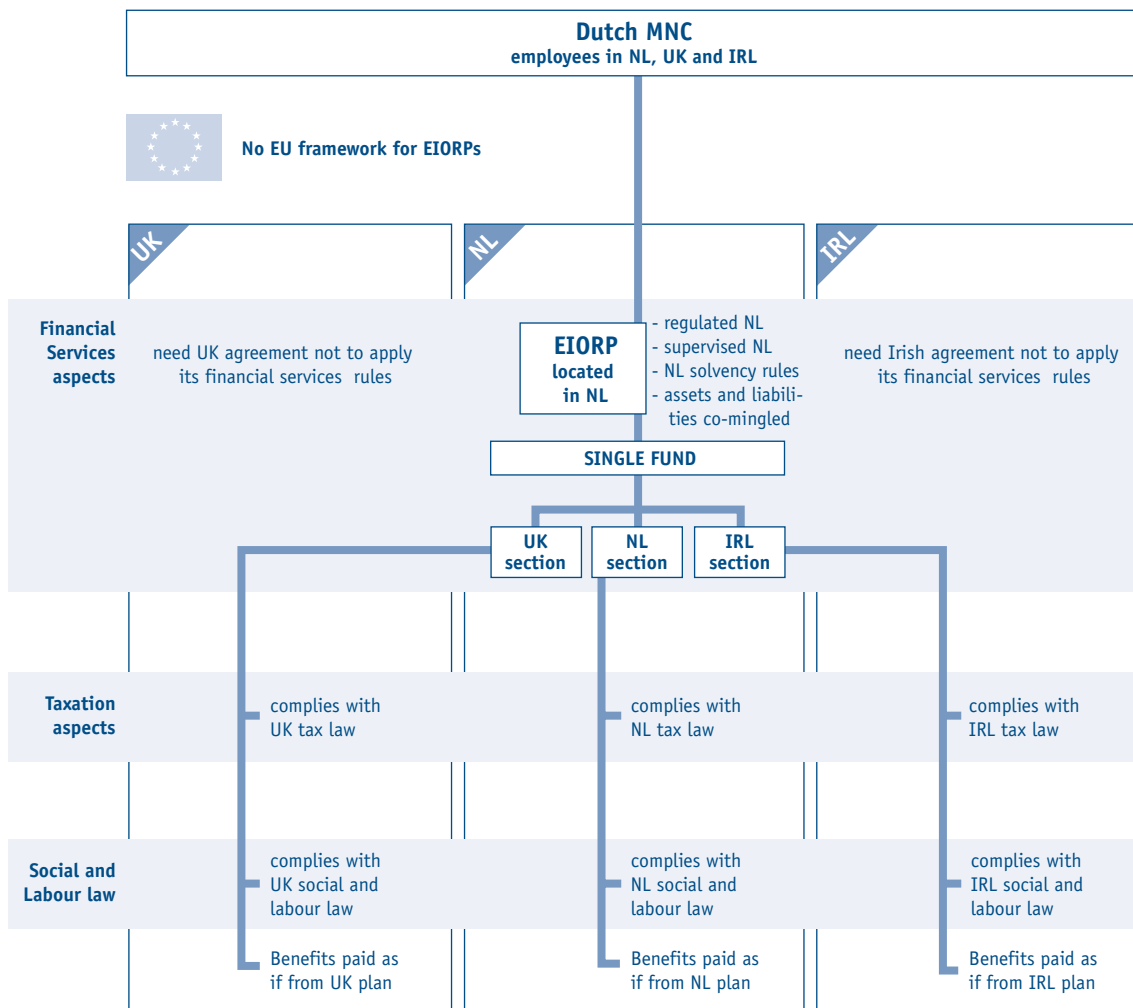
The EIORP concept has moved forward significantly since its launch in July 2000.

The ECJ has twice ruled in favour of deductible contributions into pension schemes managed by IORPs established across border in the *Danner* and *Skandia and Ramstedt* cases.

The European Commission analysis as put forward in its Tax Communication has thus received legal and institutional support.

In the wake of these developments, denials of deductibility of cross-border contributions are now being actively challenged by the European Commission by no fewer than eight infringement procedures pending.

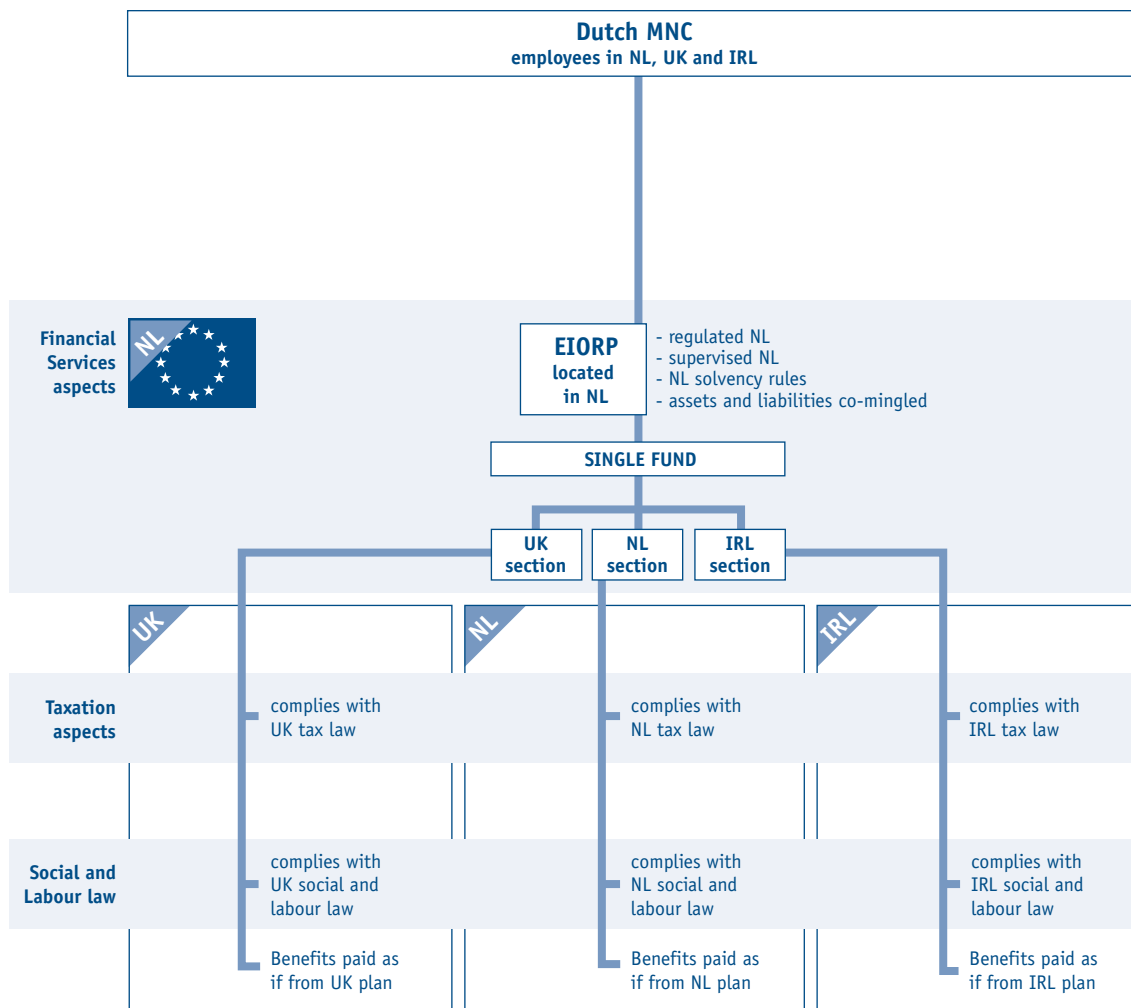
EIORP 2000



The EFRP strongly hopes that Member States subject to infringement proceedings will now bring their legislation and procedures in line with the established case law of the ECJ on Article 49 EC Treaty (freedom to provide services). They should not await a final Court judgement before opening up their occupational pension markets to cross-border affiliation.

More than ever the EIORP is a viable proposal. Its feasibility has been boosted by the recent developments in the tax area: Tax Communication, ECJ rulings and the pending infringement proceedings.

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5. *The EIORP concept updated* – *EIORP 2005*

5.1. EIORP 2005 – a basic profile

EIORP 2005 is an occupational pension vehicle designed to hold its assets as a **single, undivided fund**, benefit from the '**single passport**' provided under the IORP Directive, yet simultaneously achieve **multi-jurisdictional compliance** in areas where each Member State may set its own rules.

It has the following basic characteristics:

5.1.1. Overall structure meets home State prudential requirements

It would be a funded institution set up in one State, i.e. its home State, complying with home State legislation implementing the IORP Directive:

- It could take the form of any legal structure permitted under home State law.
- The central plan governance would be subject to home State rules on
 - basic operational requirements
 - solvency/adequate funding requirements
 - investment
 - information

The Directive also allows an EIORP to:

- have one actuary appointed by the EIORP's governing body (e.g. Board of directors, Board of trustees)
- design and implement only one investment structure
- work with only one auditor in charge of regulatory reporting requirements

5.1.2. National sections to enable multi-jurisdictional compliance

The EIORP would feature national sections. The concept of a national section (see Section 5.2) does not appear in the IORP Directive. However, it provides an appropriate technique for enabling a single fund to achieve multi-jurisdictional compliance as long as this is necessary.

Following the IORP Directive, host State laws with which an EIORP must also comply, as well as any home State law, cover:

- social and labour law relevant to occupational pension provision, and
- possibly, a limited range of prudential aspects, i.e.:
 - quantitative investment rules allowed in cross-border situations;
 - any specific members' information requirements.

As regards **tax**, an EIORP must satisfy, under current EU law, the requirements of each State in which it operates, for example, on corporation tax, yield tax and wage tax aspects as well as some aspects of scheme design.

Articulating an EIORP into national sections reproduces the multi-jurisdictional environment in which it operates. **No tax harmonization is needed:** a host State's tax provisions would apply to 'its' national section of a non-domestic EIORP in the same way that they would to an IORP located in that host State.

The **benefits** payable to employees belonging to particular national sections of an EIORP will be the same as those that they would receive had the EIORP been an IORP located in the relevant Member States. The same benefit structures would apply.

To promote smooth interaction between a national section and relevant parties in its corresponding State, each national section could have its own '**plan administrator**' as focal point.

The role of this office could include:

- communicating with members, national tax authorities and other interested parties
- assisting in the actuarial process, e.g. when determining funding requirements centrally, the actuary would consult with plan administrators of a national section, to ensure that contributions levied to achieve the required funding are acceptable for tax purposes at section level.

It should be possible for a single individual to occupy the office of plan administrator for more than one section. Plan administrators need not be located in the host State nor have any legal role distinct from that of the EIORP of which they are part.

5.1.3. Home State supervision and multi-jurisdictional compliance

The EIORP would be supervised

- on all prudential requirements: exclusively by its home State
- as regards host State social and labour law: the home State will have to enforce compliance but the host State retains a residual role.

As regards taxation, Member States can use existing EC instruments for mutual assistance and cooperation between tax authorities to ensure compliance and proper information.

Also specific arrangements between Member State tax authorities and individual EIORPs and their members should be used.

5.2. National sections – a basic profile

Any technique splitting the fund into separate, national funds would negate a central point of the IORP Directive.

Since a variety of techniques are possible for ensuring an EIORP complies with the obligations applicable to one of its national sections, no prescriptive detailed definition of national sections is required at EU-level.

A national section may be viewed in broad terms as including any technique by which:

- a *notional* share of an EIORP's assets could be identified which corresponds to the liabilities towards those members and beneficiaries located in the State involved⁶¹
- but that does not compromise the fund's integrity as a single pool of assets and liabilities. National sections are to be understood as purely notional being a result of calculations. No one section would own an identifiable part of the assets which would continue to constitute an indivisible pool owned by the EIORP as a whole.⁶² It follows that national sections need have no separate legal personality. Nor must they have separate accounting or management systems.

The concept is related to – but distinct from – the undefined notion of **ring-fencing** which appears at several places in the IORP Directive and which serves a variety of roles. Where ring-fencing in the Directive is intended to ensure multi-jurisdictional compliance, the EFRP urges Member States to use the concept of a national section as a guideline when implementing it into national law.⁶³

5.3. National sections and tax

5.3.1. Basic principle – ensure tax neutrality

A basic principle to secure tax neutrality would be to ensure that a national section is subject to the relevant tax rules of its corresponding Member State. The EFRP proposal is therefore based on the idea of treating an EIORP with a national section for State A exactly as if it were an IORP located in State A.

Furthermore, the EIORP would provide information to each Member State involved.

This means that problems relating to tax discrimination do not arise or do so in reduced form.

61. The general rule in the vast majority of cases would be that the State involved is that in which a member's salaries are taxed.

62. The idea of having a specific but undivided notional interest in a commonly held asset without it being split into separate assets is nothing new. For example, national systems of property law under which two or more parties may simultaneously have beneficial interests in one and the same asset may provide an analogue for understanding how several national sections can have notional but undivided interests in a single fund.

63. See Section 3.3.

For example, if the Member State of work or residence operates an ETT system, contributions would be deductible in that State, the EIORP would pay the yield tax with regard to this section to the authorities of that State and, where applicable, would also withhold tax at source on the benefits or collect any wage tax.

5.3.2. Notional allocation of assets into national sections

Assets would be notionally allocated between national sections for tax purposes according to a specific formula, for instance in proportion to the average of opening and closing liabilities for the accounting period of the EIORP.

The notional allocation could be agreed on a case-by-case basis to ensure flexibility.

5.3.3. Determining membership of national sections

In the vast majority of cases employees would join the EIORP via the national section corresponding to the Member State in which their salaries are taxed.

5.3.4. Tax treatment of national sections

If a host State operates a **tax approval** procedure for its domestic pensions schemes, then the procedure should be no different for the national section of that host State within the EIORP.

The same approach would apply to **yield tax** as well as the **tax treatment of benefits**.

Both home and host States of EIORPs have to acknowledge and accommodate the proposed structure with national sections.

The EIORP should **establish direct contact** with the relevant national fiscal authorities of the host State, entering where necessary into agreements with them. These agreements could set out the modalities for levying any yield tax, withholding taxes on the basis of bilateral tax treaties and wage taxes, and of the payment of such taxes to the fiscal authorities, as well as the information requirements of these authorities.

The fiscal authorities could ensure application of their agreements with the EIORPs by providing that pension contributions paid to the EIORP would no longer be tax deductible in case of breach of the agreement by the EIORP⁶⁴.

5.3.5. Non-mobile and mobile workers

For *non-mobile workers* the pension schemes conditions offered by a cross-border EIORP should comply with those rules imposed on domestic schemes in the host State.⁶⁵ The EIORP manages to comply with this through the national section approach.

Mobile workers would have the option of staying in the national section corresponding to the State where they were previously working ('old State') or switching to the national section corresponding to their new Member State of work ('new State').

64. This would be in line with the position recommended by Advocate-General Jacobs in his opinion in *Danner* of 21.03.2002 (see paragraph 74).

65. Section 3.7, third paragraph, Tax Communication.

If a mobile worker who has moved to a new State decides to:

- remain in their old section: There is, at this stage of EU legislation, no need for prior tax approval of that national section by the new State⁶⁶. The worker is entitled to deductibility of contributions paid across border subject to any limits applicable to contributions paid to domestic IORPs in the new State under the identity of treatment principle.⁶⁷
- switch from their old section to a new one: There would not be a switch of retirement institutions as the EIORP remains the same. The employer would simply reallocate those workers to whatever section is appropriate for that phase of their careers⁶⁸.
The system would work fairly and there would be no undesirable tax consequences related to accrued benefits such as 'exit charges' as a result of switching from one Member State to another.

All of the benefits would remain within the one EIORP and be ultimately paid out together as a single benefit at retirement and reflect the payment rules corresponding to each section.

To achieve this, the total benefits would be allocated between the different national sections of which a worker was a member in the course of his or her careers, on an agreed "protected rights" basis according to the following methodology:

- In the case of a *defined contribution (DC)* scheme, assets already built up will continue to be invested and future contributions will be made to the new national section possibly at a different level.
- In the case of a defined benefit (DB) scheme the overall structure of the benefit promise would remain intact based on full service within the EIORP but with actual benefits split between national sections⁶⁹.

The accrual rate and other design features might be different within each national section and this would be reflected on the change of sections, with different attributes applying to the benefits allocated to each national section.

5.3.6. Tax relief on contributions

The same tax relief will be available on contributions to, say, the national section for State A of an EIORP located in State B as that available to an equivalent local plan in State A. Any limits on contributions would apply to that section as if it were based in State A.

5.3.7. Yield tax⁷⁰

In ETT Member States there is a **tax on the annual yield** of the funds' investment. The national section approach of the proposal allows those Member States to enforce their yield tax in cross-border situations.

So, where such a tax is chargeable in the host State corresponding to one of its sections, the EIORP will ensure cross-border payment of the yield tax due for that section.

66. Section 5.3.4.

67. Section 3.4., Tax Communication

68. See 5.3.3.

69. The split would be achieved by way of an accrued pension entitlement type calculation effected each time the employee leaves a section, with the balance of the promise always being allocated to the latest section of which the employee is a member. Alternatively, a 'pseudo transfer value' could be calculated and treated as the 'fund' allocated to that section. Whatever approach is adopted, it should be consistent with any harmonized rules emerging from the Commission consultation on the mobility of pensions and preservation of benefits.

70. Currently, this only concerns three Member States, Sweden, Denmark and Italy.

For the purpose of calculating yield tax, the assets of that section would be valued on an average basis corresponding to liabilities attributable to each section over an accounting period with, of course, no formal split of the assets.

Conversely, for EIORPs established in an ETT Member State, such a home State has to waive tax on the national sections that do not correspond to home State members.

5.3.8. Withholding tax

Because of its liability to tax in the home State, the investment earnings of the EIORP in the form of dividend, interest payments or capital gains would be covered by **the bilateral tax treaties** between the EIORP home State and the source countries for those dividend and interest payments.

Consequently, the EIORP would benefit from any reduction in withholding taxes/exemption from tax on capital gains as agreed in the bilateral tax treaties of the home State on the same conditions as IORPs located in the home State.

This approach would allow a centralised arrangement for the custodian of the EIORP claiming treaty relief. It is in line with the pooling concept of the EIORP proposal.

5.3.9. Tax on the EIORP as a vehicle or fund itself

The result of the EIORP being established as a legal structure in one Member State is that central liability for taxing the EIORP itself lies in the home State.

5.3.10. Tax on benefits

The basic principle is that each element of the benefit attributable to each national section should be taxed as if the benefit was being paid from a pension arrangement located in that Member State.

The matter is, however, also subject to the network of bilateral tax treaties. Most **bilateral taxation treaties** provide that the exclusive right of taxation lies with the State in which the pensioner is tax resident.

Consequently, the EIORP will deduct – if applicable – any wage tax and pay it to the State of tax residence of the pensioner.

In some bilateral tax treaties whilst the basic right to tax is passed to the State where the pensioner is resident for tax purposes, the home State is able to withhold a certain amount of tax on any benefit payments (typically this tax can then be offset against the individual's tax liability in their State of tax residence). In this case, the EIORP would be responsible for ensuring that the appropriate level of withholding tax is deducted from the element of the benefit deemed to have been earned in respect of service in that Member State and pays this tax to the relevant fiscal authorities.

5.4. Towards EIORP 2005 – further issues

By the time of the implementation-deadline in September 2005, there must be a framework which not only enables but encourages the creation of EIORPs.

Working out a viable EIORP concept in detail will require filling in the ‘fine print’ on many matters which go beyond the ‘hard core’ of issues addressed in this Section. Some of these, and suggestions on how to take them forward in an ‘EIORP-friendly’ way, are the following:

5.4.1. Language requirements

The IORP Directive is silent on language requirements. They could be part of the information rules which individual Member States may fill out under the Directive.

The EFRP would urge Member States to consider flexible language rules which could allow, for example, that the governing document of the IORP would be in the language of the home State.

A translation into the language of a host State could be made available at the request of a minimum of 50 members. National rules could also allow members to agree to other languages subject to agreement by at least 50 members.

5.4.2. Pan-European members’ governance aspects

To ensure that appropriate pan-European considerations are applied, the selection of representatives on the governing board (e.g. the trustees in the case of a trust), could be determined at European level rather than on a national basis. This may include the involvement of a European Works Council or any other selection process agreed upon between a sponsor and members. The solution proposed in the July 2000 EIORP report remains valid, according to the EFRP. In the long term, there may be EU-level legislation on this aspect but we recognize that at this stage some national governance structure may be unavoidable.

5.4.3. Dealing with surpluses

The EFRP suggests that ownership of a surplus and how it may be calculated could be decided on the basis of home State rules. This would ensure that the entire surplus emerging to the EIORP is dealt with homogeneously and that EIORP members are not either unfairly advantaged or disadvantaged by different rules in their respective sections.

5.5. Conclusion

An EIORP structured as above will not only comply with home State prudential rules but also, by virtue of its national sections, the tax requirements of its home State and each host State in which it is active.

The road to pan-European pension funds and the cross-border provision of pension schemes is open.

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6. Next steps for realizing EIORPs

The following steps are needed to generate further progress towards EIORP 2005:

6.1. Member States should implement the IORP Directive in an 'EIORP-friendly' manner

Provided it is consistently implemented across the EU, the IORP Directive should greatly simplify matters.

The EFRP wants Member States to look to the future when implementing the Directive. They should fill in the framework provided by the Directive not only with a view to creating a convenient domestic regime but one which is 'EIORP-friendly.'

6.2. Regulators and supervisors should optimise their coordination platform

The IORP Directive will inevitably lead to upgrading the existing forms of cross-border cooperation between national supervisors. A smooth information flow on host State social and labour law as well as efficient notification procedures will greatly assist EIORPs to operate effectively across borders.

6.3. Facilitate conversion into EIORPs

The EFRP hopes Member States will see the point of having EIORPs established in their territory. Therefore, they should facilitate conversion into an EIORP from already existing pension funds removing any risk of incurring stamp duties, capital duties, etc.

6.4. Agreements with non-EU states

To complete the picture, it is necessary to flag the need that Member States reach agreement with third countries about the status of EIORPs to ensure appropriate treatment in the context of bilateral tax treaties.

The EFRP is happy to cooperate with any pension scheme administrator or financial services provider prepared to develop a prototype EIORP during the implementation period.

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Solvency / funding requirements

AUSTRIA	BELGIUM	DENMARK
<p>1. Book reserves</p> <p>2. Pensionskassen</p> <p>3. Direct insurance</p> <p>4. Support funds (rarely used)</p> <p>1. Book reserves</p> <ul style="list-style-type: none"> • The minimum liability calculated under the following requirements: valuation rate of interest 6% actuarial funding method individual attained age demographic assumptions prescribed tables • At least 50% of the book reserves must be matched with ear-marked asset holdings • Pensioners are preferential creditors to these assets <p>2. Pensionskassen</p> <ul style="list-style-type: none"> • Fund must have at least 1,000 members • Fund must be joint stock company • Liabilities must be fully-funded • Funding method and assumptions must be set out in a technical business plan • Assets are valued at market value <p>3. Direct Insurance</p> <ul style="list-style-type: none"> • There is a tax advantage in that the employer contribution of up to € 300 per annum per employee is not taxable for employees provided plan applies to all employees 	<ul style="list-style-type: none"> • Value of assets held must be at least as great as the present value of accrued benefits on the following assumptions: Rate of interest 6% Projection of salaries 0% • Nil turnover and disability assumptions, prescribed mortality tables • Annual reporting required 	<ul style="list-style-type: none"> • Majority of plans are defined contribution plans financed via group insurance contracts and savings contracts • Contributions usually invested in endowment or deferred annuity contracts • Calculated using an interest rate of 2 – 5% per annum • Pension promise must be funded • No obligations relating to disclosure or managerial involvement of members • Industry-wide pension funds subject to life insurance regulation

Solvency / funding requirements

FINLAND	FRANCE	GERMANY
<ul style="list-style-type: none"> • Assets of pension foundation fully separated for employer • At least 2 members of administrative board are employees • Number of employees restricts whether pension foundation or direct insurance is used • Funding required up to 100% by 2004 (pensioners), 2010 (actives), on a current basis 	<ul style="list-style-type: none"> • Most pension benefits provided through ARRCO and AGIRC arrangements, and operate on a pay-as-you-go basis • Top-up schemes are usually individually insured plans (les régimes "chapeau") • Book reserves not normally used because of absence of tax deductibility 	<p>Four methods:</p> <ol style="list-style-type: none"> 1. Book reserves 2. Direct insurance 3. Pensionskassen (pension fund) 4. Support funds <p>1. Book reserves</p> <ul style="list-style-type: none"> • Liabilities recognised in company balance sheet. The minimum liability is calculated according to German tax code: Valuation of interest: 6% Actuarial funding method: individual entry age with a minimum entry No projection of benefits: prescribed • Companies with book reserves must participate in a compulsory pension benefit insurance system. <p>2. Direct Insurance</p> <ul style="list-style-type: none"> • Premiums currently calculated using 4% discount rate; for contracts concluded after 30 June 2000, a discount rate of 3.25% has to be used <p>3. Pensionskassen</p> <ul style="list-style-type: none"> • Liabilities must be fully-funded using a discount rate of max. 4% • Funding method and assumptions to be documented in a technical business plan and agreed with the supervisory authority: <ul style="list-style-type: none"> - standard demographic assumptions - nil turnover - assets are valued at the historic minimum of their book or market value • An additional solvency margin is also required <p>4. Support funds</p> <ul style="list-style-type: none"> • Separate legal entities from the company with limited pre-funding provisions • Compulsory participation in pension benefit insurance system

Solvency / funding requirements

GREECE	IRELAND	ITALY
<ul style="list-style-type: none"> Occupational pension provision not widespread (only 10% of private sector employees covered) Where provided, benefits are predominantly secured by deposit administration contract with an insurer, or less commonly, through direct insurance Pension funds uncommon and book reserves almost unknown (because not tax deductible) 	<ul style="list-style-type: none"> Pensions Act sets out minimum funding / reserving requirements for all defined benefit schemes <ul style="list-style-type: none"> - actuarial certification at least every 3 1/2 years - assets measured at market value. Asset value used for funding status may exclude concentrations of investments - assets sufficient to secure liabilities measured using pensionable salary at the date of certification, pensionable service since 1 January 1991, statutory pension revaluation of lesser of 4% and inflation Method and assumptions are not prescribed, although the actuary subject to the actuarial guidance notes 	<ul style="list-style-type: none"> Since 1997, new plans have not been allowed to directly manage fund assets, but instead have to use an insurance company, a registered investment broker (SIM), a bank or a registered asset manager (SGR). Pre-existing plans (currently with the choice using direct insurance, a self-administered fund or a book reserve) have until 2007 to convert

LUXEMBOURG	NETHERLANDS
<ul style="list-style-type: none"> Pensions Law of 1999 allows: <ol style="list-style-type: none"> 1. direct group insurance 2. book reserves (unfunded book reserves disallowed w.e.f. 1/1/02) 3. pension funds with separate legal status from employer Book reserves assumptions (mortality tables, max. 5% interest rate, no salary or pension increases) stipulated by tax law; liabilities actuarially calculated. Insolvency insurance compulsory Book reserves with reinsurance being replaced by direct group insurance Pension funds growing in popularity since change in tax treatment under 1999 Pensions Law, but must be constituted as an ASSEP, SEPCAV or a non-profit making organisation. Annual actuarial valuations compulsory. Minimum funding requirement 	<ul style="list-style-type: none"> Funding is compulsory for occupational schemes. The three main ways are: <ol style="list-style-type: none"> 1) industry-wide schemes 2) company schemes 3) insurance contracts Actuary and auditor must both be appointed by the board Actuarial valuation requirements (frequency, interest rate < 4% p.a., nil salary inflation or withdrawal documents) Assets plus future contributions > liabilities, unless reinsurance is used Assets based on market value

Solvency / funding requirements

PORTUGAL	SPAIN
<ul style="list-style-type: none"> • Administered by authorised management society (with capital and solvency requirements) • Periodic review of technical resources • There is a minimum solvency requirement for the market value of the assets to exceed a minimum liability level, calculated using a specified mortality table, a discount rate of 4.5%, no future salary increases and no future pension increases unless contractually granted. Special exemptions exist following approval of the authorities. 	<ul style="list-style-type: none"> • Book reserves outlawed by 1995 pensions legislation. External funding through qualified pension plan or insurance contract now compulsory in most organisations (main exclusion finance sector companies) • Qualified pension plans must: <ul style="list-style-type: none"> - hold a 4% margin of actuarial liability; plus an additional 0.3% margin if death/disability lump sums covered. The solvency margin must always exceed €225,380 - have an actuarial valuation carried out at least every three years - have advance funding with contributions actuarially determined. Contribution ceiling is €8,000 for both employer and employee, separately. The ceiling increases by €1,250 each year from age 53 up to €24,250 at age 65 - have a control committee with equal employer/employee representation
SWEDEN	UK
<ul style="list-style-type: none"> • Retirement benefits for salaried employees under the ITP system must either be secured by: <ul style="list-style-type: none"> - direct insurance with the Alecta insurance company - book reserves - a pension foundation • Both the book reserves and direct insurance use the level annual funding method with prescribed discount rates (w.e.f 1/5/99 3.0% for direct insurances and 3.5% for book reserves and pension foundations reduced to 3.0% where inflationary increases guaranteed) • Book reserves require insolvency insurance • Pension foundations are separate legal entities from the sponsoring employer with equal employer/employee representation 	<p>Two methods used:</p> <ul style="list-style-type: none"> - Direct insurance - Self-administered pension fund <ul style="list-style-type: none"> • The Pensions Act 1995 introduced a minimum funding requirement (MFR) on approved defined benefit plans from 2002, to be fully-operative by 2004. • The MFR "solvency" test requires action to be taken if funding fall below certain prescribed levels. The funding level is to be calculated on a market value basis with liabilities being calculated by reference (broadly) to UK equities (for non-pensioners) and UK bonds (for pensioners). • Full actuarial review every 3 years, and certification of schedule of (minimum required) contributions. Following the recent Government review, the MFR is intended to be abolished and replaced by scheme-specific funding requirements. It is not entirely clear how these requirements will be decided upon or when the changes will take place. However, company pension funds will still have to demonstrate a reasonable level of solvency on a prescribed basis.

EIORP > *APPENDIX 2*

2005

Investment requirements

AUSTRIA	BELGIUM	DENMARK
<p>1. Pensionskassen</p> <p>Equities, options & convertible bonds Max. 50%</p> <p>Foreign equities Max. 30%</p> <p>Foreign currency loans Max. 50%</p> <p>Euro bonds Min. 35%</p> <p>Loans to sponsoring company Max. 10%</p> <p>Real estate Max. 20%</p> <p>2. Book reserves</p> <p>50% of the book reserves must be invested in earmarked assets following the same restrictions that apply to the investment of pension fund assets. In the event of insolvency, beneficiaries are preferential creditors.</p> <p>3. Support Funds</p> <p>No investment restrictions</p>	<p>New framework urges funds to invest prudently, with little prescription of minimum / maximum investment percentages. For pension funds, investment restrictions only apply to assets relating to required legal minimum provisions, as follows:</p> <ul style="list-style-type: none"> • Bonds issued outside EEA/OECD and certain other countries: Max. 10% • Mutual funds not EU regulated: Max. 10% • Non-quoted securities: Max. 10% • Real estate certificates: Max. 5% per issuer • Options/future/other derivatives not serving as security: Max. 5% • Non-guaranteed loans: Max. 1% per issuer & 5% in total. • Direct real estate in one value: Max. 10% per issuer • Equities, bonds from a single issuer and/or loans to one borrower: Max. 5%. <p>For other assets, the only maximum that applies is a limit of 15% in equities, bonds and loans of sponsor company (self-investment).</p>	<ul style="list-style-type: none"> • Currency matching rule (of which 50% can be in € or in an EU currency): Min. 80% • Total amount of unlisted shares: Max. 20% • Maximum 70% investment in high-risk assets¹ • Unlisted certificates (shares etc.) and other securities which are listed in countries not belonging to Zone A (included in the 70% above): Max. 10% • Total technical reserves which can be invested in one single issuer/debtor: Max. 3% per issuer <p>EXCEPTIONS:</p> <ol style="list-style-type: none"> 1) single investments in properties: Max. 5% per issuer 2) mortgage credit institutes: Max. 40% per issuer 3) commitment to a bank: Max. 10% per issuer 4) single investment in a subsidiary engaged in banking operations: Max. 5% per issuer 5) single fund of an investment fund²: Max. 10% per issuer <ul style="list-style-type: none"> • Consolidated assets – as % of parent companies technical provision: Max. 5% • No investment restrictions for free reserves exceeding actuarial liability
<ol style="list-style-type: none"> 1. High risk assets are: <ul style="list-style-type: none"> - UCTTS (EU Directive 85/611). - Other bonds and loans listed on public stock exchanges of Zone A (= OECD); (other than those considered “low-risk” and also belonging to Zone A such as government bonds; listed bonds issued by international organisations; mortgage-credit bonds as well as other bonds issued in Denmark or similar bonds issued in Zone A; land and buildings and/or loans secured by registered mortgages thereon; loans secured on the company's own life insurance policies up to their surrender value). - Shares and other certificates of capital participations listed on the public stock exchange in Zone A. - Land and buildings not considered “low-risk” (see 2). 2. Special concessions apply if the fund invests in government bonds and mortgage bonds. 		

Investment requirements

FINLAND	FRANCE	GERMANY
<p>Main restrictions of the Decree on the coverage of the pension liabilities of pension foundations issued on 23/12/1998:</p> <ul style="list-style-type: none"> • Quoted shares and bonds of companies domiciled in an EEA state + units in investment funds that invest their assets in shares and bonds: Max. 50% • Bonds traded on a regulated market in an EEA state or issued by credit institutions (excl. deposit banks) or corporations licensed or domiciled in an EEA state: Max. 50% • Units in an individual investment fund: Max. 25% per issuer • Real property and shares in real estate corporations in an EEA state: Max. 40% • Real property and shares and holdings in real estate corporations, mortgages on real estate in EEA: Max. 70% • Property: Max. 25% • One single investment target: Max. 15% per issuer • Units in an interest funds: No limit • Currency matching: Min. 80% 	<p>AGIRC</p> <p>Domestic equities Max. 20%</p> <p>Foreign equities Max. 20%</p> <p>Foreign bonds Max. 20%</p> <p>Profit sharing plan assets (compulsory for companies with over 50 employees) must either be invested in SICAVs (if less than 100 employees) or in the company shares. Management of these funds assured by separate legal entity. Where a company savings plan (PEE) is established, accumulated funds have to be invested in equities.</p>	<ul style="list-style-type: none"> • Pension funds: no restrictions with regard to the diversity of investment • Book reserves and support funds: no restrictions • Direct insurance schemes and Pensionskassen: investments must comply with the detailed requirements of §54-VAG (insurance supervisory law). The main restrictions are: <p>EURO Equities Max. 35%³ (in any one company) (Max. 10% of share capital)</p> <p>non-EURO equities Max. 10%</p> <p>EURO bonds Max. 50%</p> <p>Non-EURO bonds Max. 10%</p> <p>Cash Max. 50%</p> <p>Property Max. 25%</p>
<p>3. + 5% (additional) if investments fall within the categories summed up in the “opening clause” in the German Regulation on technical reserves of insurance companies, + 5% (additional) if permission is granted by supervisory authority</p>		

Investment requirements

GREECE	IRELAND	ITALY
<ul style="list-style-type: none"> • Significant investment in government bonds • Limited domestic investment market. Foreign investment managers can now be used. Insurers are allowed to freely invest reserves, but have to bear downside risk. 	<ul style="list-style-type: none"> • Few restrictions other than self-investment • Must display prudent investment principles • Larger funds tend towards direct investment, with smaller ones using unit-linked managed funds 	<ul style="list-style-type: none"> • Cash: Max. 20% • Investment funds (closed or real estate): Max. 25% of the investment fund (same issuer); Max. 20% (total) • Bonds and equities not traded in regulated markets issued in OECD area: Max. 50% • Equities not traded in regulated markets issued in OECD area: Max. 10% • Bonds and equities not traded in regulated markets issued in OECD area (excl. bonds and equities issued by OECD countries or international organisations): Max. 20% • Bonds and equities traded in regulated markets issued in non-OECD area: Max. 5% • Bonds and equities issued by same issuer or by the same group: Max. 15% of the PF assets • Bonds and equities issued by same issuer or by the same group not traded in EU, USA, CANADA, JAPAN regulated markets, except bonds issued in OECD area: Max. 5% of the PF assets • Equities issued by the group of sponsor undertaking: Max. 20% of PF assets; Max. 30% of PF assets (for occupational PF) • Equities giving the right to vote issued by the same issuer (listed), (PF is not allowed to control companies): Max. 5% (same issuer) • Equities giving the right to vote issued by the same issuer (not listed) (PF is not allowed to control companies): Max. 10% (same issuer) • Currency matching: 1/3 • Options, futures and others derivatives used only for hedging • Leverage not allowed <p>* THESE RULES DO NOT APPLY TO PENSION FUNDS SET UP BEFORE NOVEMBER 1992 ("OLD" PENSION FUNDS)</p>

Investment requirements

LUXEMBOURG	NETHERLANDS
<p>Principle of spreading risk Prudent investments required</p>	<ul style="list-style-type: none"> Requires prudent investments, with investments to be made in a solid way Maximum 5% self-investment but up to an additional 5% can be 'self-invested' if in case of availability of surplus assets. Self-investment restriction can be waived, on application to the supervisor (Verzekeringkamer).
PORTUGAL	SPAIN
<p>Restrictions are:</p> <ul style="list-style-type: none"> Equity/loans issued <ul style="list-style-type: none"> by same company Max. 10% per issuer by same group of companies Max. 20% per issuer by the pension fund sponsor Max. 5% in total Equity as a % of the issuer's total capital Max. 10% per issuer Property investments (used by Fund Sponsor or associate) Max. 25% Stocks in foreign currencies (unless hedged back by Euro) Max. 30% Direct equity holdings, convertible bonds, warrants, investment funds mainly invested in equities Max. 55% Assets not listed on an OECD country stock market Max. 15% Non-harmonised investment funds Max. 5% Land, property (incl. property inv. funds), mortgage loans & shares / bonds issued by companies with essentially property income Max. 50% Land and buildings that are currently being used by the pension fund sponsor or an associate Max. 25% Self-investments forbidden are: <ul style="list-style-type: none"> assets issued by the pension fund manager assets issued by entities that participate in the direction of the pension fund manager or that hold more than 10% of the capital of the pension fund manager, except if those assets are listed in a OECD country stock market assets issued by the pension fund sponsor, except if those assets are listed in a OECD country stock market assets issued by companies of which directors of the pension fund manager hold more than 10% of the capital assets issued by companies of which the directors of the pension fund manager are also directors <p>Note that the limits for foreign investments and equities may be increased if supported by an asset liability study justifying higher limits.</p>	<p>The assets of qualified plans must be held separately from company assets.</p> <ul style="list-style-type: none"> Quoted securities, bank deposits, property or mortgages: Min. 90% Banking deposits: Max. 15% Securities issued or guaranteed by the same entity: Max. 5% per issuer Sum of securities issued or guaranteed <ul style="list-style-type: none"> by the same entity and credits granted or guaranteed by it: Max. 10% per issuer by entities belonging to the same group and credits granted or guaranteed by it: Max. 10% per issuer Cash or short term investments (up to 3 months): Min. 1% No restrictions on equities or foreign investments <p>Restrictions on mutual provident societies*:</p> <ul style="list-style-type: none"> Stock or rights attaching to securities issued by a company*: Max. 5% per issuer Non-negotiated stock or rights attaching to securities in regulated markets: Max. 10% Deposits in credit institutions; stock attaching to securities, excluding shares in a single entity: Max. 40% Non-guaranteed or unsecured loans to societies registered in some EU member states whose shares are negotiated in OECD regulated markets* Max. 5% Real estate, real estate stamp duties and participation in investment funds: Max. 45% Investment in a single piece of real estate: Max. 10% Cash & cheques: Max. 3% <p>4. The following categories are not subject to these limits:</p> <ul style="list-style-type: none"> Investments in group investment institutions Deposits in endorsing companies on account of accepted reinsurance operations Financial assets issued by entities for international organisations to which member states of the European economic space belong Credits against Inland Revenue <p>5. This limit will be 10% if the Mutual Provident Society does not invest more than 40% in shares exceeding 5%.</p> <p>6. A limit of 1% for a single debtor cannot be exceeded.</p>

Investment requirements

SWEDEN	UK
<ul style="list-style-type: none"> • Corporate pension funds must use a “prudent approach” and have their asset allocations approved by a regional government representative. • “bigger friendly societies”: <ul style="list-style-type: none"> - Equities: Max. 25% - Property: Max. 25% - Fixed income: Max. 100% - Currency matching: Min. 80% - No investment restrictions on assets held as surpluses. • “small friendly societies”: <ul style="list-style-type: none"> - Equities: Max. 0% - Property: Max. 100% - Fixed income: Max. 100% - Currency matching: Min. 100% • Pension Foundations: <ul style="list-style-type: none"> - Prudent person rule - Self-investment into the sponsoring company:Max. 5% 	<ul style="list-style-type: none"> • Self-investment: Max. 5%

EIORP > APPENDIX 3

2005

AUSTRIA	BELGIUM	DENMARK
<p>1. Pensionskassen</p> <ul style="list-style-type: none"> • Employer contributions deductible up to 10% of payroll. • Employee contributions possible up to a maximum of employer contributions; tax-deductible, subject to prescribed limits varying with the employee's marital status. • Employer funded pension benefits are taxed as assessable income. Only 25% of employee funded pension benefits are taxable. • Pension fund investment income is not subject to tax, provided a wide range of requirements are satisfied (covering the establishment, administration, security of assets, solvency standards, trust deed, actuarial supervision, investment restrictions, reporting and disclosure), and employees' participation in plan management. • The insurance tax is 2.5% <p>2. Book reserves, support funds, direct insurance</p> <ul style="list-style-type: none"> • Different tax rules apply to these funding vehicles. However, their importance is declining. 	<ul style="list-style-type: none"> • To be deductible, employer and employee contributions which are paid to a company plan, must conform to the following: <ul style="list-style-type: none"> - benefit from all sources is not excessive (based on projected benefit of 80% of final salary) - employee contributions are compulsory and deducted regularly from salary - contribution rates defined in pensions rules - contributions are irrevocable - the fund is stand-alone • All pension benefits are taxed as earned income, subject to a tax credit on retirement pensions. • Lump sum retirement or death benefits are taxed (including social security, communal, solidarity contribution) at a flat rate in the year they are received, based on the mathematical reserve established at age 60. • Pension fund assets taxed at 0.17%. • Pension fund investment income has withholding tax of 15% (fixed income) and of 25% (dividends from shares). • Contributions are taxed at 4.4%, plus 8.86% social security contribution. 	<ul style="list-style-type: none"> • Employer contributions to a pension plan are deductible provided (in effect tax exempt for employee): <ul style="list-style-type: none"> - the benefits are not payable prior to age 60 - lump sum retirement payments are made between ages 60-70 - contributions cannot be returned unless employee leaves before they are legally vested. • Employee contributions are deductible without limit, if contributions paid via withholding towards pension scheme. • The combined employer and employee contribution to lump sum plans limit for deductibility is DKK 38,900 per annum. The tax effect for employee is not as advantageous as with annuity pensions, as contributions to lump sum pensions are deductible only at a rate of approximately 44% rather than the 59% top tax rate. • Employer contributions are not a benefit-in-kind if above conditions fulfilled. • Pension benefits taxed as earned income at up to 59% (plus state church tax, labour market contribution and special 1% additional contribution). • Lump sums are taxed at 40%. • Surrender value for pension benefits before retirement taxed at 60%. • Tax rate on pension investment income is 15% for all investments in bonds and shares; real estate investments are free except for certain investments in real estate made prior to certain dates in the late 1990s and certain index-linked bonds.
<p>Limits for the purposes of determining the tax-deductibility of contributions are varied by country. Limits are determined by reference to some projected retirement multiple of final pay, contributions being retained to the fund for a prescribed period of time, a multiple of the employee's/employer's contribution, social security ceilings.</p>		

FINLAND	FRANCE	GERMANY
<ul style="list-style-type: none"> • Employer contributions: <ul style="list-style-type: none"> - fully deductible - not a benefit-in-kind (up to prescribed maximum). • Employee contributions are fully tax-deductible, up to a prescribed maximum level of pension cover if paid to a voluntary unregistered plan. • Maximum based on 66/60% of earnings; 60% of any benefit-in-kind amount is deductible for the individual, subject to a maximum of approximately € 5,000. • Pension insurance premiums are not tax-deductible if paid to a company that does not have a branch office in Finland. Such premiums are benefits-in-kind. • Pension benefits are taxed as earned income. Lump sum benefits are exempt from tax. Pensioners receive special allowances. 	<ul style="list-style-type: none"> • Employer and employee contributions: <ul style="list-style-type: none"> - to social security fully deductible, with few exceptions - complementary schemes are deductible subject to certain limits provided: <ul style="list-style-type: none"> - employee affiliation must be compulsory - the contributions fund a retirement benefit - employer must contribute - contributions to group insurance contract should be uniform across a group of participants - excess contributions subject to social security contributions - contributions to a group insurance contract are deductible, provided: <ul style="list-style-type: none"> - benefit guarantee is permanent - categories of beneficiaries are clearly defined - retirement benefits are not excessive - if made to a DC plan, employee co-contributions are required • Top-hat policy contributions are treated as benefit-in-kind. • Retirement pensions are taxed as earned income, subject to certain rebates. • Contribution taxes apply to certain insurance premiums. 	<ol style="list-style-type: none"> 1. Book reserves (direct pension pledge) <ul style="list-style-type: none"> • Internal financing through provisions on the balance sheet. • Annual allocation for the pension provision liabilities is a full tax deductible expense with the limits of §6a Income Tax Act. • Pension payment is taxable income for the retiree, but special allowances apply. • No employee contributions allowed, but deferred compensation is possible. 2. Direct Insurance <ul style="list-style-type: none"> • Employer contributions are tax-deductible but also a benefit-in-kind for the employee. • Flat rate tax (company assuming employee's tax liability within certain limits) only allowed if policy does not mature before age 60 and if its prior surrender by the employee is excluded; limited to an amount of € 1,752 in general. • Salary deferral arrangements are possible and the system of flat-rate taxation can be adopted. • The benefits from a directly insured plan are tax free in most cases, if certain conditions are met (only the assumed interest content of annuity is taxed). 3. Pensionskassen <ul style="list-style-type: none"> • Contributions up to 4% of the SSCC remain income tax free with benefits being fully taxable; on contributions over this the same flat-rate taxation applies as for direct insurance; salary deferral arrangements are equally allowed. 4. Support funds <ul style="list-style-type: none"> • Employer contributions are tax-deductible. There are no employee contributions, but salary deferral is again possible. Taxation of contributions and benefits is the same as that for book reserve benefits. • There is a limit on the amount of individual benefits. • The extent of tax deductibility in respect of employer contributions depends on whether benefits are reinsured. 5. Pension Funds <ul style="list-style-type: none"> • Employer contributions are tax-deductible, but also a benefit-in-kind for the employee with 4% SSCC remaining tax free. Benefits are full taxed, subject to allowances being made. • Salary deferral schemes are possible.

GREECE	IRELAND	ITALY
<ul style="list-style-type: none"> • Employer contributions are not fully deductible (limited to 5% of the normal gross salary, with a maximum deductible of € 440.21 per employee). Employer contributions below this limit are not treated as a benefit-in-kind, but any above are. • This tax treatment applies if the plan's benefits are guaranteed on basis of approved insurance tariffs. Similar tax relief available for non-insured plans by special approval, provided certain governance conditions met. • Allocations to book reserves do not attract tax relief. • Employee contributions attract tax relief in same way as individual life insurance premiums. • Pensions are taxed as earned income. • Lump sum benefits are tax exempt if paid by life insurance companies. 	<p>For approved plans (i.e. established under Trust with assets segregated from company):</p> <ul style="list-style-type: none"> • Employer contributions are deductible and not treated as a taxable benefit-in-kind. • Employee contributions are tax-deductible (up to limits). • Pension benefits are earned income. Lump sum, if allowed, is tax free. • Investment income and capital gains are not taxed. • Refunded employee contributions are generally taxed at 20%. 	<ul style="list-style-type: none"> • Employer contributions are fully deductible provided: <ul style="list-style-type: none"> - Plan relates to well-defined group of employees and has well defined rules - Contributions and benefits agreed by employer and employees through National Collective Agreements, company regulation or company agreement - An external pension fund exists (a trust arrangement which ensures employer contributions are not taxed as a benefit-in-kind) • Employee contributions are deductible up to the lower of 12% of annual salary or € 5,164, provided that 50% of total contributions come from TFR (Trattamento di Fine Rapporto) annual accruals. For an employee hired after 28 April 1993, the whole of the TFR has to be diverted into the pension fund. • To qualify for full fiscal incentives, lump sum payment at retirement must not exceed 1/3 of capital. • Sums paid as benefits are taxed only if not already taxed as contributions or fund income: <ul style="list-style-type: none"> - Capital: taxed on average rate of previous five years. - Annuities: taxed as personal income at the marginal rate. • A tax of 11% is levied on investment income of pension funds.
LUXEMBOURG	NETHERLANDS	
<ul style="list-style-type: none"> • Employer contributions are tax-deductible within certain limits (vary between DB and DC plans); and are in such case not taxed as a benefit-in-kind. • Employee contributions tax-deductible, up to limit. • Pension benefits taxed as earned income for the part of benefit which accrued prior to 1 January 2000 and tax exempt for the part which accrued after 1 January 2000. • Lump sum benefits are fully exempt from income tax for part which accrued after 1 January 2000. • Portion that accrued prior to 1 January 2000 only taxed if funded by book reserves. • There is a 20% tax on employer contributions/book reserve allocations, which can be deducted from liability for corporate tax. • Both employer and employee contributions are subject to levy of 1% as dependency insurance contribution. • Investment income from SEPCAV fund is tax exempt. Tax regime of ASSEP fund similar to that of an ASBL. 	<ul style="list-style-type: none"> • Employer contributions are fully deductible (to either approved or non-approved plans) provided plan meets the following criteria: <ul style="list-style-type: none"> - provides exclusively retirement, death and disability benefits, for employees - benefits within accepted limits - in pension form - guaranteed by insurer or pension fund • Insurer or pension fund established in the Netherlands • If non-approved, employer contributions will be taxed as a benefit-in-kind. • Employee contributions are fully deductible unless the plan is non-approved, in which case benefits must be in form of pension for tax deductibility to apply. No tax relief on policy paying lump sum benefits. • Pension benefits are taxed on a scale which varies slightly from the income tax scale. • No tax is payable on pension foundation assets. 	

PORTUGAL	SPAIN
<ul style="list-style-type: none"> • Allocations to a book reserve are not deductible. • Employer contributions to pension funds and insurance contracts will be deductible up to a maximum 15% of payroll, provided that: <ul style="list-style-type: none"> - the plan is open to all permanent employees and is non-discriminatory - retirement benefits are not paid as a lump sum although up to one third may be taken as a lump sum, with the balance being in the form of an annuity - benefits are paid at the same time as social security benefits and to same beneficiaries - funding is external • Employer contributions to funds with vested rights are taxed as a benefit-in-kind to employee unless the above conditions for tax qualified plans are observed. In this case, there is no additional employee tax liability. • 25% of employee contributions to company plan funded through a pension fund are tax-deductible, up to limits. Lower limits exist for plans funded through insurance contracts. • Pension benefits are tax free, up to limits. • Benefits resulting from book reserve arrangements are tax-deductible for the employer when paid, and are earned income for the employee. • Lump sum benefits are subject to tax, depending on the size of the interest component and timing of the payment of premiums. • Investment income on pension funds and insurance contracts funding pension plans are exempt from taxes. <p>Notes: The 15% limit applies cumulatively to all employee benefit plans, including death & disability covers, medical care and pension funds. If the sponsor is not covered by social security (e.g. banks) the limit is increased to 25%.</p>	<ul style="list-style-type: none"> • Employer contributions to a company tax qualified pension plan (CTQPP) are tax-deductible, within limits varying with beneficiaries' age. Although company contributions to a CTQPP are taxable as a benefit-in-kind, the combined effect on personal tax is neutral because the employee may claim a tax deduction by the same amount. Company contributions to a group insurance policy are only tax deductible from corporate tax if they are imputed to employees. • Since 16 November 2002, the practice of book reserving pension obligations has been outlawed. • Employee contributions are tax-deductible, within limits varying with age of beneficiaries, if paid to qualified plan only. • All CTQPP benefits are subject to income tax. Withholding tax on pensions applies at between 0% and 45%. Retirement lump sums are taxed as income yet keeping in mind that the taxable basis equals only 60% of the vested rights; the remaining 40% are tax exempt if over two years have elapsed since payment of the first contribution. • Investment income from qualified plans is tax-free. • Investment income from non-qualified plans is subject to a 25% withholding tax. • Favourable tax treatment requires satisfaction of: <ul style="list-style-type: none"> - non-discrimination and eligibility criteria (all employees with at least two years' service). NB. Whatever is agreed in the plan specification is deemed non-discriminatory. <ul style="list-style-type: none"> - irrevocable contributions - immediate full vesting and portability - limit on total contributions - advance funding, according to actuarial advice (review every 3 years) - solvency standards - equal employee/sponsor representation on plan management board
SWEDEN	UK
<ul style="list-style-type: none"> • Contributions to plans are deductible for the employer, and not considered a benefit-in-kind if: <ul style="list-style-type: none"> - paid for collective bargaining agreements; or - satisfy prescribed maximum benefit and contribution rules. • Contributions are levied an alternative social security tax of 24.26%. • All plans are not contributory for employees. • Allocations to book reserves are also subject to 24.26% social security tax. • Contributions to pension plans other than those based on collective agreements may be tax-deductible under certain conditions and limits. • Premium payments are not taxable income for the employee. • Pension payments paid by the employer are tax-deductible and subject to the 24.26% social security tax. • Pension benefits are subject to income tax. • The greater of pension liability and assets are levied as an investment return tax of 15% of a notional return. 	<ul style="list-style-type: none"> • Employer contributions deductible, if fund is run as a trust and conforms to benefit limits. • Employee contributions (including AVCs) are deductible up to 15% of earnings. • Pension benefits are taxed as earned income. • However, a tax free lump sum may be taken. • Investment income is tax-free, except for 25% withholding tax on UK dividends.

EIORP > *APPENDIX 4*

2005

1. AUSTRIA

- Book reserves or direct insurance have no employee representation.
- Pension funds: member-representatives are elected to the supervisory board; employer representatives may outnumber member-representatives by no more than one director.

2. BELGIUM

- If employees contribute, then at least 50% employee representation is required on the fund's Board of Directors.

3. DENMARK

- Equal employee and employer representation is normally required.

4. FINLAND

- If a pension foundation is established then there must be at least 5 employees on the administrative board.
- If it is a pension fund then there must be at least 3 employees on the administrative board.

5. FRANCE

- This is very rare in the self-administered funds. AGIRC and ARRCO have equal employer and employee representation.

6. GERMANY

- There is only a requirement for employee representation for book reserves or direct insurance arrangements when considering benefit design.
- For pensionskassen and Unterstützungskassen, the works council's involvement ensures equal employer/employee representation on the supervisory board.

7. GREECE

- Occupational pension schemes are rare so there is no legislation on this. However, approved schemes must have one government representative on the board of the trustee company.

8. IRELAND

- If a fund has more than 50 members, members can call for a member trustee election for either 2 member nominated representatives or an equal number of member and employer representatives.

9. ITALY

- There are no requirements for funds established before 1993.
- For new pension funds there has to be equal representation of employer and employee representatives.

10. LUXEMBOURG

- Employee representative(s) are to be consulted whenever a plan is set up, amended or terminated.

11. NETHERLANDS

- There must be equal numbers of employee and employer representatives on the board of directors in a pension fund.

12. PORTUGAL

- Obligatory in case of funds funding contributory schemes. Optional for the remainder but not relevant in practice.

13. SPAIN

- Majority employee representation is required on the plan management board.

14. SWEDEN

- The employer and employees each elect half the board of a pension foundation.

15. UK

- There is a minimum requirement for 2 member nominated trustees where the scheme has more than 100 members (or 1 where there are less than 100 members) and 1/3 of the total trustees.

EIORP > APPENDIX 5

2005

Prudency Requirements

AUSTRIA	BELGIUM	DENMARK
<p>* Who operates private and occupational pension schemes? Insurance companies and pension funds.</p> <p>* What has to be approved and who by? Insurance companies need to be approved by the Austrian Federal Minister of Finance. To operate a pension scheme, the company needs a special permit from the same Minister. The pension fund as well as the insurance company needs a business plan (Geschäftsplan), approved by the Ministry of Finance. If a business has no works council, an individual can participate in a pension fund by individual arrangement if this is approved by the Federal Minister of Labour and Social Affairs in advance.</p> <p>* Is there a regulatory authority? Minister of Finance.</p> <p>* Are there sanctions for non-compliance? Yes, civil and criminal.</p> <p>* Comments: No</p>	<p>* Who operates private and occupational pension schemes? Insurance companies operating group insurance contracts and pension funds.</p> <p>* What has to be approved? Pension funds must have their rules approved, and meet various actuarial rules (minimum funding, etc).</p> <p>* Who by? Office de Contrôle des Assurances/Controledienst der Verzekeringen (OCA / CDV).</p> <p>* Is there a regulatory authority? OCA / CDV.</p> <p>* Are there sanctions for non-compliance? Yes, criminal and civil.</p> <p>* Comments: No</p>	<p>* Who operates private and occupational pension schemes? Insurance companies, pension funds and banks.</p> <p>* What has to be approved and who by? Insurance business (including pensions) may only be undertaken by PLCs, mutual companies and pension funds with a permit from the Danish Financial Supervisory Authority (DFSA). Pension funds must also obtain a permit to do business as pension funds from the DFSA.</p> <p>* Is there a regulatory authority? Yes. Functions are split between DFSA and Danish Commerce and Companies Agency.</p> <p>* Are there sanctions for non-compliance? Yes, civil and criminal.</p> <p>* Comments: Non-company pension funds subject to the Act on Insurance Companies. Occupational pension funds are subject to the Act on the Supervision of Company Pension Funds.</p>

Prudency Requirements

FRANCE	GERMANY	GREECE
<p>* Who operates private and occupational pension schemes?</p> <ul style="list-style-type: none"> Insurance companies operating individual savings plans (Plan d'épargne entreprise) Welfare companies ('Institutions de prévoyance') Mutual funds (Mutuelles) <p>* What has to be approved?</p> <p>Schemes run by insurance companies must comply with the 'insurance code'.</p> <p>* Who by?</p> <p>See below</p> <p>* Is there a regulatory authority?</p> <ul style="list-style-type: none"> Ministry of Social Security, operating (for industry wide 'top up' pension schemes) through ARRCO and AGIRC. Insurance cos.: Treasury (Direction du Trésor); Commission to Control Insurance Companies (Commission de Contrôle des Assurances). <p>* Are there sanctions for non-compliance?</p> <p>Yes</p> <p>* Comments:</p> <p>No</p>	<p>* Who operates private and occupational pension schemes?</p> <ul style="list-style-type: none"> Unfunded promises by employers Insurance companies Pension fund from mutual insurance societies Support funds <p>* What has to be approved?</p> <ul style="list-style-type: none"> <i>Support funds:</i> No regulation <i>Pensionsfunds/Pensionskasse/direct insurance/direct pension commitment:</i> regulated by the Act on the Improvement of Company Pension Schemes (BetrAVG) <i>Special investment funds:</i> Regulated under Investment Companies Act (KAGG) <p>* Who by?</p> <p>Federal Authority for Financial Services Supervision (BAFin).</p> <p>* Is there a regulatory authority?</p> <p>BAFin.</p> <p>* Are there sanctions for non-compliance?</p> <p>Yes</p> <p>* Comments:</p> <p>Annual audit of non-employer sponsored plans. Third pillar schemes: Riester-Products introduced in 2002.</p>	<p>* Who operates private and occupational pension schemes?</p> <p>Insurance companies, which must exclusively provide insurance services.</p> <p>* What has to be approved?</p> <p>The insurance company.</p> <p>* Who by?</p> <p>The company must be approved by the Minister of Development (Commerce).</p> <p>* Is there a regulatory authority?</p> <p>Ministry of Development (General Secretary's Office for Commerce) (Department of Administrative Regulation of Insurance Companies).</p> <p>* Are there sanctions for non-compliance?</p> <p>It is a criminal offence for an insurance company to make false statements to the Minister of Development in order to obtain a licence.</p> <p>There are no criminal offences relating specifically to the operation of private law pensions.</p> <p>* Comments:</p> <p>Pensions are mostly provided by the State.</p>

Prudency Requirements

IRELAND	ITALY	LUXEMBOURG
<p>* Who operates private and occupational pension schemes? Insurance companies, mutual funds, pension trusts.</p> <p>* What has to be approved and who by? Terms of all occupational pension schemes and Personal Retirement Savings Accounts (PRSA) must be approved by the Revenue Commissioners. The terms for retirement annuity contracts do not require individual approval, but standard terms for such contracts are agreed with the Revenue Commissioners by insurance companies. Banks and Investment managers regulated by the Central Bank. Insurance companies are regulated by the Dept. of Enterprise, Trade and Employment (DETE).</p> <p>* Is there a regulatory authority? The Pensions Board regulates the operation of occupational pension schemes by Trustees and PRSA. The DETE regulates insurance companies. This covers retirement annuity contracts.</p> <p>* Are there sanctions for non-compliance? Yes, criminal and civil.</p> <p>* Comments: In April 2002 Personal Retirement Savings Accounts (PRSA) were introduced.</p>	<p>* Who operates private and occupational pension schemes? Insurance companies, banks, investment companies.</p> <p>* What has to be approved? The provider and the fund.</p> <p>* Who by? Ministry of Labour, on a recommendation by the Supervising Commission (Commissione di Vigilanza sui Fondi Pensione). 'Open ended' pension funds must be approved by the agency regulating the provider: i.e. ISVAP for insurance companies, CONSOB and Bank of Italy for banks, SIM for investment companies.</p> <p>* Is there a regulatory authority? Supervising Commission.</p> <p>* Are there sanctions for non-compliance? Yes, criminal and civil.</p> <p>* Comments: No</p>	<p>* Who operates private and occupational pension schemes? <ul style="list-style-type: none"> Company (société d'épargne-pension à capital variable: SEPCAV) Non-profit mutual (association d'épargne-pension: ASSEF) Insurance companies Banks </p> <p>* What has to be approved? <ul style="list-style-type: none"> The Pension Scheme The company's or mutual's articles of association </p> <p>* Who by? Commission de Surveillance de Secteur Financier (CSSF).</p> <p>* Is there a regulatory authority? CSSF.</p> <p>* Are there sanctions for non-compliance? Yes.</p> <p>* Comments: Assets held by the company or non-profit mutual must be entrusted with a credit institution regulated by law. New pension funds in the form of contrat de prévoyance-vieillesse provided by insurance company or bank introduced in 2002.</p>

Prudency Requirements

NETHERLANDS	PORTUGAL	SPAIN
<p>* Who operates private and occupational pension schemes?</p> <ul style="list-style-type: none"> Professional insurers Industry-wide pension funds Company pension funds <p>* What has to be approved?</p> <ul style="list-style-type: none"> Articles of Association of pension provider Business plan Other aspects of the insuring institution Less supervision over smaller mutuals <p>* Who by? The Pension and Insurance Chamber (PVK).</p> <p>* Is there a regulatory authority? PVK.</p> <p>* Are there sanctions for non-compliance? Yes</p> <p>* Comments: No</p>	<p>* Who operates private and occupational pension schemes? It must be an insurance company authorised to carry out life assurance, or a 'proper company' (Sociedades Gestoras de Fundos de Pensões).</p> <p>* What has to be approved? The company operating the Scheme. Regulations of the Scheme.</p> <p>* Who by? Instituto Portuges de Seguros (Portuguese Insurance Institute).</p> <p>* Is there a regulatory authority? Portuguese Insurance Institute.</p> <p>* Are there sanctions for non-compliance? Yes</p> <p>* Comments: Pensions treated as part of the insurance industry.</p>	<p>* Who operates private and occupational pension schemes?</p> <ul style="list-style-type: none"> Company for its employees ('sistema de empleo') Association (i.e. union or guild) for its members ('sistema asociado') Company operating personal plans ('sistema individual') <p>* What has to be approved? The Scheme, which is assessed by criteria published by the Ministry of Economy and Finance.</p> <p>* Who by? Ministry of Economy and Finance.</p> <p>* Is there a regulatory authority? Ministry of Economy and Finance.</p> <p>* Are there sanctions for non-compliance? Yes</p> <p>* Comments: Scheme must be registered in the Commercial Register and the Pension Funds Administrative Register.</p>

Prudency Requirements

SWEDEN	UK
<p>* Who operates private and occupational pension schemes?</p> <ul style="list-style-type: none"> • Employer operated pension funds • Pension plans with an insurance company <p>* What has to be approved?</p> <p>The company that operates the scheme needs to be licensed.</p> <p>* Who by?</p> <p>The Financial Supervisory Authority.</p> <p>* Is there a regulatory authority?</p> <p>The Financial Supervisory Authority.</p> <p>* Are there sanctions for non-compliance?</p> <p>Yes, criminal and civil.</p> <p>* Comments:</p> <p>No</p>	<p>* Who operates private and occupational pension schemes?</p> <p>Insurance companies, Mutual funds, Pension Trusts.</p> <p>* What has to be approved?</p> <ul style="list-style-type: none"> • Trust Deed • Companies offering personal pensions need an operating licence from the FSA <p>* Who by?</p> <p>Inland Revenue.</p> <p>* Is there a regulatory authority?</p> <ul style="list-style-type: none"> • Occupational Pensions Regulatory Authority (OPRA) to investigate occupational schemes • Pensions Ombudsman for complaints of maladministration • Financial Services Authority regulates insurance companies and personal pension providers <p>* Are there sanctions for non-compliance?</p> <p>Yes, criminal and civil.</p> <p>* Comments:</p> <p>No</p>

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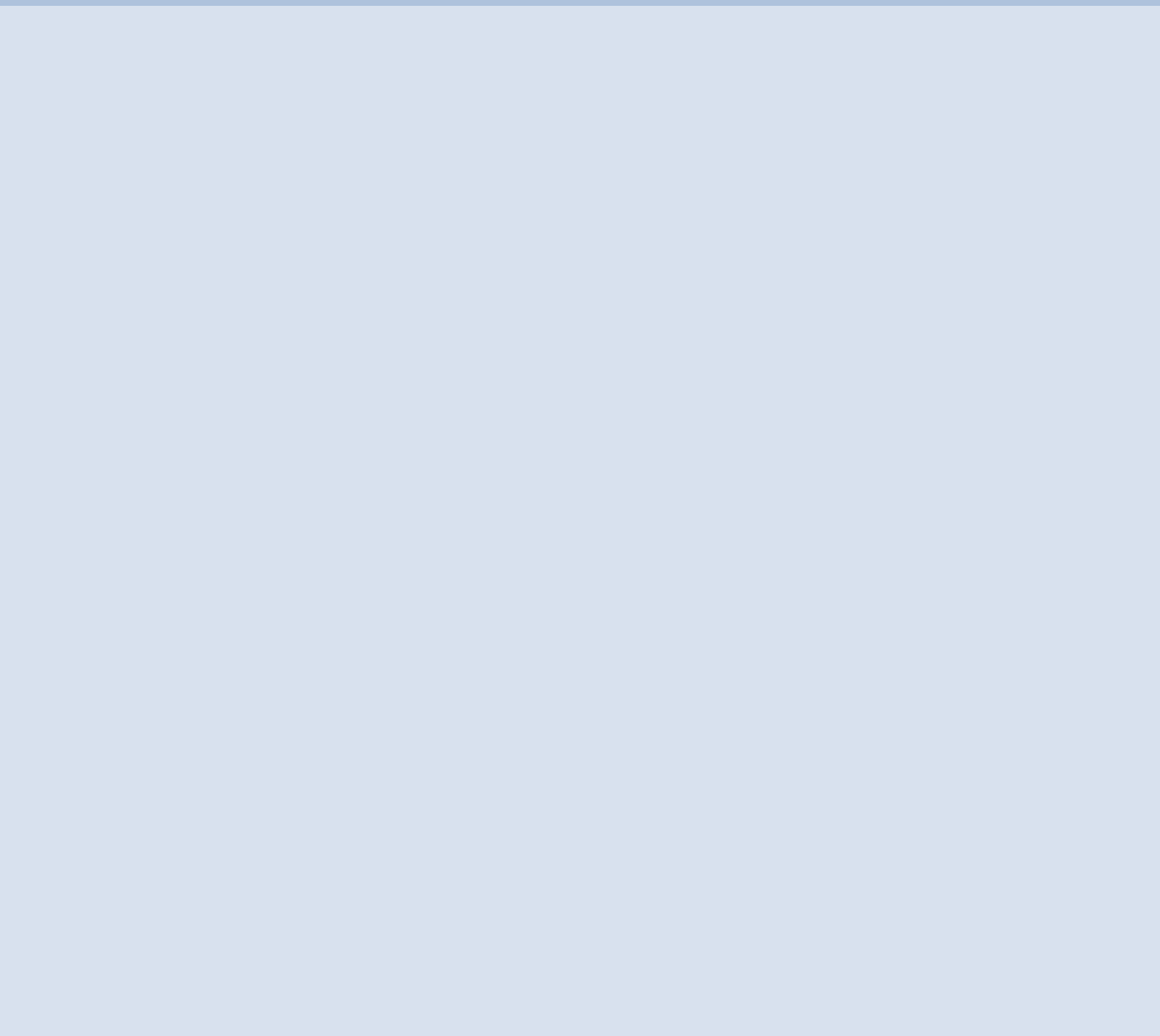
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