

# A European Institution for Occupational Retirement Provision (EIORP)

EIORP

*European Federation for Retirement Provision*

JULY 2000



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*A Single License to enable Multi-Nationals to pool their  
pension liabilities and assets on a tax neutral basis*

*European Federation for Retirement Provision*

**The publication of this report was sponsored by:  
SHELL PENSIOENFONDS BEHEER B.V., The Netherlands**

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## Note by the Chairman

The Single Market is one of the key objectives of the European Union. Most citizens and the European economy at large have benefited from considerably enlarged markets. However, when it comes to labour markets, not much has been achieved in this area. Labour conditions are still determined nationally, if not locally. As a matter of fact, labour mobility has not increased at the same pace as it has for capital or products.

Yet European companies with subsidiaries in several Member States would like to deploy their human resources talent to the full extent on a European level. One important aspect of this policy concerns the administration of the company's supplementary pension plans.

To set up several - possibly up to 15 - legal entities for their respective nationally based pension funds and to report to some 15 different supervisory authorities will cost a lot more

than to report - even extensively - to one single prudential supervisor. A single supervisory authority could take care of both assets and liabilities for a group of affiliated companies. However, to achieve this objective the European legislator must lay down basic prudential principles that allow Member States to mutually recognise each other's supervisory systems and practices for pension funds or preferably, Institutions for Occupational Retirement Provision (I.O.R.P.)

A single European I.O.R.P. is urgently needed for European industry to be competitive and grant a high degree of social protection to the work force. This report sets out basic principles and indicates the hurdles that have to be overcome.

C.J. van REES,  
Chairman E.F.R.P.

# 1. Introduction

- 1.1** The European Federation for Retirement Provision (EFRP) established in the Autumn of 1999 a Working Group to consider whether its earlier suggestion, in response to the European Commission's Green Paper, of a Pan-European Pooled Pension Vehicle was feasible. The conclusion of this Working Group, which is set out in this paper, is that such an approach is both desirable and feasible.
- 1.2** The principle basis of the EFRP's suggestion was that an established pension vehicle in one Member state should be able to create separate sections that are tax approved in other Member States, whilst remaining regulated in its home state.
- 1.3** Tax approval is vitally important to the establishment of a Pan-European Pension Vehicle and unless tax neutrality is maintained both from the Plan sponsor's perspective and from the position of the fiscal authorities, any proposal to create such a vehicle is certain to fail.
- 1.4** The EFRP is aware that a number of multinationals are considering taking the issue of Pan-European pension provision to the European Court of Justice through one or a series of test cases. EFRP feels that whilst this is an understandable reaction to years of frustrating inaction at a European level, the results of such a case or cases could produce a solution that is either too complex, or too limited. The decision in such a case may also produce results that undermine the tax neutrality of the pension systems in a number of Member States.
- 1.5** The EFRP therefore feels that by putting forward this paper it can help the European Commission to come to a solution with Member States before the conclusion of any test case(s) and thus produce a workable solution acceptable to the Member States.
- 1.6** The EFRP does not wish to limit a solution purely to Pension Funds, it believes a solution could cover all forms of Institutions for Occupational Retirement Provision, including life assurance products and any other approved pension products.
- 1.7** Throughout this paper the term "Institution for Occupational Retirement Provision (IORP)" is used and by this we mean an institution established separately from the sponsoring employer(s) (who makes the pension promise to employees of benefits on death or retirement) in order to provide the promised benefits, including industry-wide pension vehicles. It also includes insurance product based vehicles.
- 1.8** EFRP is grateful to the following persons who contributed greatly to the preparation of this paper.

Ray Martin	Rexam Plc
Henk Marius	Shell Pensioenfond v.b.v.
Simon Gilliat	Watson Wyatt Worldwide
Ruth Goldman	Linklaters and Alliance
Jane Marshall	Hammond Suddards
Joachim Schwind	Pensionskasse Hoechst V Vag

## 2. Why does Europe need a Single License for Institutions for Occupational Retirement Provision?

**2.1** Europe needs to retain and enhance its competitive position with other regions of the world, in particular with the United States. Within the European economy at large, pension vehicles need to provide a dual role. Firstly, they need to provide a level of benefits to workers on a cost-effective basis to keep the costs of such benefits to employers to a minimum, and secondly they need to be an efficient supplier of capital to business to enable the economy, and in particular SME<sup>1</sup>, to grow and develop.

**2.2** With increasing pan-European business and the trend for the globalization of business, European employers want to look at Europe as a single operating territory. In addition they want to reinforce the cost efficiencies offered by the Euro by operating on a Pan-European basis within the single market.

**2.3** Benefits will become transparent with the introduction of the Euro and sponsoring employers will wish to provide consistent benefits to their employees across Europe in line with their reward objectives and business strategy. This would simplify communication to employees, reduce the risk of unhelpful comparisons between countries and help create a single culture within the business. In addition it would facilitate cross border movement of employees within the organizations.

**2.4** The sponsoring employers will also be interested in cost reduction opportunities from combining their pension liabilities

within single vehicles, and the ability to manage their risk in the pension area more efficiently. As with many other activities if it were possible to reduce the number of providers of administrative, compliance and legal services (both within the organization and externally) then cost reductions are likely to be obtained.

**2.5** If it were possible to combine European pension liabilities, employers would also 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.

**2.6** From the employees' perspective, they will be less interested in the cost savings that may be achieved from a single European plan, but will be interested in a single consistent benefit structure that enables cross country comparison and additional mobility.

**2.7** Based on work by Watson Wyatt Worldwide the EFRP estimates that for an average multinational the annual cost saving from our proposed approach would be around Euro 1.3 million, broken down as follows :

Administration	Euro	40,000
Investments	Euro	1,200,000
Compliance	Euro	20,000
Governance	Euro	40,000

1. Small and Medium Sized Enterprises

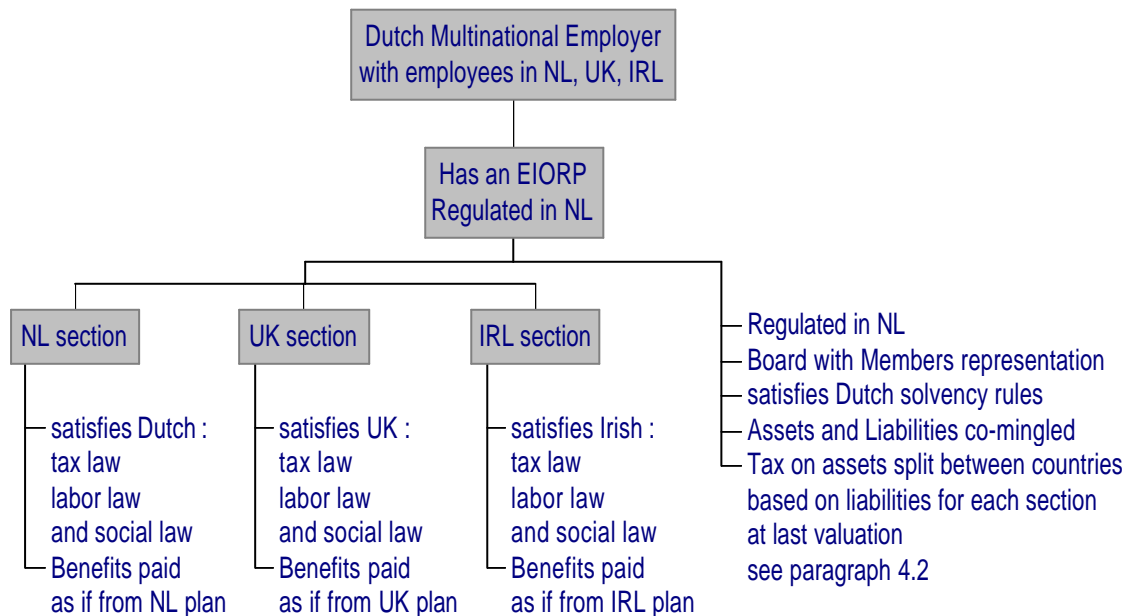
### 3. How Does EFRP see a Single License Working?

**3.1** The basic principle that EFRP wants to preserve in its proposal is that Member States are able to maintain their own approach to taxation of pension arrangements for residents in their own state.

**3.2** The EFRP sees that this is achievable by separating the regulation of IORPs from their tax approval, and allowing those IORPs regulated in one Member State to be able to offer benefits to workers of an employer within the same Group resident within another Member State, provided they have a section of that IORP that complies with the tax, social and labor law regulations of the Member State where the workers are resident.

**3.3** In effect therefore EFRP proposes that an IORP established and regulated in one Member State can establish separate sections that are tax approved in other member states, and comply with the local social and labor laws.

**3.4** As a first step EFRP would see this approach being limited to Employers within the same Group of Companies, ie multinationals, although it could at some later date be extended to industry-wide groupings. A graphical representation of how the single license approach would work for a Dutch multinational with employees in the UK and Ireland is set out below:-



## 4. What obstacles need to be overcome?

In order to proceed with the EFRP proposal a number of obstacles need to be overcome and these can be divided into

1. Regulatory - Solvency requirements and investment restrictions
2. Tax
3. Employment and Social Law
4. Plan Governance

**4.1 Regulatory** - As can be seen from *Appendix 1* there are considerable differences in the approach used to measure the solvency level of pension arrangements across the European Union. In the main a fixed discount rate is used, ranging from 6% in Germany, Belgium and Austria to 4% in Holland and Spain. The UK however is a major exception using a market rate to assess solvency, but requiring funding to be only 90% of this level.

If a Single License approach is to succeed it will be necessary for regulators to understand each other's approach and above all to avoid the imposition of conditions that Member States believe are necessary for prudential reasons which would hinder the operation of a Single License. In a number of member states the regulation of IORPs is included within the regulation of Insurance Companies, and it may become necessary to separate over time the regulation of IORPs (including insurance products) from other life insurance products.

There are also quite different approaches to investment restrictions that the recent communication of the Commission is pro-

posing to address through a pension-funds Directive but a summary of the current restrictions is set out in *Appendix 2*.

**4.2 Tax** - To understand the EFRP's proposal on tax it is necessary to separate the taxation of contributions, from the taxation of investment proceeds and the ultimate taxation of benefits. *Appendix 3* sets out the current approach of each Member State to the taxation of IORPs.

Under the EFRP's proposal contributions to a section of an IORP in another Member State would be treated by the tax authority in the same manner as currently applies to an IORP in that Member State. Any limits on contributions, or benefits would apply to that section as if it were similarly based in the Member State, if not the tax authority would have the right to remove tax approval.

Similarly benefits paid would be treated as if they were paid from an IORP of the relevant Member State. However dual taxation treaties at present provide that tax is only payable in the Member State of residence, so there would be no major change as a result of the proposal.

The major difficulty in the tax area is how to determine what portion of the assets of an IORP belong to each section and are thus subject to the taxation policy of the appropriate Member State. The EFRP proposes that the assets are divided between each section in accordance with the corresponding liabilities at the last actuarial valuation, and taxed accordingly.

**4.3 Employment and Social Law** - The EFRP proposes that the Employment and Social law applicable in each member state would apply to each section as if it were an IORP in each Member State. The one exception would be in the area of plan governance.

**4.4 Plan Governance** - We suggest that whilst this would be the system used in the country of regulation of the IORP, the selection of any employee representatives would no longer apply on a national basis but would be determined at a European level. This may include the involvement of a European Works Council (EWC) or any other selection process agreed upon between plan sponsor(s) and members. A summary of each Member State's member representative requirement is set out in *Appendix 4*.

With regard to languages it would be proposed that all communication to members should be in the member's own language, but that the governing documents of the IORP should be in the language of the country of regulation, with a translation into English, French and German at the expense of the IORP where requested by the members. The members should be able to request a translation into any other language of a Member State at their own expense.

Each section for a Member State should have a Plan Administrator who is responsible for providing the communication to the members, to the national tax authority and any other interested party.

## 5. How could the European Commission take this approach forward?

**5.1** The majority of IORP assets within the European Union are based in the United Kingdom (49%), the Netherlands (20%) and Ireland (2%). These three countries have a very similar approach to IORPs in their Member State. They all use the prudent man approach in its purest form, each has a well established regulator of IORPs who meet each other regularly. The mother language of the UK and Ireland is English and the majority of employees in Dutch multinationals speak English. They all have a long history of occupational defined benefit IORPs.

**5.2** The EFRP would therefore propose a multilateral voluntary “pilot” approach between UK, Netherlands and Ireland, to see if its taxation approach can work. EFRP would be willing to work with the Commission, the three Member States, their tax authorities and regulators to develop a system that could work.

Subsequent extension of the pilot approach could be extended to Belgium and Denmark whose systems are not too dissimilar from the three initial countries. The remaining Member States could be added as and when they felt it appropriate, or if it was felt appropriate at a European level through subsequent European legislation.

## 6. Conclusion

If Member States are prepared to accept the desirability for a single license for IORPs then a tax neutral system to them needs to be found. EFRP believes its proposal is workable and is desirable as it would significantly benefit the European economy.

If the EFRP proposal, or one like it, is not adopted by Member States in the near future then it could be the European Court of Justice that decides how the single license will operate from a tax perspective. Its decision could undermine the tax neutrality principle that the EFRP seeks to maintain, and could be unworkable from a Member States perspective.

### Appendices - Overview of Existing EU Pension Provisions

1. Overview of Solvency Requirements
2. Overview of Investment Regulations
3. Overview of Taxation
4. Employee representation in Plan Management
5. Overview of Prudency Requirements

## **Appendices - Overview of Existing EU Pension Provisions**

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## Appendix 1 - Solvency / funding requirements

### Austria

1. Book reserves
2. Pensionskassen
3. Direct Insurance

#### 1. Book reserves

Book 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 reserve must be matched with earmarked asset holdings
- Pensioners are preferential creditors to these assets

#### 2. Pensionskassen

- Fund must have at least 1000 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

#### 3. Direct Insurance

- Tax advantage up to € 291 insurance premium p.a.

### Belgium

- 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

### Denmark

- Majority of plans are defined contribution plans financed via group insurance contracts
- Contributions usually invested in endorsement or deferred annuity contracts
- Calculated using a maximum interest rate of 2% 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

### Finland

- 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.

### France

- Most pension benefits provided through ARRCO and AGIRC arrangements, and operate on a pay-as-you-go basis.
- Top-up schemes are on a book reserve or direct insurance basis.

### Germany

Four methods: Book reserves  
Direct insurance  
Pensionskassen (pension fund)  
Support funds

#### 1. Book reserves

- 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 age of 30

No projection of benefits; prescribed decrement tables

- Companies with book reserves must participate in a compulsory pension benefit insurance system.

#### 2. *Direct insurance*

- Premiums currently calculated using 4% discount rate; for contracts concluded after 30th June 2000 a discount rate of 3,25% has to be used.

#### 3. *Pensionskassen*

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:
- 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.

#### 4. *Support funds*

Separate legal entities from the company with limited funding provisions.

Occupational schemes for public employees are governed by a number of institutions

(Versorgungsanstalten, Zusatzversorgungskassen).

Basically PAYG, partially pre-funded. Membership is arranged through collective labour agreements.

### **Greece**

- The majority of company sponsored pension arrangements in Greece are insured, typically via deposit administration contacts.

### **Ireland**

- Pensions Act sets out minimum funding / reserving requirements for all defined benefit schemes.
  - a. Actuarial certification at least every 3½ years.
  - b. Assets measured at market value. Asset value used for funding status may exclude concentrations of investments

c. 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.

d. Method and assumptions are not prescribed, although the actuary subject to the actuarial guidance notes

### **Italy**

- New occupational pension funds can be established only on a defined contribution basis. Therefore no minimum solvency margin applies.

### **Luxembourg**

#### *Under draft legislation*

- Continuation of pre-existing funding methods allowed (predominantly direct insurance or book reserves).
- Requirements regarding re-insurance of book reserves.
- Requirements regarding valuation of liabilities and contributions.

### **Netherlands**

- Funding is compulsory for occupational schemes. The three main ways are:
  - 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  $\leq 4\%$  pa, nil salary inflation or withdrawal documents).
- Assets plus future contributions  $>$  liabilities, unless reinsurance is used.
- Assets based on market value.

### Portugal

- Administered by authorised management society (with capital and solvency requirements) and life insurance companies.
- Periodic review of technical resources.
- Minimum funding requirement.

### Spain

Assets of qualified pension plans must hold:

- 4% margin of actuarial liability; plus
- 0.3% additional margin of death / disability lump sums, but always greater than ESP 37.5m.

### Sweden

Retirement benefits must, according to collective agreements, be secured by:

- direct insurance with insurance companies or friendly societies (understödsföreningar)
- book reserves
- a pension foundation (not providing benefits, only securing liabilities of employer)
- Both the book reserve and direct insurance use the level annual funding method with prescribed discount rates
- Book reserves are reinsured

### UK

Two methods used:

- Direct insurance
- Self-administered pension fund
- 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.

## Appendix 2 - Investment regulations

### Austria

Equities	Max 40%
Fixed-interest securities	Min 40%
Derivative products	Only to cover fund assets
Property	Max 20%
Company loans	Max 10%
Investment in non-Euro	Max 10%

### Belgium

- New framework urges funds to invest prudently, with little prescription of minimum / maximum investment percentages.

### Denmark

- Currency matching of all liabilities
- Minimum 50% investment in:
  - Government bonds
  - Loans to local government
  - Real estate mortgages
  - Low risk loans to Danish bonds
- Maximum 50% investment in high-risk assets:
  - Real estate loans (up to 100% of value)
  - Unquoted investments
  - Foreign equities

### Finland

- Very few investment restrictions.

### France

	AGIRC	ARRCO
Domestic equities	Max 20%	Max 25%
Foreign equities	Max 20%	Max 25%
Foreign bonds	Max 20%	Max 25%

### Germany

- Few restrictions on book reserves and support funds.

Direct insurance schemes and Pensionskassen: investments are to be made compliant with the detailed requirements of § 54a VAG (insurance supervision law). The main restrictions are:

- Equities (in any one company) Max 30%  
Max 10% of share capital
- Non Euro bonds Max 5%
- Deposits Max 10% of the institution's capital
- Property Max 25%  
(depending on liabilities)
- Public employee pension funds mainly follow insurance requirements.

### Greece

- Significant investment in government bonds.
- Limited investment market exists.

### Ireland

- Few restrictions other than self-investment.
- Must display prudent investment principles.

### Italy

- Restrictions vary depending on type of scheme and financial vehicle.

### Luxembourg

- Principle of spreading risk.

### Netherlands

- Maximum 5% self-investment.
- Requires prudent investment.

### Portugal

Restrictions are extensive, and include:

- Commercial paper and bonds (excluding state issues) Max 60%
- Direct Real Estate Max 45%
- Equities Max 50%
- Short-term deposits Max 30%
- Derivatives for more efficient management or reduction of risk
- Unlisted unit trusts Nil allowed  
(Unless issued by insurance company, credit institution or investment institution)

## Spain

The assets of qualified plans must be held separately from company assets.

- Quoted securities, bank deposits, property or mortgages Min 90%
- Share capital of any one company { Max 5% of share capital  
Max 10% of plan assets
- Cash Min 1%

## Sweden

- Corporate pension funds must use a "prudent approach" and have their asset allocations approved by a regional government representative.
- Insurance providers (insurance companies and friendly societies) may invest maximum of 25% of total liabilities in equities. Up to 20% of technical reserves may be held in foreign assets.
- No investment restrictions on assets held as surpluses.

## UK

- Self-investment Max 5%
- Any one unit trust Max 10%
- Unit trusts run by any one manager Max 25%

## Appendix 3 - Taxation

### Austria

- Employer contributions deductible up to prescribed limits.
- Employee contributions tax-deductible, subject to prescribed limits (€ 2.907) and a maximum of the amount of employer contributions.
- 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%

### Belgium

- To be deductible, employer and employee contributions which are paid to a company plan, must conform to the following:
  - 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 social security contribution.

### Denmark

- Employer contributions to a pension plan are deductible provided:
  - 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 towards pension scheme.
- The combined employer and employee contribution to lump sum plans limit for deductibility is 34,000 DKK per annum.
- Employer contributions are not a benefit-in-kind.
- 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%.
- Surrendered value for pension benefits before retirement taxed at 60%.
- Tax rate on pension investment income is determined such that average net interest earnings have been 3.5% plus average inflation. This system will be replaced by fixed 26% tax rate applying to non-share investments.

### Finland

- Employer contributions:
  - fully deductible
  - are not a benefit-in-kind (up to prescribed maximum).
- Employee contributions are fully tax-deductible, up to a prescribed maximum level of pension cover.
- Maximum based on 66/60% of earnings; 60% of any benefit-in-kind amount is deductible for the individual.
- 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.

## France

- Employer and employee contributions:
- to social security fully deductible, with few exceptions
- to complementary schemes are deductible subject to certain limits provided:
  - 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
- excessive contributions subject to social security contributions
- contributions to the group insurance contract are deductible, provided:
  - benefit guarantee needs to be permanent
  - categories of beneficiaries are clearly defined
  - retirement benefits may not be 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.

## Germany

### 1. Book reserves (direct pension pledge)

- 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 retiree; no employee contributions allowed

### 2. Direct insurance

- Employer contributions are tax-deductible but also a benefit-in-kind
- Flat rate tax only allowed if policy does not mature before age 60 and if its prior surrender by the employee is excluded.
- Employee contributions are not tax-deductible but are allowed and it is possible to adopt the same flat rate system as above by using salary conversion tables.
- The benefits from a directly insured plan are tax free in most cases, (only the assumed interest content of annuity is taxed).
- 10% withholding tax on investment income.

### 3. Pensionskassen

- Contributions and benefits are treated similarly to direct insurance systems: employee contributions are equally allowed.

### 4. Support funds

- Annual allocations and taxation of benefits are similar to book reserves; no employee contributions.
- However, there is only a limited possibility for a tax effective pre-funding of the pension benefit.

## Greece

- Employer contributions are not fully deductible (limited to 5% of the normal gross salary up to a maximum of GRD 150,000).
- Employer contributions within the limits are not a benefit-in-kind, but contributions exceeding the limit are.
- Tax treatment applies if the plan's benefits have been approved, requiring at least one government representative on the Trustee, and significant investment in government bonds.
- Allocations to book reserves do not attract tax relief.
- Employee contributions attract tax relief on 4% of declared income up to a maximum of GRD 200,000 pa.
- Pensions are taxed as earned income.

- Lump sum benefits are subject to stamp duty and withholding taxes.

### **Ireland**

For approved plans (ie established under Trust with assets segregated from company):

- Employer contributions are deductible (up to limits) and not treated as a taxable benefit-in-kind.
- Employee contributions are tax-deductible (up to limits).
- Pension benefits are earned income. Lump sum is tax-free.
- Investment income and capital gains are not taxed.
- Refunded employee contributions are generally taxed at 25%.

### **Italy**

Taxation of pension funds was recently reformed. According to the new fiscal regulation, to be implemented from 2001:

- Contributions are not taxable up to a certain ceiling;
- Pension fund earnings (included capital gains) are subject to an 11% tax rate;
- Benefits are taxed net of the part that was not already taxed as contributions or earnings; benefits paid as lump sum are subject to separate taxation; pension benefits are taxed as income on a progressive basis.
- Employer contributions are deductible without limit provided:
  - plan relates to well defined group of employees and with well defined rules
  - contributions and benefits agreed by employer and employees
  - "Cassa di Previdenza" exists (a trust arrangement which ensures employer contributions are not taxed as a benefit-in-kind)
- Employee contributions are deductible without limit provided:
  - plan is not for retirement benefits; or
  - plan is only for pre 28 April 1993 participants

- Employer and employee contributions that do not satisfy these provisos will be deductible only within certain limits
- Lump sum benefits are taxed concessionally
- Only 87.5% of pension benefits are taxed as income
- A flat annual tax is levied on the scheme

### **Luxembourg**

*Under draft legislation*

- 60% of employer contributions deductible, provided benefits provided were within limits.
- Employer contributions are not benefit-in-kind.
- Employee contributions tax-deductible, up to limit.
- Pension benefits taxed as earned income.
- Lump sum benefits subject to a flat rate of 20%.
- Plan rules must prescribe membership eligibility, contributions, determination and eligibility for benefits and wind-up provisions.
- Consultation with employee representatives.
- Disclosure requirements.
- Transfer requirements.

### **Netherlands**

- Employer contributions are fully deductible (to either approved or non-approved plans) provided plan meets the following criteria:
  - provides exclusively retirement, death and disability benefits, for employees
  - benefits within accepted limits
  - in pension form
  - guaranteed by insurer or pension fund; and
  - insurer or pension fund in principle established in the Netherlands, but Inland Revenue may grant similar status to approved foreign schemes in context of a group of companies
- If non-approved, employer contributions will be taxed as a benefit-in-kind.
- Employee contributions are deductible (with limits) unless the plan is not approved, or pays lump sum benefits.
- Pension benefits are taxed as income.

- Lump sums are taxed depending on size and reason for payment.
- No tax is payable on pension foundation assets.

### Portugal

- Allocations to a book reserve are not deductible.
- Employer contributions to pension funds and insurance contracts will not be benefits-in-kind, and will be deductible up to a maximum 15% of payroll, provided that:
  - the plan is open to all permanent employees and is non-discriminatory
  - retirement benefits are not paid as a lump sum
  - benefits are paid at the same time as social security benefits
  - funding is external
- Employer contributions to funds with vested rights are taxed as a benefit-in-kind to employees.
- 25% of employee contributions to company plan are tax-deductible, up to limits.
- 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.

### Spain

- Employer contributions to a qualified pension plan are deductible including those made directly to corporate - employer sponsored - pension plans and those made to individual plans, but also those made indirectly (by the employer to the corporate pension plan) which make the latter tax neutral in the end
- Limits apply to employer and employee contributions

- Allocations to book reserves are not tax-deductible for the employer until the benefits are paid out.
- All benefits subject to income tax. Withholding tax on pensions applies at between 0% and 48%. 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.
- 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:
  - non-discrimination and eligibility criteria
  - irrevocable contributions
  - full vesting and portability
  - limit on total contributions
  - advance funding, according to actuarial advice (review every 3 years)
  - solvency standards
  - majority employee representation on plan management board

### Sweden

- Contributions to plans are deductible for the employer, and not considered a benefit-in-kind if:
  - paid for collective bargaining agreements; or
  - satisfy prescribed maximum benefit and contribution rules.
- Contributions are levied an alternative social security tax of 24.6%.
- Most plans are not contributory for employees.
- Allocations to book reserves are also subject to 24.6% social security tax.
- Contributions to pension plans other than those based on collective agreements may be tax-deductible under certain conditions and limits.

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

- 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.
- Investment income is taxed at 15%.

## UK

- 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.

## Appendix 4 - Employee representation in plan management

### Austria

- No relevant legislation for book reserves or direct insurance.
- Pension funds: member-representatives are elected to the supervisory board; employer-representatives may outnumber member-representatives by no more than one director.

### Belgium

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

### Denmark

- Equal employee and employer representation is normally required.

### Finland

- At least 2 employees.

### France

- Self-administered funds very rare.

### Germany

- For book reserve or direct insurance arrangements there is no legal requirement, except on benefit design.
- For pension and support funds: the works council involvement satisfies equal employer / employee representation on the supervisory board.

### Greece

- No legislation (occupational schemes are still quite rare). However, approved schemes require at least one government representative.

### Ireland

- If the fund has more than 50 members, then members can insist that a member trustee election take place. This can require that either at least 2 member-nominated representatives or an equal number of member and employer representatives.

### Italy

- No requirements for pre-1993 funds..  
New type pension funds: equal representation of employer and employee representatives.

### Luxembourg

- Draft legislation currently proposes the consultation of employee representative when a plan is set up, amended or terminated.

### Netherlands

- Employee representatives must at least equal the number of employer representatives.

### Portugal

- No legal requirements.

### Spain

- Majority employee representation required on the control committee for qualified plans.

### Sweden

- Employees and employers must have equal representation.

### UK

- At least member nominated trustees with a minimum of 2.

## Appendix 5 - Prudency Requirements

### Austria

- *Who operates private and occupational pension schemes?*  
Insurance companies and pension funds
- *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 need 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
- *Is there a regulatory authority?*  
Minister of Finance
- *Are there sanctions for non-compliance?*  
Yes, civil and criminal

### Belgium

- *Who operates private and occupational pension schemes?*
  - Life-insurance company operating group insurance contracts
  - Pension funds
- *What has to be approved?*  
Pension funds must have their articles of association approved as well as the pension scheme and meet various actuarial requirements (minimum funding, etc)
- *Who by?*  
CDV/OCA - Ministry of Economy
- *Is there a regulatory authority?*  
CDV/OCA - Ministry of Economy
- *Are there sanctions for non compliance?*  
Yes, criminal and civil

### Denmark

- *Who operates private and occupational pension schemes?*  
Insurance companies, pension funds and banks
- *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.
- *Is there a regulatory authority?*  
Yes. Functions are split between the DFSA and, to a minor extend, the Danish Commerce and Companies Agency.
- *Are there sanctions for non-compliance?*  
Yes, criminal and civil
- *Comments:*  
Non-company pension funds are subject to the Insurance Companies act. Company sponsored pension funds are subject to the Supervision of Company Pension Funds act.

### France

- *Who operate private and occupational schemes?*
  - Insurance companies operating individual saving plans (Plan d'épargne entreprise)
  - Welfare companies (Institutions de prévoyance)
  - Mutual funds (Mutuelles)
- *What has to be approved?*  
Schemes run by insurance companies must comply with the "insurance code"
- *Who by?*  
See below
- *Is there a regulatory authority?*
  - Social Security Ministry, operating (for industry-wide "top up" pension schemes) through ARRCO and AGRIC

- Insurance : Treasury Ministry: Control Commission for Insurance Companies.
- *Are there sanctions for non-compliance?*  
Yes

### Germany

- *Who operate private and occupational schemes?*
  - direct pension promises by employers
  - direct insurance by life insurance companies
  - Pensionskassen (pension funds)
  - Support funds
- *What has to be approved?*
  - Support funds : no regulation
  - Pensionskassen : regulated by Federal Insurance Supervisory Authority ("BAV")
- *Who by?*  
Federal Insurance Supervisory Authority ("BAV") for Pensionskassen and life insurance
- *Is there a regulatory authority?*  
Federal Insurance Supervisory Authority ("BAV") for Pensionskassen and life insurance
- *Are there any sanctions for non-compliance?*  
Yes, civil and criminal
- *Comments:*  
Annual audit of all occupational pension plans  
Public Employees pension funds are supervised either at federal or at Bundesland level by administrative bodies.

### Greece

- *Who operate private and occupational schemes?*  
Insurance companies, which must exclusively provide insurance services
- *What has to be approved?*  
The insurance company
- *Who by?*  
The company must be approved by the Minister of Development (Commerce)
- *Is there a regulatory authority?*  
Ministry of Development (General Secretary's Office for Commerce) (Department of Administrative Regulation of Insurance Companies)

- *Are there any sanctions for non-compliance?*

It is a criminal offence for an insurance company to make false statements to the Minister of Development in order to obtain a license.

There are no criminal offences relating specifically to the operation of private law pensions.

- *Comments :*  
Pensions are mostly provided by the State.

### Ireland

- *Who operates private and occupational pension schemes?*  
Insurance companies, mutual funds, pension trusts.
- *What has to be approved and who by?*  
Terms of an occupational pension scheme must be approved by the Revenue Commissioners.  
The terms for retirement annuity contracts do not require individual approval, but insurance companies agree standard terms for such contracts with the Revenue Commissioners.  
Banks and investment managers regulated by the Central Bank. Insurance companies are regulated by the Dept. of Enterprise, Trade and Employment (DETE)
- *Is there a regulatory authority?*  
The Pensions Board regulates the operation of occupational pension schemes by Trustees.  
The DETE regulates insurance companies. This covers retirement annuity contracts.
- *Are there sanctions for non compliance?*  
Yes, criminal and civil
- *Comments:*  
New legislation is expected shortly which will introduce individual retirement accounts, operated by insurance companies, etc. and regulated by the Central Bank

### Italy

- *Who operates private and occupational pension schemes?*  
Insurance companies, banks, investment companies
- *What has to be approved?*  
The carrier and the fund

- *Who by?*  
Ministry of Labour, on a recommendation by the Supervisory Commission (COVIP - Commissione di Vigilanza sui Fondi Pensione)  
"Open ended" pension funds must be approved by the agency regulating the carrier: i.e. ISVAP for insurance companies, CONSOB and Bank of Italy for banks, SIM's and investment companies
- *Is there a regulatory authority?*  
Supervisory Commission - COVIP
- *Are there sanctions for non-compliance?*  
Yes, criminal and civil

### Luxembourg

- *Who operates private and occupational pension schemes?*
  - Company (société d'épargne-pension à capital variable)
  - Non profit mutual (association d'épargne-pension)
- *What has to be approved?*
  - The pension Scheme
  - The company's or mutual's articles of association
- *Who by?*  
Luxembourg central bank
- *Is there a regulatory authority?*  
Yes
- *Are there sanctions for non-compliance?*  
Yes
- Comments  
Assets held by the company or non-profit mutual must be entrusted with a credit institution regulated by law

### Netherlands

- *Who operates private and occupational pension schemes?*
  - Professional insurers;
  - Industry wide pension funds or
  - Company pension funds
- *What has to be approved?*
  - Articles of Association of pension provider
  - Business plan
  - Other aspects of the insuring institution
  - Less supervision over smaller mutuals

- *Who by?*  
The Insurance Supervisory Board (De Verzekeringskamer)
- *Is there a regulatory authority?*  
The Insurance Supervisory Board (De Verzekeringskamer)
- *Are there sanctions for non-compliance?*  
Yes

### Portugal

- *Who operates private and occupational pension schemes?*  
It must be an insurance company authorised to carry out life insurance or a "proper company" (Sociedades Gestoras de Fundos de Pensoes)
- *What has to be approved?*  
The company operating the scheme
- *Who by?*  
Instituto Portuges de Seguros (Portuguese Insurance Institute)
- *Is there a regulatory authority?*  
Portugese Insurance Institute
- *Are there sanctions for non-compliance?*  
Yes
- Comments :  
Pensions treated as part of the insurance industry

### Spain

- *Who operates private and occupational pension schemes?*  
It must be an insurance company authorised to carry out life insurance or a "proper company" (Entidades Gestoras de Fondos de Pensiones")
- *Who is sponsoring the pension plans?*
  - Company for its employees ("sistema de empleo")
  - Association (i.e. union or guild) for its members ("sistema asociado")
  - Company operating personal plan ("sistema individual")
- *What has to be approved?*  
The plan/scheme, which is assessed by published criteria
- *Who by?*  
Directorate-general for Insurance - Ministry of Economy and Finance

- *Is there a regulatory authority?*  
Directorate-general for Insurance - Ministry of Economy and Finance
- Are there sanctions for non compliance  
Yes
- Comments :  
Plans/schemes must be registered in the Commercial Register and the Pension Funds Administrative Register

### Sweden

- *Who operates private and occupational pension schemes?*  
Pension plan with an insurance company or a friendly society
- *What has to be approved?*  
The company that operates the scheme needs to be licensed
- *Who by?*  
The Financial Supervisory Authority (Finansinspektionen)
- *Is there a regulatory authority?*  
The Financial Supervisory Authority
- *Are there sanctions for non compliance?*  
Yes, criminal and civil

### UK

- *Who operates private and occupational schemes?*  
Insurance companies, Mutual funds, Pension Trusts
- *What has to be approved?*
  - Trust Deed
  - Companies offering personal pensions need an operating licence from the Financial Services Authority (FSA) or other regulatory bodies
- *Who by?*  
Inland Revenue
- *Is there a regulatory authority?*
  - OPRA (Occupational Pensions Regulatory Authority) to investigate occupational schemes;
  - Pensions Ombudsman for complaints of misadministration;
  - FSA and other regulatory organisations regulate insurance companies and personal pension providers
- *Are there any sanctions for non-compliance?*  
Yes, criminal and civil







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