

Feasibility Study for Creating an EU Pension Fund for Researchers

**Prepared for the European Commission
Research Directorate-General**

Final Report

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Introduction

In September 2008 the European Commission, Research Directorate-General, issued an open call for tender for a "*Feasibility study of a pan-European pension fund for EU researchers*". Hewitt Associates was awarded the tender in June 2009.

This report covers the main results of the study carried out on behalf of the European Commission in accordance with the service contract RTD/DirC/C4/2009/0268794 of 9 June 2009.

The main objective of this project was to study, and report to the European Commission and to its Advisory Group¹, the legal, technical and financial terms and requirements that should be considered for setting up a viable pan-European framework of occupational pension arrangements that could best match EU researchers' needs. At each phase of the project implementation and on the basis of three interim reports submitted to the Commission, key findings have been presented to, and discussed with, DG Research and the Advisory Group members.

Preliminary findings were also presented by Hewitt Associates at the meeting of 23 February 2010 to the Member States' officials of the ERA Steering Group on Human Resources and Mobility (SGHRM), who help to oversee the implementation of the ERA Initiative on a "European Partnership for Researchers" (EPR).

The results of the project aim to raise the awareness of stakeholders about practical solutions covering supplementary pension rights with a view to helping to remove one of the barriers to the mobility of researchers. The study may also encourage the establishment of targeted pan-European pension arrangements to the benefit of researchers, and more generally to employees at large. Ultimately these developments will be instrumental to make the European Research Area more open, competitive and attractive.

The study was carried out with a view to offer actionable knowledge, expert advice and insight around three critical building blocks, in accordance with the tender specifications, the technical proposal submitted by Hewitt, and taking into account the suggestions made by the EC Advisory Group during the implementation phase of the project. The three main areas of investigation are related to the following:

Relevant best market practices

- Reviewing latest and on-going market practices based on those plans that have already used existing pan-European legal vehicles allowing cross-border affiliation for member employees. This covers both single and multi-employers sponsor undertakings with specific reference to two main legal vehicles: the Institution for occupational retirement provisions (IORP, within the meaning of the Directive 2003/41/EC) and the life insurance based contractual arrangements (Directive 2002/83/EC).

Employers' interest, benchmark options and analysis of pan-European pension framework for researchers

- Undertaking empirical research investigating the interest of the researchers' employers (in accordance with the classification of the OECD-2002 "Frascati manual")² and assessing their potential availability to be potential sponsor undertakings for the pension framework.

¹ The Advisory Group was chaired and set up by the Research Directorate-General since the inception of the study and involved the participation of EC officials from other EC Directorates-General, including DG Internal Market, DG Taxation, DG Employment, SCIC.

² Research and experimental development (R&D) comprise creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications. OECD, Frascati manual 2002, Proposed standard practice for surveys on research and experimental development.

- Designing a possible structure of governance of a pan-European framework of supplementary pension that would accommodate multiple employers from different countries and ensure adequate representation of relevant stakeholders.
- Benchmarking location of choice to host pan-European legal vehicle and assessment of potential costs for set-up and administration.

Prototype test of pan-European framework and recommendations on operational follow-up

- Design and impact assessment of a potential pan-European pension framework for researchers

Concluding remarks and conclusions are drawn and included in the final chapter of the study together with some suggestions for follow-up.

Hewitt Associates is grateful to the Advisory Group for their useful comments and remarks during the project implementation. We are particularly grateful to the wide range of organisations that supported and participated to the employers' survey.

This study has been carried out under the direction and contribution of Leonardo Sforza and Paul Bonser, with the support of Clive Staines and the project team of Hewitt experts, benefit consultants and retirement and financial management leaders throughout Europe including: Angeles Almena, Barbara Ambrogioni, Yves Corne, Maggie Cruise, Magdalena Czerwinska, Frank Driessen, Rainer Goldbach, Suzanne Kerr, Richard Lawrey, Taoufiq Lesmer, Jacqueline Lommen, Dieter Oppermann, Claudio Pinna, Hash Piperdy, Marc Salameh, Jan Peters Sengers, Philip Shier, Bart Schoof, Anne Swift, Pieter van Rijsbergen, Thierry Verkest, Pete Williams, Andrew Warwick-Thompson and Brian Wilson. Section 6.4 was contributed by An Van Damme, partner at Law firm Claeys & Engels and by the associated network of labour lawyers of Ius Laboris.

The content of this report does not necessarily reflect the opinion or position of the European Commission.

Brussels, 4 May 2010

About Hewitt Associates

Hewitt Associates (NYSE: HEW) provides leading organisations around the world with expert human resources consulting and outsourcing solutions to help them anticipate and solve their most complex benefits, talent, and related financial challenges. Hewitt works with companies to design, implement, communicate, and administer a wide range of human resources, retirement, investment management, health care, compensation, and talent management strategies. With a history of exceptional client service since 1940, Hewitt has offices in more than 30 countries and employs approximately 23,000 associates who are helping make the world a better place to work. For more information, please visit www.hewitt.com.

1. Pan-European pension funds and life assurance products in place and under development

1.1. Overview Scope and Methodology

Scope

The main objective of this chapter is to identify current market practices and likely future developments in the pan-European pension market, aiming at entities which use (or are interested in using) pension solutions that allow cross-border affiliation for covered employees.

This inventory was undertaken at the inception of the study over the period July-September 2009. It has been used as preliminary input in assessing which solutions present the most feasible and appropriate way forward in creating pan-European pension arrangements for researchers.

We have analysed the case of single and multi-employers sponsor undertakings with specific reference to two main legal vehicles: namely the Institution for Occupational Retirement Provisions (IORP, within the meaning of the Directive 2003/41/EC) and the life insurance based contractual arrangements (Directive 2002/83/EC). We have focused on the analysis of targeted registered cross border pension funds -based on the IORP Directive- and of relevant life insurance based pension arrangements which could fit researchers' needs. Moreover, in relation to multi-employer we have explored arrangements created by a financial services provider to service multiple third party entities (usually profit oriented).

We have limited our analysis to complementary occupational group pension solutions (generally belonging to the so called "2nd pillar"). We have not taken into account 3rd pillar products which are generally bought directly by individuals from an insurance company, such as life annuities, mutual funds, etc.

Methodology

Cross-Border Pension Funds (IORPs)

We used as a basis the official report made available by the Committee of European Insurance and Occupational Pension Supervisors (CEIOPS) and the public IORP registers of national supervisory authorities available at time of the inventory³. As the CEIOPS report is the only available consistent source of information and the overview revealed little additional information, we contacted CEIOPS and relevant national supervisors with a view to collect more detailed and updated information instrumental to assess the nature and scope of registered cross-border IORPs. Only the supervisory authorities of Belgium (CBFA) and Luxembourg (CSSF) disclose publicly the name of registered IORPs and on that basis have allowed further analysis following the information that could be shared by pension fund sponsor undertakings. CEIOPS secretariat was not in the position to provide further information beyond that already made available via the Committee web site.

We complemented this information with comments based on our own market experience and insight into the occupational pension landscape.

Beyond this inventory, we have examined expected developments and identified several "true" cross-border single employer IORPs which are already operational, or are in the process to be operationalised, as an indication of the innovations under way in the European pension market.

Cross-Border Life-assurance Products

We have undertaken a qualitative review of existing and expected developments in cross-border pension products as provided by insurance companies and other financial services providers. For this

³ CEIOPS, 2008 Report on market developments, 11 November 2008

purpose we set up one-to-one interviews with 14 leading European insurance groups to investigate their current or planned cross-border pension products. The identification and selection of the insurance companies was based on group financial statistics published by the European insurance and re-insurance federation (CEA), and supplemented by relevant market information.

We used Hewitt's market knowledge to identify other financial services providers, which may be offering or planning to offer such products. These providers encompass asset managers, registered pension administrators, custodians and risk pooling networks.

The questions that we focused on were the following:

1. What type of cross border occupational retirement products do you currently offer, and/ or plan to offer in the next 12-24 months?
2. How many and what type of clients are you expecting to use these products, and what features do these products share in common?
3. Is there any experience of groups of researchers (with public and private employers) using these products to date?
4. What barriers have you encountered and how do you believe these can be best addressed?

In practice, because of the early stage of development of the market and the traditionally limited cross-border activity of insurers, the answers to the above questions (in particular 2. and 3.) were limited. Nevertheless, we were able to determine some overall trends.

1.2. Cross-Border Pension Funds (IORPs)

Brief Overview of legislative requirements

European cross-border pension vehicles are now a reality following the introduction of the so called "IORP Directive". It provides a pan-European legal vehicle for managing local retirement contributions and benefits within the European Economic Area (EEA)⁴ and makes it possible to cover participants from several different countries. Beyond the EEA, when required the same vehicle can sometimes be considered lawful by other third country's jurisdictions and could cover also pension plan members from those countries.

IORP Directive: Overview

The European Union Directive (2003/41/EC) on Activities and Supervision of Institutions for Occupational Retirement Provision (IORPs), known as the IORP Directive, sets out basic requirements relating to the establishment, operation and supervision of funded occupational retirement vehicles across the EU. In particular, the Directive regulates:

- Registration and licensing of every IORP in any EEA country by competent supervisory authorities
- Minimum reporting standard to regulators
- Certain funding requirements
- Minimum governance requirements
- Members' rights to information
- Investment under "prudent person" principle
- Process to operate on a cross-border basis and cross-border cooperation of supervisors

⁴ EEA covers the EU countries and Iceland, Liechtenstein and Norway)

EU countries were required to implement the Directive into their own national legislation by 23 September 2005. As of 2007 all countries had notified their implementation measures, although for two of them the European Commission had formally contested the incorrect transposition of the Directive⁵. In one of the two cases the European Court of Justice pronounced its judgement last 14 January 2010 and required the Member States concerned to adopt all necessary measures necessary to implement the EC Directive on IORPs⁶. It should be noted that -according to the consolidated jurisprudence of the European Court of Justice- the rights and obligations deriving from an EU Directive, even when its national implementation is delayed or incorrect will remain generally untouched; although in some circumstances it may be materially difficult for the claimant to have them applied in practice.

Existing local occupational pension vehicles have been categorized as IORPs at the time of the local transposition of the Directive. Examples include “Pensioenfondsen” in the Netherlands, “Pension Trusts” in the UK or Ireland, “PensionKasse” and “PensionFonds” in Germany, “Organization for Financing Pensions” (OFP) in Belgium, “ASSEP”, “SEPCAV” and the CAA pensionfund in Luxemburg, and many other European retirement vehicles.

The Directive is based on minimum harmonisation principles and well defined objectives, while leaving the regulation of IORPs –the means to achieve the Directive’s objectives- to the individual member states and local supervisors. As such, IORP vehicles and IORP regulation can differ across the EEA countries.

The Directive only applies to funded, occupational and independent (from the employer) retirement vehicles. The Directive does not apply to institutions managing «social security» benefits, unfunded vehicles such as “book reserved” plans (common in Germany and Austria), pay-as-you-go programmes such as ARRCO/AGIRC in France, or vehicles where employees have no legal rights to benefits. Member States may choose not to apply the Directive to pension funds with fewer than 100 members.

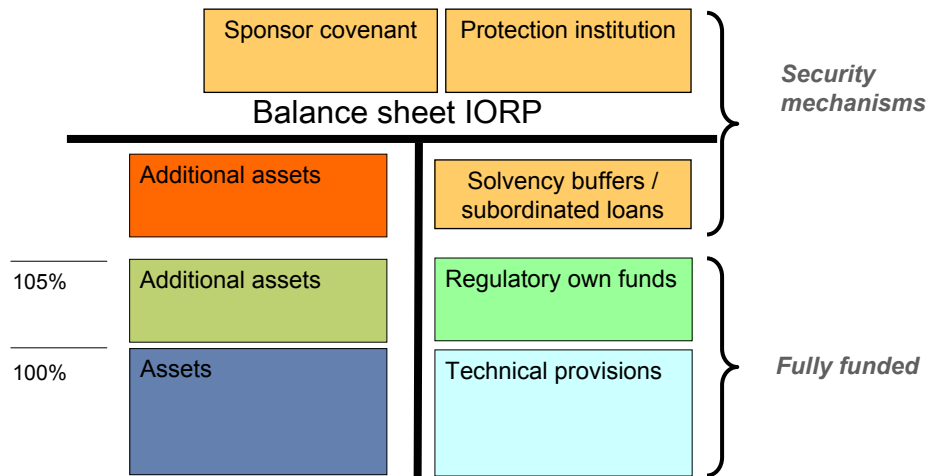
It has been left up to the individual member states to decide which existing local pension provisions should be regulated by the IORP Directive.

The Directive applies equally to open (multi-employer) as to closed (single-employer) retirement vehicles. The first group of IORPs is operating as financial institutions, often founded as a pension subsidiary of asset managers, insurance companies or banks. They are generally profit oriented and provide retirement arrangements for a number of third parties, but organised on an occupational basis. The second group of IORPs has a completely different nature, often founded by an employer to provide retirement benefits to its own employees, and with a non-profit focus.

The graph below illustrates the generic financing requirements of IORP vehicles. The items on technical provisions and regulatory own funds are regulated by the IORP Directive. The other security mechanisms, such as solvency buffers, national guarantee system and sponsor covenant are not regulated by the Directive. As such, major differences in IORP overall funding requirements exist.

⁵ Some indications on the latest published review of the state of implementation of the IORP directive is included in the “Report from the Commission of 30 April 2009 -COM(2009)203

⁶ Case C-343/08, European Commission v Czech Republic, judgement of the ECJ published in the OJCE C 63 of 13 March 2010, p.9



IORP Directive: Cross-Border Opportunities

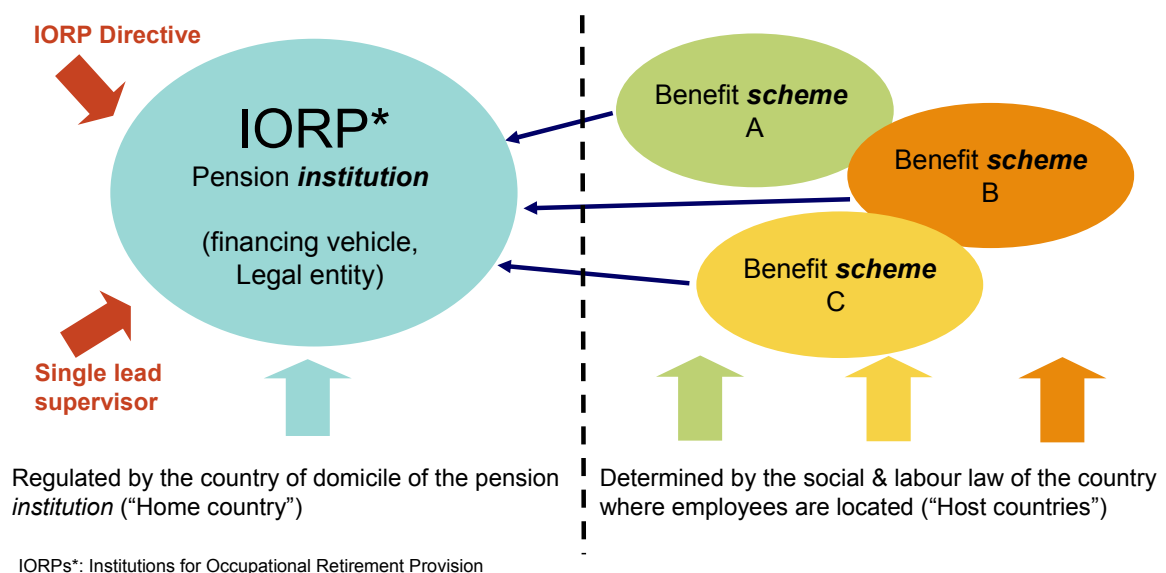
The Directive specifically allows for the mutual recognition of IORPs by national supervisors within the EEA and for cross-border affiliation of employees. This means that an employer, irrespective of its country of registration or operation, can establish a pension fund in any EEA country of his choice with a view to manage retirement benefit schemes and members in any other country within the EEA.

Cross-border IORPS are always authorised and regulated by the country in which the pension fund is established (defined as the «home» country) rather than the country or countries where the schemes and the employees operates (defined as the «host» country). In contrast to domestic-only IORPs, they must always be fully funded. In several EU member-states this is also a requirement that applies to domestic funds.

Cross-border IORPs must comply with «host» country social and labour laws ("SLL"). The IORP itself is regulated by its home country, but the benefit schemes that it provides must comply with the SLL requirements of the various host countries. For example, it is not possible to pay lump sum retirement benefits to Dutch participants irrespective where the IORP covering those participants is based. In addition, host countries have the option to impose further information, ring-fencing and investment requirements on cross-border IORPs, although these need to be fully justified by the supervisory authorities and cannot be discriminatory vis-à-vis those applying to domestic IORPs.

The following diagram offers a snap-shot of the structure of a cross-border IORP.

Cross Border IORP Structure - Pension institution and benefit schemes

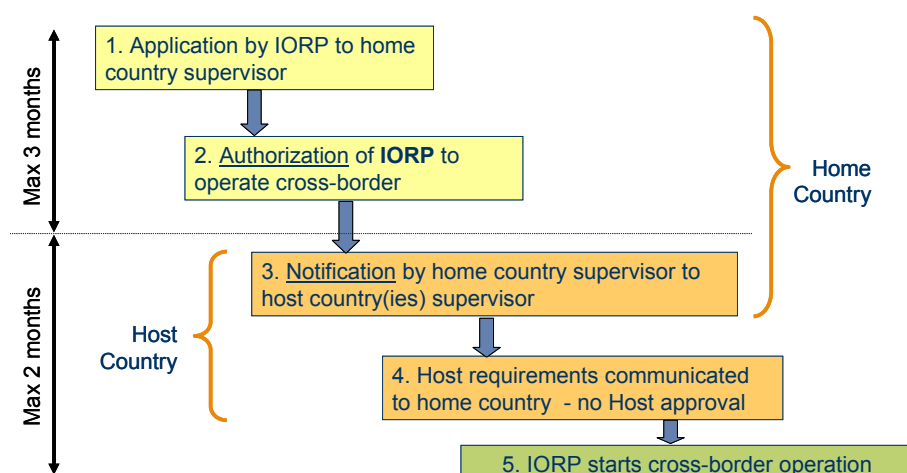


Cross-border approval process

The home country supervisor, the country where the IORP is based, is clearly in the lead. The IORP has to ask for *authorization* to operate across the border and will receive a cross-border license. Subsequently, the host country supervisor will be *notified* by the home supervisor that a cross-border activity is being aimed for. The host country supervisor will provide an overview of the host country requirements that the benefit scheme has to comply with and may check the consistency of the plan rules with the local applicable SLL. Upon receipt of this information or (in case the host country does not react) after a total 5 month period by the home country authority, the IORP may start its cross-border activities into the specific host country.

There is no opportunity for «host» supervisors to reject an application. However, once the IORP is providing cross-border services, the host country supervisor is allowed to screen if the benefit scheme complies with the host country requirements. If not, or if no agreement could be reached, the home supervisor – after an extensive process and unsuccessful attempt of mediation by CEIOPS - is formally mandated to end the cross-border services of the IORP into the particular country. This has never happened thus far.

The defined cross-border approval process is summarised below:



Identification of implementation issues

Before we review the key implementation issues, it is useful to consider the factors driving the development of cross-border IORPs. Issues relating to the solutions provided by Insurance companies and other financial service providers are considered in section 1.3 of this report.

Multinational companies/organisations – drivers for establishing cross-border retirement vehicles

Multinational companies believe that there are financial benefits and reduced operational risk and cost from grouping together retirement plans and their assets in cross-border Pension Funds. These include:

Financial advantages:

- Asset management cost reductions through “economies of scale”
- reduced financial risks through more controlled and efficient asset and/or insurance solutions;

- potentially more regulatory/financing flexibility (particularly important if DB plans are included)
- more tax-transparent and efficient pension coverage for internationally mobile employees.

Reduced operational risks and costs:

- simplified governance and operational oversight;
- fewer providers and interfaces and reduced internal management time.
- improved strength of the plan sponsor
- provide access to better quality investment options
- possibility to implement consistent new multi-country benefit plans with common look/feel/structure
- react to commercial situations in multi-country acquisitions and divestitures

The actual drivers vary considerably on a case by case basis depending on each company's geographical footprint, existing retirement benefits and strategy.

Implementation issues

Implementation issues vary considerably depending on the starting position and objectives of the various stakeholders. In our experience, common issues include:

- The availability of an appropriate existing local pension fund: Is there already somewhere within the company a well-functioning, well-financed and well-governed IORP available that is able to be converted into a cross-border IORP solution?
- Structure of scheme benefits: Is the aim to provide uniform benefit schemes, or will the existing benefit schemes be transferred to the cross-border IORP while maintaining their full original specifics. Obviously, scheme rules will always have to comply with local social and labour law and as such to a certain extent will differ. However, a DC scheme could be partially standardised (with some Annexes added to comply with country specific requirements).
- Number of host countries, companies/entities and schemes involved. The greater the number of entities and countries involved, the greater the complexity, particularly if defined benefit retirement allowances are being provided. Compliance with host country issues can be demanding and time consuming. In this situation, a stepwise process is recommendable, with new host countries being added only one by one. However, a multi-country implementation approach can be practically considered if the benefits are defined contribution in nature and only future service benefits are considered.
- The administration strategy. Administration on a multicountry basis is a significant issue, but there are solutions which can work well in practice. Unfortunately, there is a limited number of third-party administrators providing fully coordinated multi-country benefit administration. However, most organizations currently addressing this issue are splitting the functions into "back-office functions" (such as consolidated cash flow recording, investment,...) which can be administered centrally, and "front-office functions" (such as member communication,...) which can still be provided by an existing local administrator, or a new local outsourcing partner.
- Resistance from local stakeholders and lack of understanding. There is often a certain amount of local resistance from local stakeholders who are concerned about moving into unknown cross-border arrangements. We have found that good honest and open communication is very powerful for breaking down often unfounded resistance. Further, it is important to ensure that local stakeholders are involved in the governance of the new cross-border IORP as far as possible.

The level of knowledge and degree of pro-active support provided by local authorities is also very important:

- Practical experience reveals that some countries' authorities have a dedicated team for cross-border supervisory issues in place, able to handle English as a working language (which is important for most multinational companies who also use English as a common working language) and a willingness to consider alternative solutions. Some other member states have a less pro-active policy stance which requires more time for prospective implementations;
- Some countries have been taking steps to become locations of choice for cross-border IORPs (eg Belgium, Luxembourg, Ireland, Liechtenstein and The Netherlands). Others countries are supportive or neutral in respect of cross-border transactions. Nevertheless, in our experience, there are other countries which at this stage appear to be more challenging given their limited experience and technical limits still imposed by local legislation in respect of cross-border arrangements.

Formally, a cross-border IORP only communicates with its local home country supervisor. However, practice shows that an early and transparent direct dialogue with the host country supervisors, initiated by the IORP or its sponsors really helps in making the implementation successful. Market practice also shows that host country supervisors are not yet used to their relatively new role.

In addition, there are some practical issues, already identified by CEIOPS, which are outstanding and are creating implementation challenges in particular for UK and German cross-border IORPs:

- Protection fund: A UK cross-border IORP providing services into host country Germany and vice versa has to pay the national pension guarantee system in both jurisdictions; the UK puts the levy on the IORP, while Germany puts the levy on the sponsoring undertaking;
- Definition of cross-border activity: Across the EU three different definitions are being applied as the Directive leaves room for different interpretations. In particular, the UK uses a very broad definition leading to numerous small formally authorized UK cross-border IORPS, which host countries do not follow up on as these UK pension schemes are considered as domestic UK pension schemes. The differences are causing misunderstandings among market participants using UK as a home country.

Creating a cross-border IORP from scratch takes 9 months up to a year, while adding an additional host country takes about 6 months on average. Regulatory pre-notice periods and approval procedures stretch the time frame. Overall, we have found that only one third of implementation issues that generally arise have a technical (regulatory, actuarial, legal) background. Social and labour law requirements and tax issues are often mentioned as major implementation barriers but have not been material issues in our experience. Most attention has been spent on stakeholder management, education and communication in this emerging sector of European retirement benefits practice.

In addition, within the context of this study, major issues to tackle will relate mainly to:

- the diversity of the legal status and nationality of the potential sponsors;
- the lack of a financial and legal link among different potential sponsors that may involve corporations, Universities, and other R&D agencies;
- the compulsory national requirements in some host countries that would impede the affiliation of members to a cross-border pension fund.

Census details of existing cross-border IORPs

At September 2009, approximately 80 registered cross-border IORPs (single and multi-employer) existed. They are located in 9 EEA countries and are managing retirement benefit schemes for employees in over 20 EEA countries.

The following table shows the distribution of «home» and «host» states for cross border IORPs existing as at 30 June 2008 in accordance with the official review publicly available at the time of undertaking the inventory analysis⁷. An updated report has been made available subsequently by CEIOPS in November 2009⁸. This more recent CEIOPS update does not report material changes compared to previous report and they were already anticipated into our review.

As the CEIOPS overview did not contain more specific details, we contacted CEIOPS Secretariat and various local regulators to obtain more information. CEIOPS and the target regulators were not in the position to provide additional information (due to lack of knowledge and/or confidentiality rules); nevertheless we made an attempt to supplement the original census.

We have added a brief description of each case listed in the original CEIOPS report. We have only described the background of the case and not mentioned the names of the parties involved for the sake of confidentiality.

⁷ CEIOPS, 2008 Report on market developments, 11 November 2008

⁸ CEIOPS, 2009 Report on market developments, November 2009

Home country	Host country	Number of cases Jan 2007	Number of cases Jun 2008	Description
Austria	Germany		1	Single employer group IORP potentially multiemployer (European Multinational)
Austria	Germany, Slovenia		1	Financial provider IORP; temporarily on hold
Austria	Germany, Liechtenstein		1	Financial provider IORP (European Insurance Company)
Belgium	Luxembourg		4	Some cases relate to Directive pre-dating cases of BE/LU commuters. One is a designed cross-border IORP
Finland	Estonia	1	1	Multinational (air carrier)
Germany	Luxembourg	1	2	Unknown
Germany	Austria	1	1	Insurance subsidiary IORP
Ireland	UK	18	21	Nearly all cases related to Northern Ireland / Ireland commuters. Small number of members
Ireland	Belgium	1	1	Multi-employer IORP
Liechtenstein	Germany		1	Financial provider IORP
Luxembourg	Finland, Denmark, Estonia		1	Unknown
Luxembourg	Netherlands		1	Dutch multinational – IORP for expatriates
Luxembourg	UK, Netherlands, Germany, France, Poland, Austria, Belgium, Italy, Spain, Sweden	1	1	Dutch multinational – IORP for expatriates – no longer active

Home country	Host country	Number of cases Jan 2007	Number of cases Jun 2008	Description
Portugal	UK		1	Unknown
UK	Ireland	11	14	Typical UK cases (broad definition of “cross-border activity”)
UK	Netherlands	3	3	Typical UK case (idem)
UK	Belgium		1	Typical UK case (idem)
UK	Greece	1	1	Typical UK case (idem)
UK	Germany	2	2	Typical UK case (idem)
UK	Germany, Austria		1	Typical UK case (idem)
UK	France, Poland		1	Typical UK case (idem)
UK	France, Netherlands		1	Typical UK case (idem)
UK	France, Sweden, Spain, Poland		1	Typical UK case (idem)
UK	France, Luxembourg		1	Typical UK case (idem)
UK	Czech Rep, France, Luxembourg, Netherlands		1	Typical UK case (idem)
UK	Germany, Slovakia, Sweden		1	Typical UK case (idem)
UK	Belgium, Ireland, Italy		1	Typical UK case (idem)
UK	Bulgaria		1	Typical UK case (idem)
UK	Ireland, Netherlands, Germany		1	Typical UK case (idem)
UK	Ireland, Netherlands, Spain		1	Typical UK case (idem)
Total		48	70	

The findings of the 2008 CEIOPS report can be summarized as follows:

- Most cases are from the UK, which applies a very broad definition of cross-border activity. The UK looks into the individual members and whether they are temporarily “based” outside the UK, while other member states use the benefit scheme as a starting point (does the benefit scheme originate in another country than the IORP) or the sponsoring undertaking (is the paying entity based in another country than the IORP). As such, in contrast to what one might conclude at first sight, the UK is not the most popular choice of home-country for “true” cross-border pension solutions as the overseas members are typically still receiving UK style benefits and many are expected to return to the UK. The same applies to a certain extent to Ireland. Most host countries, except Germany, usually regard the UK cases as not relevant from their perspective;
- German-speaking countries are also well-represented in the CEIOPS overview, reflecting the fact that insurance companies have started to use IORPs as open pension funds mainly for multi-employer solutions;
- Many cases pre-date the IORP Directive and were formalized once the Directive was implemented. These cases mainly refer to cross-border employees (Northern Ireland/UK/Ireland; Belgium/Luxembourg);
- Many cases include only a small number of members; no more than 5-10 members on average;
- Some cases are test cases, pilot cases of financial service providers.

Expected developments and examples of single employer cross-border IORPs

Further analysis of the CEIOPS overview indicates that there were not many “true” cross-border IORPs as of May 2008. Such “true” cross-border IORPs provide different benefit schemes and cover groups of local employees and/or specific groups of internationally mobile employees. These “true” cross border IORPs are those triggering major innovations in the European pension market in terms of making the inclusion of employees located in different countries in a common pension arrangement a practical reality..

As indicated, a subsequent CEIOPS’ report, providing an update of the market developments, was made available in November 2009. The official number of operational cross-border cases reported increased to 76, widening the scope of registered cross-border pension operations.

In summary, there are two distinct paths of development in single employer cross-border IORPs. On the one hand, a few multinationals are determined to maximise the benefits arising from consolidating existing domestic retirement plans by leveraging the opportunity offered by the IORP Directive, ie reducing the complexity and number of financing vehicles, improving governance and benefiting from economies of scale. These multinationals are creating and growing their cross-border IORPs on a country-by-country basis, selecting the home-country IORP, and then identifying different groups of local employees with a view to include them in the cross-border IORP.

The second path is focusing more on using cross-border IORPs to provide benefits for internationally mobile employees. Previously such internationally mobile employees would typically have received either a mix of scattered locally financed benefits, or benefits from a retirement arrangement established in an offshore location. Using a cross-border-IORP represents an opportunity to both increase economies of scale and improve tax transparency and efficiency of such arrangements, at least for individuals resident within the EEA.

We expect the number of single-employer cross-border IORPs to increase significantly over the next 2-3 years once practice becomes more established, and more multinationals realise that cross-border

IORPs have become a practical reality at last. In addition, we expect a convergence of the two paths to growth with cross-border-IORPs covering both local and internationally mobile employees.

Below we sketch out a few examples of each development path.

Designed to cover locally based employees

Example A – Belgium + Luxembourg

A global pharmaceutical company registered a cross-border IORP in Belgium in 2007 and covers over 3000 employees in Belgium and a group of 25 employees working in Luxembourg. All employees in these countries are covered in the IORP, and there are 6 different benefit schemes providing a mixture of defined benefit and hybrid retirement benefits. Variations in benefits are designed to meet requirements of social and labour law. On establishment, past service entitlements were transferred into the IORP.

Example B – Belgium + 4 other EEA countries

A European-based multinational has registered an existing Belgian IORP as a cross-border IORP in 2009. The objective of the company is to combine various existing local (DB/DC) pension arrangements into one single European vehicle. The initiative is aimed at local employees, not primarily at mobile employees. The main drivers are financial (more flexible but not lower financing requirements), better governance and improved overall risk management. The multinational has defined a clear implementation plan and already completed implementation studies in 2 locations; the first location was planned to go live in October 2009. It is expected to copy existing local benefit schemes in the cross-border IORP. As such, the IORP will manage DC, DB and hybrid schemes alongside each other. It is intended that past service benefits will be transferred to the IORP. By end 2010, the cross-border IORP is expected to cover schemes and participants out of 5 countries, involving in total more than 10,000 people.

Example C – Belgium + several EEA and non-EEA countries

A global oil company is considering modifying and extending its Belgian IORP to include employees from several other EEA countries and non EEA countries. Specific drivers for this global company include providing continuity of benefits for former employees, improving the financial security of benefits, improve the investment opportunities and tax-efficiency. The company is now in the process of defining the roll-out strategy and expects the first group of EEA members to join the cross-border IORP by mid 2010. Benefit schemes will be established for each country which will mirror existing local defined benefit or defined contribution benefits as far as possible. In addition, the company is also considering to provide benefits for local employees in one non-EEA country through this IORP, and potentially a different set of benefits for internationally mobile employees once the initial roll-out to local employees is completed. It is expected to retain as much benefit administration at the local host country-level as possible. There could be over 1000 employees covered within a couple of years.

Example D – Luxembourg + several EEA countries

This multinational company has selected the Luxembourg ASSEP vehicle as a starting point to create a cross-border IORP. The objective of the company is to replace various existing local pension arrangements with highly standardised DC schemes, managed by a cross-border IORP. It is intended that the DC administration will be done by a single provider and be as much as possible done centrally. Key drivers are less management time, more cost control and easier to start business in new markets. The IORP is expected to cover more than 10 schemes and participants out of at least 7 countries (mainly in Central and Eastern Europe).

Designed to cover internationally mobile employees

Example E – Ireland/UK/Poland/Hungary

A global IT company established a cross-border IORP in Ireland in 2008. It covers a modest number of different groups of internationally mobile employees in Ireland/UK/Poland/Hungary and also a number of non-EEA countries such as Russia, Turkey and Egypt. The objective of the organisation is to provide retirement benefits which are understandable and fair, and which will not present a barrier to international mobility. There are two main benefit schemes both providing defined contribution benefits at either 0% or 8%, and individual country sections will be tailored to meet social and labour law conditions. Previously retirement benefits for these employees had been unfunded leading to a number of issues including complex and inefficient rules, and limited level of transparency. In the future, it is intended to extend the range of countries covered under this IORP

Example F – Cyprus/Luxembourg/Malta and Lithuania

An international financial services company is establishing a cross-border IORP in Belgium primarily for a group of about 50 internationally mobile employees in 4 other EU countries, and will also include a smaller group of about 10 Belgian-based self-employed directors. Benefits will be defined contribution in nature, and different sections will exist to maximise local tax efficiency and ensure compliance with local social and labour law requirements. Benefits will be provided for future service only.

Example G – Luxembourg – but no further implementation

A European based multinational was among the first early movers and created a cross-border IORP directly following the transposition of the Directive in Luxembourg. The main objective of the IORP was to accommodate expatriate employees from within the Group. They registered a CAA insurance vehicle but then the initiative stalled because the expected number of internationally mobile employees expected to be covered dropped significantly due to a change in the definition of internationally mobile employees in one jurisdiction and a major global divestiture. This multinational is currently reconsidering its cross-border IORP strategy.

The following table summarises the key features of the 7 examples above:

Example	Home Country	Host Countries	Benefits	Employees	Progress
A	Belgium	Luxembourg	DB, Hybrid	3000 local	Live
B	Belgium	Netherlands + 3 other EEA locations planned	DB, DC	10,000 local expected	Expected Live 2009
C	Belgium	1 EEA country and non EEA planned to start	DB, DC	1000+ local employees	Expected live 2010
D	Luxembourg	7 EEA countries planned	DC	Local employees	Unknown
E	Ireland	UK, Hungary, Poland planned, non EEA countries	DC	International employees	Live
F	Belgium	4 EEA countries	DC	50 International, 10 local employees	Unknown
G	Luxembourg	Unknown	Unknown	International employees	Live

Overall, we observe the following general characteristics in the development of single-employer cross-border IORPs:

- We observe a small number of multinationals acting as first movers and actually implementing the first live cross-border IORPs;
- We expect that many more multinationals will establish cross-border IORPs once the first few cases are operating and reach the public domain and they realise this is a practical reality;
- Actual cross-border IORP implementation strategies depend on the geographical footprint and business strategy of each multinational, and on their existing policy towards retirement benefits.
- Where cross-border IORPs are replacing local retirement arrangements, the benefits covered under the cross-border IORPs are either defined benefit or defined contribution depending on existing locally provided benefits;
- The choice of location of the cross-border IORP is particularly important where DB retirement benefits are provided due to significant differences in financing requirements;
- Where cross-border IORPs provide benefits to internationally mobile employees, the benefit schemes tend to be defined contribution in nature. Further, it is very likely that any new benefit schemes would be defined contribution in nature unless defined benefit is required by contract or legislation;
- The pace of growth of cross-border IORPs could potentially increase faster if multinational companies decide to move "international" retirement plans onshore from existing offshore locations.
- Local tax and social and labour law considerations do not appear to be barriers to implementations to date. Several multinationals are now addressing the issue of cross-border pension administration.

1.3. Cross-Border Product-Based Solutions

This section of the report analyses cross-border product-based solutions offered (mainly) by insurance companies. In particular, they can be split into three categories:

- Category 1 products established under the IORP (Institutions for Occupational Retirement Provision) Directive (2003/41/EC);
- Category 2 products established under the Life Assurance Directive (2002/83/EC);
- Category 3: other cross-border products which may involve some form of cross-border asset pooling or simply common financial design/marketing (virtual pension pooling).

Description of Cross-Border Products

IORP-based Products (referred to as "Category 1" Products)

Category 1 products are all very new. A select group of pro-active financial service providers (insurers, risk pooling networks, administrators, asset managers, pension service providers) have launched or are launching IORP based products to serve the cross-border group pension market.

Financial service providers are recognizing the opportunities presented by the IORP Directive. Their clients in this case are typically the same type of multinational companies discussed in section 2.1 of this report. However, these clients consider using a product based IORP approach through a third party provider rather than establishing and registering their own single-employer cross-border IORP. The Category 1 IORPs products described in this section are often referred to as "multi-employer IORPs" or "open funds", in contrast to single-employer, closed funds which are founded by single employers and are for internal use only.

The view of several financial services providers is that the IORP regime makes it considerably easier to offer cross-border occupational second pillar pension services than under the Life Directive regime. In the past, entering other occupational pensions markets within the EEA has been costly in terms of complying with local regulatory requirements or impractical using the 3rd Life Directive (see Appendix A). The Pension Directive route permits insurers and other financial institutions to operate under the regulatory regime of the "home" country alone without the need for complicated local host country registration procedures, other than the standard notification and review process as it applies to IORPs. Moreover, the benefit schemes offered by the IORPs have to comply with well-defined host country "social and labour law" (SLL) requirements, which makes it more easy meet different countries' requirements.

Description of product features

- The service provider (insurer or other financial services company) operates typically using an IORP license and being regulated by the IORP Directive. The IORP subsidiary is founded in a specific EEA home member state and has obtained a cross-border license from its home regulator.
- The IORP is divided into sub-country sections, each well ring-fenced. In each section the pension scheme design complies with the host country Social and labour law (SLL)⁹ requirements.
- The benefit schemes being offered through the “open IORPs” route tend to be defined contribution schemes and are harmonised across different country sections as far as possible. At the time of the inventory 5 insurers had registered “open IORP” solutions, with each 1 - 5 country specific benefit schemes under management.
- The IORP follows the standard notification process when it intends to offer a new benefit scheme in a new country as set out in section 1.2. Currently, some home country regulators are considering whether host country notification is required when additional companies join a multi-employer IORP into a country section which has already followed the notification process.
- The IORP offers cross-border bundled supporting services to clients in the various countries. All operational activities (customer service, investments, administration, insurance) are the responsibility of the IORP, but some of these activities may be delegated to “subsidiaries” of the IORP in local countries or outsourced to third parties.
- Death, disability (and even medical) benefits may be included in the product. The associated risks might be born by the IORP or by other parties eg. the parent insurer, a captive insurer or outsourced to a third party. Pooling of risks in a risk pooling network is often offered.
- Assets as well as liabilities are automatically pooled across borders as the IORP is a single European entity. This is in contrast to the Category 3 products where various local entities and/or local contracts are involved.
- Since the IORP is a single entity, the assets are managed in a single pool and as such take advantage of economies of scale (e.g. lower fees, streamlined reporting) and a centralised investment strategy (e.g. ALM risk-management, portfolio managers selection, tactical asset allocation). However, the assets and liabilities belonging to the country sub-sections are well-ring-fenced and earmarked in order to allocate risks to the appropriate section and to manage the level of solidarity among the sections.
- If a covered employee moves to a new country, the employee’s account remains within the IORP. There is no need to transfer the pension rights and assets out of the IORP to another pension entity. As such, no portability issues arise. The employee moves to another sub-section of the IORP applicable for the new country and may face a different benefit scheme reflecting market competitive practice in that country and the new social and labour law.

⁹ Social and Labour Law (SLL) refers to the those parts of the (pension) legislation of a Member State (host country) that apply to the pension scheme if this scheme is being managed by an IORP in a foreign country (home country). All Member States are due to identify their SLL and to make their local requirements available to market participants

Strengths of Category 1 products

- Economies of scale in insurance, investment, administration and governance may result leading to better benefits all other things being equal.
- Medical underwriting for risk benefits should be less onerous when compared to a purely local plan.
- Only one set of IORP documents will apply, with a single supervisor and single regulatory reporting.
- Local benefit scheme rules could be streamlined into a standardized DC scheme across Europe (though some local adaptations needed to comply with local social and labour law requirements) .
- The day-to-day governance of the IORP is delegated to the financial service provider.

The multi-employer IORP products could potentially suit the wide variety and large number of employers of EU based researchers.

Weaknesses of Category 1 products

- Seems at first sight a more costly route as the insurers usually operate as profit-oriented institutions. A closed, single-employer IORP would not be profit-oriented and seems more cost-efficient. However, a closed IORP will have to make use of several profit-focused outsourcing partners to provide various services which will lead to additional fees.
- The benefit schemes offered through the IORP route have to comply with local social and labour law and taxation requirements whether organised on a single employer or product basis. However, market practice shows that complying with host country SLL and tax requirements is less of an issue than often stated.
- Setting up a multi-lingual customer service and administration centre is costly and complex. This comment applied to all cross-border retirement solutions Market practice shows, that part of the administration (front office) could be delegated to (existing) local administrators or insurers. Moreover, some insurers do have large international call centres already available.
- It may prove difficult in practice to launch in multiple countries all at once. However, this goes for all cross-border solutions.

Third Life Directive based Products (referred to as "Category 2" Products)

The traditional route for insurers and other financial services companies to operate in the cross-border pension market has been through the insurance route using the Life Assurance Directive (2002/83/EC) on the basis of the Freedom of Services (FOS) EU Treaty principle, i.e. the cross-border provision of life insurance products without an establishment in the country where the product is sold (a brief overview of it is set out in Appendix A).

However, the absence of any standardisation of procedures and product requirements has meant that this route has not been used successfully in practice. The lack of pre-defined and simple procedures for licensing and transparent local product requirements is generally perceived in the cross-border insurance market as the missing link.

Some Category 2 products exist covering individual internationally mobile employees. However, most insurers have pursued group retirement business using a multi-domestic approach, by acquiring or founding several local insurance companies, which are experts in their local market and which service just their own local market.

Description of product features

- The service provider (insurer or other financial services company) operates directly or via an insurance subsidiary, using an insurance license and being regulated by the Third Life Directive and correlated EU legislation. The insurer is subject to the financial supervision in its specific EEA home member state only, and makes use of its freedom of services (FOS) rights to sell its products into other EEA countries without the need of a locally established insurance company. The third Life Directive sets out the defined notification procedure where host states can specify certain requirements which must be met "in the interests of the general good".
- The insurer offers a pension insurance contract to the various employers across the EEA member states. Each employer has to enter into a separate contract with the designated insurer. However, the insurer offers a similar pension product to each individual employer.
- Typically benefits are defined contribution and different country sub-sections have significant design consistency.
- It is necessary for the product offered in the local markets to comply with relevant local labour law requirements. In addition, there may be other requirements such as language and advertising restrictions in line with locally supervised products,
- All activities (customer service, investments, communications, and administration) are the responsibility of the insurer. This activity may be carried out directly by the provider itself. Alternatively, some activities may be delegated to outsourcing partners. Most activities will be operated out of the home country of the insurer, other might be delegated to own subsidiaries or outsourcing partners in local countries (for language or other reasons). Often a multi-lingual call centre (and/ or internet-based) approach is in place.
- Death, disability (and medical) benefits may also be included (also generally via a cross-border insurance product).
- Assets and liabilities of the cross-border insurance contract are automatically pooled.
- When employees move countries covered by the same cross-border insurance contract, their assets are unaffected and stay in the cross-border insurance contract. However, they move into the sub-section applicable to their new home country. There are no formal transfer procedures required and no pension portability issues.

Strengths of Category 2 products

- Economies of scale in insurance, investment, administration and governance exist since all employers sign a contract with the same insurer and this insurer operates as a single entity, having pooled the assets and liabilities and having streamlined its operational activities across the border.
- Medical underwriting for risk benefits (to determine eligibility for specific benefits on health grounds) should be less onerous versus a purely local plan.
- Only one pension insurance product applies. However, the sub-sections for all countries must be kept up-to-date with local laws if required to qualify for local tax relief on contributions, alike the product offerings as part of Category 1 and 3.

Weaknesses of Category 2 products

- May be difficult to find a true 'freedom of services' 2nd pillar occupational pension product. Anecdotally many providers believe that some countries are, in practice, retaining their road blocks regarding tax equality. The European Commission has not systematically examined yet the existence of infringements cases concerning the discriminatory tax treatment of life insurance contributions paid to life insurance providers established in other Member States, as it did for pension contributions paid to foreign providers.
- We believe there is a lack of available retirement focused 3rd Life Directive products on the market. Further, most providers are not anticipating to actively develop these products as the Category 1 IORP route seems more promising.
- Setting up a multi-lingual EU customer service and record-keeping administration centre will be complex. However, this goes for all cross-border solution, as well solutions offered as part of the IORP as the Insurance Directives route.
- Researchers are typically not fully protected if the insurer gets into financial difficulties – only to the extent of protections under the insurer's home country insurance legislation. However, this goes for IORPs as well.
- There are potential Solvency II implications (which do not currently seem to apply to IORPs) which might make the insurance offerings more costly than in the past.

Virtual Pension Pooling Products (referred to as "Category 3 Products")

Category 3 products have been available in the pension market for a few years. Some pro-active insurers (and other pension service providers) have found new ways to tap into the potential in the cross-border group pension market by bundling existing *local* insurance products together instead of using a Category 2 product provided cross-border out of a particular home country.

Providers combine various local insurance products and services to form a virtual pension pooling product. These products involve some degree of co-ordination for investment of pension assets (some via asset pooling vehicles) and may also include co-ordination of administration and customer service activities (multi-country and multi-lingual call centers, consolidated reporting to the employer, single branding with regard to member information).

Description of product features

- The product is structured as legally separate local pension insurance contracts (typically operated by insurers belonging to the same international insurance network) covering employees in multiple EEA member states (plus other countries outside the EEA).
- Pension insurance contracts for different countries are issued by locally authorized and regulated providers
- Pension design is typically defined contribution, and designs are typically co-ordinated from country to country.
- Pension liabilities and ownership of assets remain with each local country insurer, so in contrast to Category 1 and 2 products, liabilities are retained in each country and there is no cross-border pooling of liabilities.
- Some providers pool the assets of these products in a central entity (e.g. an asset pooling vehicle in Ireland (CCF), in Luxembourg (FCP) or in The Netherlands (FGR)) in order to provide greater investment mass, therefore enabling improved investment diversification and performance, in addition, tax optimization.
- Death, disability (and medical) benefits may also be part of this product, and may be made more efficient via multinational risk insurance pooling.
- Significant administrative activity (customer service, investment communications/ education plus record-keeping) is typically carried out at each local country level.
- In addition to the asset pooling offer, ad-hoc services may be added, e.g. consolidated reporting, news alert services and expatriate solutions, in order to better serve the specific needs of the pension clients.
- If a covered employee moves to a new 'host' country, the insurance network will try to use its 'best endeavours' to effect a transfer of reserves to the contract in the new country (but, in practice, this may not be possible and/ or not be tax-effective) which means that future benefits will come from different insurance policies.

Strengths of category 3 products

- This could lead to a faster initial roll-out and ability to cover more countries quickly as initial benefits would be based on pre-existing policies which the insurers already provided, if belonging to the risk pooling network.
- Medical underwriting of risk benefits should be less onerous versus a series of purely local pension plans.
- Asset flexibility may, in practice, be greater than for an IORP depending on locations and the insurer.

Weaknesses of category 3 products

- This is not a true Pan-European pension fund, since liabilities are not pooled (for example, each country must meet its own longevity risks) and there is no cross-border legal vehicle.
- There will generally be problems in transferring assets when researchers who move between countries would like to combine their accrued benefits with a single provider for (cost-) efficiency reasons in the pay-out phase.
- The survey among providers shows that there are few products available and there are no disclosed plans to develop more as this virtual pooling approach is being overtaken by the true pooling via the IORP route. Section 1.3.1 below describes the providers in more detail
- There are insurance products for each country to be kept in current compliance in all countries.
- Researchers are typically not fully protected when a local insurer gets into financial difficulties – only to the extent of protections under local insurance legislation.
- There are potential Solvency II implications (which do not apply to IORPs) which might make these insurance offerings more costly than in the past.
- It is more expensive than IORP based solutions, since there are less economies of scale and each participating insurance company will charge its own mark-up.

1.3.1 Existing Cross-Border Pension Products

The project team conducted interviews with the persons within the financial service providers who are responsible for international business development and/or pan-European pension products. We contacted 24 financial service providers in Europe. This included 14 large life insurance groups in Europe and 10 other financial services providers in the pension market who were thought likely to be contemplating developing or participating in a cross-border pension product-based solution. Furthermore, earlier in 2009, we conducted a survey covering European based providers, and the views/opinions collated from this supported also this study.

The names of the participants are set out in Appendix B. We have referred to these providers within the main body of the report in an anonymous manner, when describing various products available, those under development and any particular views or comments expressed.

We have identified 16 existing cross-border products and 9 products under development. The existing products are spread evenly across all categories (although some Category 2 products have less of a pension focus, and have less relevance for this study). Most of the products under development are Category 1 IORP based products.

Summary results existing products

The actual reported existing cross border products are described by vehicles below:

Category 1 - IORP Product

There are five registered products but only one has clients. The number of the countries in-scope for time being very limited, i.e. products target very specific markets. Due to the nature of this category being new and constantly developing, providers will add countries as and when are needed.

Category 2 - Insurance Product

We identified six cases of Category 2 cross-border Third Life Directive products that are registered and ready to receive clients. The number of clients remains limited and focuses mainly on benefits for

internationally mobile employees. Generally, these products are more geared towards providing risk benefit cover rather than retirement benefits, and so are less relevant for this study. This route does not seem to be the future preferred route forward for most providers.

Category 3 – Virtual Pension Pooling Products

There are five providers who offer this product.

Table 1 and 2 in the annex contain in more detail, the findings of our full survey/interviews covering both current products and planned initiatives, and is split into insurance companies and other financial service providers respectively.

1.3.2 Planned and on-going-developments on Cross-Border Pension Products

IORP-based Products (Category 1)

There are seven Category 1 IORP products in the process of development. Levels of development vary from relatively advanced with a blue-print structure agreed to a concept based on IORP vehicles which have not yet received local regulatory approval.

Product Structure

The insurance companies who choose the Category 1 IORP Product route will be targeting mainly multinational companies. However, these clients will be considering whether to establish their own single-employer cross-border pension arrangements in an unbundled manner, or whether to use a ready-made IORP product as described above, where the Insurer or financial services provider offers a bundled service. We expect that the greatest demand for the Category 1 Products will come from multinational companies in relation to countries where they have smaller numbers of employees, and will benefit the most from larger economies of scale.

It is thought that most of these IORP products will be structured as multi-employer pension funds (rather than as a series of pension funds, involving the cross-border operations of a single parent company).

Pricing is likely to be based on a minimum of IORP participants per country (or a minimum annual premium or assets). The normal pricing basis is likely to be fixed fee plus basis points on the assets. Fixed fee covers administration and would be based on the number of members covered (with a minimum to apply).

The insurers can also cover life and disability insurance benefits, and some are known to be considering the possibility of offering health insurance (and even long term care insurance) to IORP members.

As far as proposal activity is concerned, the insurers today have responded to a number of "Requests for Proposals". However, based on activity in the market over the past several months, they expect this number to grow significantly over the coming 12 and 24 month periods. This is confirmed by the large number of IORP products currently under development.

Pension Fund (Home Country) Location and Host Country services

To date, the insurers and other financial service providers are tending to show an equal preference as home country locations for Belgium, Luxembourg, and Liechtenstein. The Netherlands may follow if a new IORP vehicle becomes available following the adoption of a new regulation, still under examination by the national legislator at the time of drafting this report. While Liechtenstein is somewhat set back for the moment as it has bilateral tax treaties in place with only a selected number of countries.

Providers' thoughts on the main host countries into which they are selling their offerings are France, Germany, Netherlands and the United Kingdom. So far, the insurers have not looked beyond five or six host countries as they are focussing on the largest European pension markets with most potential clients.

Pension Fund Administration

With regard to the administration of participants' accounts, most of the insurers interviewed are members of international insurance networks and propose to use their local network partners to cover all states. Local country insurers will tend to focus on inflow of information for/ from members, compliance with local regulation and for collecting premiums to be remitted to the IORP location.

With regard to member communication, this typically takes place via one or more multi-lingual call centres based in a central location (not necessarily the IORP host or home country). The insurers are also planning multi-lingual websites to facilitate electronic access by participants. At this time, there is very little capability to communicate beyond six main languages – English, French, German, Dutch, Spanish and Italian, but more languages could be added depending on client demand.

Example H – Insurer

This example relates to a non-EU based insurance company. It is a longstanding player in the group pension market and wants to improve its traditional risk pooling network proposition and to offer an integral pension proposition to its clients. The IORP product route makes it possible to attract more clients from across Europe; it will effectively enter the EU in a specific country and make use of the European pensions "passport" under the Pensions Directive. In addition to a multi-employer fully bundled product, the insurance company is also considering offering its various related services (such as portfolio management, administration services, insurance coverage) as unbundled building blocks to service other single-employer IORPs.

Example I - Financial services company

This specific example relates to a European based financial services company with operations in five countries including four European countries, 5,000 employees worldwide, and assets under management of more than euro 50bn.

The objective of this financial institution is to be able to reach out to clients in the new European pension market more effectively and to offer an integrated pension proposition to its clients. They intend to create one or more in-house IORP subsidiaries established on a multi-employer basis with a defined contribution design to better leverage their own current client portfolio by offering cross-border services instead of only local services. The company has selected the Luxembourg CAA vehicle and the Liechtenstein pension fund as starting vehicles for consideration.

The main drivers for their clients are reduced governance, lower costs, web-based communication to members and better investment performance. By mid 2011, the IORP is expected to cover many schemes and participants in its home country, with the intention to include additional country schemes over time. Total number of members is expected to be in a range of 5,000 – 10,000 people within the next couple of years.

Third Life Directive based products (Category 2)

There are only two disclosed cases of Category 2 Third Life Directive products which are under some form of development, and in both cases, it is in conjunction with Category 1 IORP based development.

Insurers see two major problems with developing Category 2 (Third Life Directive) pension-related products:

- where and how this arrangement will be reflected on the balance sheet of the insurance company; and
- responsibility for the pension liabilities of a cross-border product as most if not all local insurance policyholder protection legislation do not fully cover the losses arising from insolvency. Typically, protection funds cover 90% of policyholder rights up to monetary limits.

The practical problems with different countries readiness to accept tax-effective "passporting" was the most commonly cited reason for not pursuing "freedom of services" cross-border pension products. In addition, several insurers mentioned other barriers including defining the "general good" which can influence country specific requirements under the Third Life Directive.

Virtual pension pooling Products (Category 3)

Freedom of Services (FOS) Category 2 insurance Products were considered by a number of these insurers, but they claim that there are only a few countries (5) that do not, in practice, discriminate between FOS and local insurers. They decided to re-focus on a local approach which combines local products with some centralised services. These are the Category 3 virtual pension pooling products.

There are no disclosed plans to develop further products in the future. We believe this is because insurance companies and other financial providers believe the Category 1 IORP route will be more efficient and enable them to offer competitive advantages to their clients.

Key Conclusions

The official number of operational cross-border cases reported by CEIOPS in 2009, increased to 76, widening the scope of registered cross-border pension operations. We expect the number of single-employer cross-border IORPs to increase over the next years once national requirements become more transparent, practice becomes more established, and more multinationals realise that cross-border IORPs have become a practical reality at last.

There are two distinct paths of development in single employer cross-border IORPs. On the one hand, a few multinationals are determined to maximise the benefits arising from consolidating existing domestic retirement plans by leveraging the opportunity offered by the IORP Directive, ie reducing the complexity and number of financing vehicles, improving governance and benefiting from economies of scale. These multinationals are creating and growing their cross-border IORPs on a country-by-country basis, selecting the home-country IORP, and then identifying different groups of local employees with a view to include them in the cross-border IORP.

The second path is focusing more on using cross-border IORPs to provide benefits for internationally mobile employees. Previously such internationally mobile employees would typically have received either a mix of scattered locally financed benefits, or benefits from a retirement arrangement established in an offshore location. Using a cross-border-IORP represents an opportunity to both increase economies of scale and improve tax transparency and efficiency of such arrangements. We expect a convergence of the two paths to growth with cross-border-IORPs covering both local and internationally mobile employees.

Beyond "single-employer", "closed funds" which are founded by a specific employer to cover only his employees, some financial service providers (insurers, risk pooling networks, administrators, asset managers, pension service providers) have launched or are launching "multi-employer IORPs" or "open funds", that can serve different employers under a structured product and serve the cross-border group pension market.

2. Employers' survey results on current practices and willingness to establish pan-European arrangements

2.1 Overview Scope and Methodology

Scope

This section provides an indication of current employers' practices in relation to pension and potential interest of organisations employing researchers to set-up cross-border arrangements for their researchers. In addition it has been considered useful to gain employers' insight on the drivers, enablers and potential barriers to provide complementary pension benefits to researchers.

Methodology

It was proposed to, and agreed by, the Advisory group to target a typology of organisations that would include employers of both the public and private sectors (i.e. institutions of higher education, public research institutes within or closely associated with the higher education sectors and private companies). For both researchers and employers, it has been used as a basis the internationally recognised definition set up in the so called "Frascati" manual¹⁰. The methodological approach for gathering the required information has relied on an employer driven survey, accessible on line via a secured web site build for this purpose.

With a view to make the survey credible, realistic and achievable within the given period of time and minimize the burden for respondents, a mailing list of target organizations has been agreed with the Advisory group primarily on the basis of the size of the R&D workforce and of the scope of R&D investments. With a view to broaden the range of participants and cover as far as possible the diversity of location, scope and size of interested organizations, the access to the survey and the invitation to participate to it has been promoted through existing ad hoc major networks, in particular those involving universities and research centres such as the European University Association (EUA), the League of European Research Universities (LERU), the Joint Research Centres (JRC), the German Rectors' Conference (HRK), AlmaLaurea. The survey's questionnaire was structured in two parts: the first part covered "structural" information on the participating organization; while the second part covered supplementary pension specific information on overall policy, coverage and conditions. 180 Organisations from 23 European countries participated to the survey providing fresh insight on the following areas:

- R&D organisation, scope of workforce and of mobile employees;
- Nature and Scope of Employment Contract & Pension;
- HR Challenges, Employer Drivers and Place of Pension;
- Relevance and Pertinence of Occupational Pension Arrangements;
- Drivers, Interest and Scope of Cross-border Pension Arrangements.

Key Findings

In a nutshell, the key finding can be summarized as follows:

¹⁰ OECD, 2002, Frascati manual

- The opportunity to establish cross-border arrangements is considered relevant and valuable by eight out of 10 organisations.
- The drivers for establishing such arrangements are: greater consistency of pension plans, better management of mobile employees and the possibility to meet employee expectations.
- In terms of plan design, the public sector prefers hybrid plans over defined benefits or defined contribution; the private sector gives the preference to defined contribution or hybrid plans.
- On the funding vehicles to be used, one third of respondent don't know yet and for the others, pension fund are preferred (32%) over insurance Contract (16%).
- Almost all respondents considered the need for "one stop information shop" (94%), while they are only 30% to provide such service to their employees.
- Posting of employees abroad and geographic mobility affect a limited proportion of the workforce; however 10% of participating organisations have up to 20% of the workforce that they consider mobile.
- R&D is mainly centralized in one country for 79% of participants. The proportion is less important, but still the majority (57%) in the case of companies.
- The location of choice for setting up research centres and which are used by organisation as main "sourcing" countries are widely spread throughout Europe.
- There is a wide typology of R&D labour contract, with a greater propensity for long-term duration contracts.
- The European Union Charter for Researchers¹¹ is still widely unknown (49%). But it is judged positively by those that know about it (54%).
- EU financial grants and support to research is widely used by respondents (73%), but much less by companies (49%). However for a majority of respondents this support has no impact on employment conditions of researchers (52%), even less in the case of companies (69%).
- Talent attraction and retention are indicated as the main human resource challenges
- Most critical factors of attraction include the adequacy of the benefit promise and the availability of family relocation packages.
- Occupational pension benefits are expected to be more important in the near future (76%); while only 42% of organizations currently provide occupational pension benefits. This proportion is more important in the case of companies (55%).
- The need to be in line with market practices and to attract the right talent is considered as the main reasons for providing complementary pension arrangements.
- The reasons for not providing complementary pensions are mainly related to the perceived generosity of the social security, but also the legal constraints and the lack of incentives to reduce the cost for employers of such complementary benefits. For the private sector the main reasons stay with the lack of tax incentives and with the cost of complementary pension. The removal of these hurdles would

¹¹ The "European Charter for Researchers & Code of Conduct for the Recruitment of Researchers" are accessible at: <http://ec.europa.eu/euraxess/index.cfm/rights/index>. Signing the Charter and Code implies a commitment from the undersigning organisation to engage in a process towards common objectives, provided by the principles laid down in the charter and Code. Each organisation chooses form and content of its commitment.

create the conditions for an expansion of pension provision in a vast majority of participating organizations (up to 94% in the case of companies).

Key Conclusions

The majority of organisations that participated to the survey welcome the opportunity to establish cross-border arrangements, by preference in the form of a pension fund.

Occupational pension benefits are already provided by a number of organisations (42%), more often in the case of companies (55%) than in the case of the public sector, with a view to be in line with market practices and attract and retain the right talent for the organisation.

Two third of organisations expect that occupational pension benefits will become even more important in the near future.

Almost all organisations (94%) consider that the establishment of specific incentives for employers and the removal of existing hurdles would create the conditions for an expansion of pension provisions to their employees.

Almost all organisations (94%) underline the need for improving direct and user friendly access by beneficiaries to relevant and updated information on pension terms, rights and conditions. A material proportion of participating organisation (30%) provides already to their employees a "one stop information shop" on pension rights and conditions.

In Appendix C is reported the full set of charts for each of the main indicators under review.

3. Guidelines and examples of governance

3.1 Overview Scope and Methodology

Scope

The main objective of this section is to identify and review possible governance structures which would best meet the needs of both sponsor organisations and beneficiaries within an EU Pension Fund designed for researchers.

The establishment of a best in class governance framework and the implementation and monitoring of related principles are the preconditions for efficient, reliable and sustainable private pension arrangements.

In the context of this project, this is even more crucial given the diversity of nature, scope and location of potential sponsor organisations, and the different employment histories, statuses and locations of potential pension beneficiaries.

Taking into account the principles for the governance stated in the IORP EC Directive and the best country specific practices of pension fund governance, we review the key possible options and examine the terms and conditions for a governance structure that can match the needs of both sponsor organisations and beneficiaries.

Approach and Methodology

The analysis of possible options for a reliable, transparent and best in class governance structure is mainly a function of:

- The type of legal contractual vehicle that will be chosen to collect contributions/premiums and deliver benefits. This often consists of a segregated pool of assets without legal personality and capacity that is governed by a separate entity such as a bank, insurance company or a pension fund management company.
- The level of independence in terms of legal capacity that the sponsoring employers will wish to attribute to the chosen vehicle. In this context, the pension fund takes the form of an independent entity with legal personality and capacity with its own internal governing board which often includes representatives of both sponsoring employers and beneficiary employees. There are countries where this takes the form of a dual-board structure (with a distinction between management board and supervisory board).
- The location, in the case of a pension fund. For example, in countries with an Anglo-Saxon legal tradition, the legal form of governance chosen by the pension fund will take the form of a “Trust” with the “trustees” legally owning the pension fund assets. While some features of the trust are similar to that of an independent foundation (i.e. assets to be administered in the sole interest of pension Scheme participants), others features may be closer to those of a contractual arrangement.

The definition of a best in class governance structure requires the identification and review of the following most critical aspects:

- Possible legal form of the pension entity and of its objectives
- Clear accountabilities with separation of operational and oversight responsibilities;

- The scope and form of the by-laws with reference to the role of the Scheme sponsor and the rights of the Scheme/fund members;
- Financial institutions responsibilities and contractual conditions in the case of establishment of a separate account;
- Core and specific functions of the governing body for operations;
- Terms and conditions for the supervisory/ or oversight committee (composition, responsibilities, appointment, renewal, etc);
- Terms and conditions for delegation of tasks and acquisition of expert advice;
- Audit, actuarial valuations, custodians;
- Terms and conditions for accountability of governing body;
- Nature and scope of risk-based internal controls processes;
- Reporting to sponsors, beneficiaries and financial supervisory authorities.

In this context we have reviewed two possible options of governance structure which are function of the applicable legal framework in two different jurisdictions. Nevertheless the basic governance principles and the main tasks and goal of an IORP remain the same, ultimately to serve as a secure source of retirement income for its beneficiaries by administering and managing pension schemes rules in compliance with their fiduciary and biometric obligations.

The first example (in Appendix D) is applicable in a common law context having the institution of the “trust” at the centre of the system of governance.

The second example (in Appendix E), is applicable in a specific mainland European jurisdiction that relies on an ad hoc and autonomous legal framework designed to respond to the objectives and operations of pension funds, irrespective of the status of affiliated members (employees and self-employed), of the nature of sponsor undertakings, of the scope, terms and conditions of pensions plan design.

3.2. Legal form, scope and accountabilities of Trust-based arrangements: the case of UK

UK Pension governance is based on hundreds of years of UK Common Law together with extensive UK specific regulation and an overlay of EU Directives (as implemented in UK legislation).

Because of the nature of UK Trust law, Pension Trusts are heavily regulated and many of their operations are regulated in detail with prescribed and proscribed actions, procedures, timescales and objectives. Many of these will not “translate” into a Pan-European environment as they are focused on UK specific circumstances and compliance.

However, the principles they apply will generally be relevant irrespective of legal jurisdiction.

Common legal forms in the UK

There are a number of different types of retirement benefit arrangements in the UK including trust based occupational schemes, contract (provider) based pension schemes and employer "promises" such as Employer Funded Retirement Benefit Schemes (EFRBS). From a tax perspective, both of the first two of these are constructed under UK trust law.

Trustee forms

- Corporate trustee
- Board of individual trustees
- Centralised trust: one scheme, unrelated multiple employers and benefit sections
- Master trust instrument: unrelated multi employer, multiple schemes

Contract (Provider based provision)

- Long-term insurance based arrangements
- UCITS III based arrangements

Employer based "promises" such as EFRBS are the UK equivalent of Germany's book reserve arrangements and are gaining in prevalence because of local tax conditions. We do not believe that the governance arrangements in these arrangements are currently robust enough to make it appropriate for them to be replicated in other environments.

Objectives

The objectives of UK Pension scheme governance bodies are, primarily, to **protect** the interests of members of those schemes and secondarily to **consider** the interests of the scheme sponsors, thus reducing risk.

Responsibilities

The primary governance documents should specify;

- specific responsibilities in trust instrument;
- exercise of powers;
- requirements of role; and
- principal risks.

Specific responsibilities in trust instrument

Detail of which parties are responsible for specific issues is confirmed in the primary scheme documentation. In UK Trust-based arrangements these are the Trust Deed and rules and override any other communication or documentation other than legislation.

The Trust Deed and Rules of the Scheme state that a minimum number of Trustees is required to attend each Trustees meeting in order to achieve quorum.

Decisions are made [unanimously / by majority vote] and the Chair of Trustees may have the power to make the casting vote where there is no clear majority.

The Trustees are responsible for minuting each meeting and for ensuring that they are an accurate record of the proceedings.

Exercise of powers

These details will cover when and/or in what circumstances powers can, must or must not be exercised together with any parties who should be consulted with (typically the employer, but possibly regulators in respect of some issues).

Requirements of role

This section will include details of how trustees (or other parties) must conduct themselves, what the minimum requirements of knowledge and understanding are and how they must be maintained. In

Trust-based arrangements there are specific rules regarding conflicts of interest and how they should be avoided or dealt with.

Principal risks

The documents will seek to identify what the primary risks are, (e.g. security of benefits, miscommunication, poor administration, lack of member understanding, poor decision making by trustees and/or members etc) and how they can be dealt with. Methodologies for dealing with risk can include avoidance, mitigation, transferral, insurance or acceptance and consideration should be given to whether any such risks are rewarded together with the potential costs of them.

Many of the comments on investment risk may be replicated in the Statement of Investment Principles within Trust-based arrangements but these Statements are not required in contract-based schemes or in many fully insured (bundled) Trust-based arrangements.

Operational and oversight responsibilities

Clear accountabilities and separation require responsibilities to be delegated.

Delegation of responsibilities

The following are the key areas to be considered for delegation (and are referenced elsewhere in this report).

- Administration (e.g. benefits administration, scheme accounting)
- Investment management
- Governance support (day to day assistance to trustees who tend to meet a limited number of times per annum)
- Internal audit/risk management (active risk assessment and regular monitoring of risk)
- Advice and guidance (comment from "experts" in a particular field e.g. investment and legal advisers).

Areas of responsibility

These are likely to include reviewing and monitoring the governance practices of the scheme as well as the members' needs.

Operational responsibilities

- To recommend individuals for appointment or reappointment to the Committee as appropriate.
- To evaluate yearly the performance of the Committee and the Chairman every three years.
- To report to the Sponsor on an annual basis in respect to the operations of the Scheme and the potential risks the Sponsor faces by virtue of those operations.
- Maintaining proper records of all Committee meetings
- Appointing the Scheme's advisors
- Reviewing performance of advisers and providers to ensure fair value from charging structures and performance of duties and outcomes.
- Establishing a procedure for dealing with any internal disputes that do not fall under the remit of the Scheme provider
- Establishing a procedure for dealing with any conflicts of interest
- Reporting any irregularities in the running of the Scheme to the Pensions Regulator.
- Good and compliant communications between the trustees, their advisers, the sponsor and the regulatory authorities.
- Liaison with the Trustees of the associated schemes.

Member related responsibilities

Two of the Committee's main objectives in relation to the Scheme are to protect members' benefits; and to promote, and to improve understanding of, good administration. To enable the achievement of these objectives, the Governance Committee will consider the main risk areas appropriate for the Committee to focus on, namely:

- any poor administrative practices (eg by review of administration reports);
- any poor investment practices (eg by review of actual choices by age/salary band of members);
- the level of charges applied to Scheme members' accounts (eg by regular market comparison);
- any poor decisions on retirement choices (eg by proactive review of members' enquiries in the lead up to retirement); and
- any perceived lack of member understanding (eg by member surveys).

Any issues arising under the above will typically be dealt with, in the first instance, by referring to the scheme provider for action. Thereafter, the Governance Committee may recommend action up to and including replacement of the provider.

Employer related responsibilities

There are potential financial risks to the employer of sponsoring a GPP, these include:

- administration failures (e.g., incorrect or late contribution allocation, poor record-keeping, etc);
- weaknesses in IT (e.g., third parties hacking into systems or poor change control);
- regulatory risks (e.g., failure to respond to TPR or HMRC requirements);
- communication risks (e.g., giving incorrect or inadequate information to members);
- investment risk (e.g., appointing or maintaining access to poor performing investment managers);
- business risks (e.g., reputational risk if member disputes enter public domain);
- HR risks (e.g., the difficulty of making members retire if their pension funds are inadequate to fund a reasonable retirement income); and
- possibly, subject to employer request, benchmarking contribution rates or other terms and conditions against key competitors.

By-laws

The scope and form of the by-laws with reference to the role of the Scheme sponsor and the rights of the Scheme/fund members include, at different levels relevant EU and national legislations. In particular (taking into **where the trust is based**):

- Law and regulation in local jurisdictions (tax, social security, etc)
- Guidance e.g. UK Pensions Regulator

In the UK, legislation and regulation of pension provision is extensive and detailed. There are numerous (at least eight in the last decade) Pension Acts, annual Finance Acts which nearly always contain amendments to pension provision regulations and various Financial Services Acts regulating provision and communication of such services. It would be impractical and unhelpful to detail these as we have referenced the most significant effects in the rest of this report.

Participating employer locations

- Law and regulation in jurisdictions local to each participating employer (tax, social security, etc)
- Guidance e.g. UK Pensions Regulator
- Global partnership e.g. reciprocal agreements between countries or other agreements to work in partnership (e.g. US/UK Memorandum of Understanding to encourage best practice in protecting benefits).

More specific details on UK based Trust arrangements are reported in Appendix D

3.3 Ad hoc legal vehicle arrangements: Governance in Belgium

Legal form, scope and accountabilities

One of the main features of the Belgian law entered into force last 1 January 2007¹² and adopted within the context of the implementation of the EU pension fund directive 2003/41/EC into national regulatory framework, is the introduction of a new legal form specifically set up for pension Financing Organisations (OFP). The law and the supporting administrative provisions¹³ specify the new legal standards for governance. Previously pension funds could take only the form of mutual insurance association or of non-profit organisations. The advantage of the new legal entity is the flexibility allowed to accommodate a wide range of situations without compromising on high level principles of governance.

The objectives of the Belgian Pension scheme governance bodies are, primarily, to administer and manage pension schemes with a view to ensuring that they comply with the fiduciary and biometric obligations of the pension scheme. For this purpose it is under the remit of the OFP to define a consistent and adequate policy of governance in relation to its risk profile and the volume, nature and complexity of its activities

In addition to this obligation of results, there is an obligation of means in terms of organisational structure required to ensure a separation of operational and supervisory functions that should allow full transparency of operations, efficient decision making, effective and timely execution of assigned tasks, regular assessment and policy reviews.

Belgian pension funds must have an appropriate management structure, administrative and accounting organization as well as internal control procedures relevant to its activities. It should in this regard make a distinction between administrative tasks, which must be assigned to one or more operational bodies and supervising activities. The CBFA has clarified the governance requirements in a circular letter dealing with the good governance of the fund. The main objective is that each Belgian pension fund identifies the risks associated with its activities and implement an appropriate structure to ensure proper management.

The General Assembly is the highest level governance body within the OFP. It consists at least of representatives of the founders/sponsoring undertakings who have schemes within the OFP (for example Nestle Ireland).

The role is mainly supervisory and strategic decision making (e.g. approval of annual accounts, financing plan, statement of investment principles, management agreement, review byelaws, appointment/discharge of Board members, wind-up of the OFP).

The OFP vehicle identifies two other bodies for the operation of the fund: The OFP Board (which is compulsory) and the Social Committee (which is optional). A Social/Management Committee may be established for each individual benefit scheme/country if desired. This flexible option enables benefit schemes to have similar representation that they would have had within their host country – if desired, or if required by host country social and labour law (SLL).

Members present on the OFP Board must meet some specific requirements. These cover areas such as having the necessary professional qualifications, enough knowledge and experience to understand/judge the general policies and be free of convictions in financial matters. The CBFA requires documentation prior to appointment.

The organizational structure shall not impede the supervision activities of the actuary, the auditor and the CBFA. The auditor verifies the accounts and reports to the General Assembly of the Belgian Pension Fund and to the CBFA. The appointed actuary provides advice on the financing plan, the reinsurance and the technical provisions.

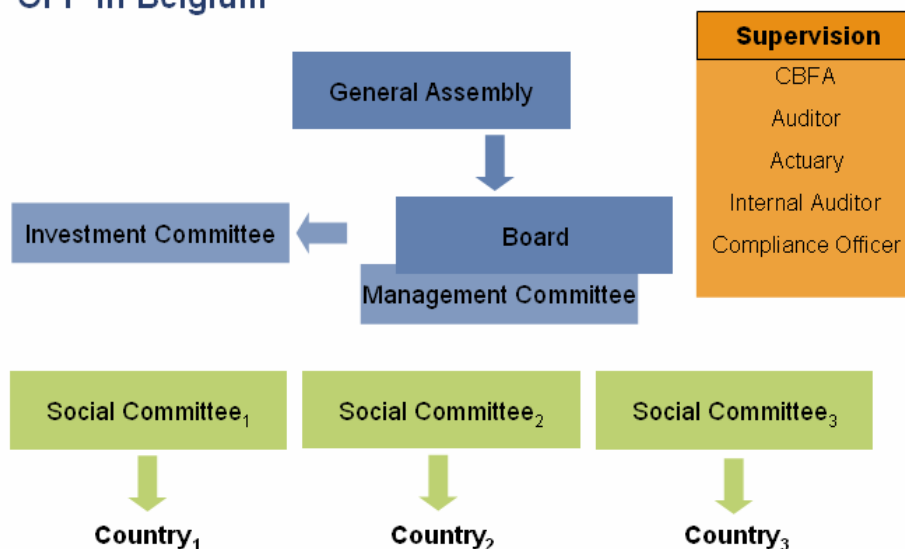
The CBFA exercises control on the basis of documents which are submitted by pension funds. Where appropriate, it may carry audits at the headquarters of the pension fund. The control exercised by the

¹² Law of 27 October 2006 on the supervision of institutions for occupational retirement provision, in Belgian official journal of 10 November 2006, 60162.

¹³ Circular by the Banking, Finance and Insurance Commission (CBFA) n°CPP-2007-2- LIRP/WIBP on the governance of IORPs

CBFA is based on an analysis of risks incurred by each pension fund and relies more on qualitative principles than on quantitative rules. The CBFA may take any measures necessary to safeguard the interests of members and beneficiaries of the pension scheme. A recovery plan may include quantitative measures, ranging from a revised financing and investment strategy for the recovery of shortfalls to a temporary prohibition on the transfer of pension rights. The chart below shows the main bodies and agents intervening into the governance system.

Governance and Supervision Principles OFP in Belgium



The Eleven Principles of Governance for OFP in Belgium¹⁴

Principle No. 1 – Management structure

The IORP shall have a management structure appropriate to its activities. It shall, in particular, assign operational tasks clearly and distinguish appropriately between operational and supervisory tasks¹⁵.

Principle No. 2 – Bodies of the IORP

The composition, competences and responsibilities of each body of the IORP shall be clearly specified.

Principle No. 3 – Internal control

Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate internal control mechanism. The competent operational body shall ensure the implementation of internal control measures and shall inform the Board of Directors accordingly at least once a year¹⁶.

Principle No. 4 – Compliance function

Within the context of its supervisory task, the Board of Directors shall regularly check that the IORP has an adequate compliance function. The competent operational body shall draw up an integrity policy and shall inform the Board of Directors accordingly at least once a year¹⁷.

Principle No. 5 – Business continuity

The Board of Directors shall draw up a continuity policy to ensure the uninterrupted provision of services and performance of activities by the IORP. The competent operational body shall develop and apply this policy and shall inform the Board of Directors accordingly at least once a year.¹⁸

¹⁴ In accordance with Circular by CBFA n°CPP-2007-2- LIRP/WIBP on the governance of IORPs

¹⁵ Article 77 of the Law of 27 October 2006.

¹⁶ Article 77 of the Law of 27 October 2006.

¹⁷ Article 77 of the Law of 27 October 2006.

¹⁸ Article 77 of the Law of 27 October 2006.

Principle No. 6 – Internal audit

Within the context of its duties and responsibilities, the competent operational body shall take the necessary measures to ensure that the IORP has an adequate internal audit mechanism that is independent of the activities audited ¹⁹.

Principle No. 7 – Outsourcing

The IORP shall draw up an outsourcing policy, which must be approved by the Board of Directors and must clearly specify the conditions under which outsourcing may be carried out ²⁰.

Principle No. 8 – Accredited statutory auditor or accredited audit firm

The General Meeting shall appoint one or more statutory auditors or audit firms belonging to the Institute of Company Auditors (Institut des reviseurs d'entreprises/Instituut van de Bedrijfsrevisoren) and accredited by the CBFA ²¹. The accredited statutory auditors shall collaborate in the task of supervision exercised by the CBFA, under their own personal and exclusive responsibility in accordance with the rules of the profession and with the instructions of the CBFA ²².

Principle No. 9 – Appointed actuary

Except where the IORP manages certain types of pension schemes ²³, the Board of Directors shall appoint one or more actuaries complying with the legal and regulatory provisions. The appointed actuary shall provide them with advice on the financing plan, reinsurance and the amount of the technical provisions ²⁴.

Principle No. 10 – Internal circulation of information

The IORP shall establish appropriate reporting systems between the persons and entities involved in the administration of the IORP to ensure effective communication and timely, relevant and accurate information ²⁵.

Principle No. 11 – External information

The IORP shall provide the information required under the legal or contractual provisions clearly, precisely and within the legal timeframes or, in their absence, within a reasonable timeframe, to the members, beneficiaries, the CBFA and, where applicable ²⁶, to the consultative and concertation bodies.

Key Conclusions

The establishment of a best in class governance framework and the implementation and monitoring of related principles are critical conditions for transparent, efficient, reliable and sustainable private pension arrangements.

This is even more crucial, in the context of this project, given the diversity of nature, scope and location of potential sponsor organisations, and the different employment histories, statuses and locations of potential pension beneficiaries.

¹⁹ Article 77 of the Law of 27 October 2006.

²⁰ Article 78 of the Law of 27 October 2006.

²¹ Article 103 of the Law of 27 October 2006.

²² Article 108 of the Law of 27 October 2006.

²³ These are pension schemes which do not cover biometric risks and which do not guarantee a given investment performance or a given level of benefits.

²⁴ Article 109 of the Law of 27 October 2006.

²⁵ Article 77 of the Law of 27 October 2006.

²⁶ In accordance with the social and labour legislation governing pension schemes.

In compliance with the principles of governance stated in the IORP EC Directive and the best country specific practices of pension fund governance, the possible options of governance structure will be mainly function of:

- The type of legal contractual vehicle that will be chosen to collect contributions/premiums and deliver benefits.
- The level of independence in terms of legal capacity that the sponsoring employers will wish to attribute to the chosen vehicle
- The location, in the case of a pension fund.

In this context have been reviewed two possible options of governance structure which are function of the applicable legal framework in two different jurisdictions.

The first example reflects a common law context with the institution of the “trust” at the centre of the system of governance.

The second example, in a specific mainland European jurisdiction relies on an ad hoc and autonomous legal framework designed to respond to the objectives and operations of pension funds only.

Both options are fully reliable and show that the basic governance principles and the main tasks and goal of an IORP remain the same, ultimately to serve as a secure source of retirement income for its beneficiaries by administering and managing pension schemes rules in compliance with their fiduciary and biometric obligations.

With a view to provide a practical example of the implication of governance principles to pension fund management, we provide in the Appendix E –and for illustrative purpose only- the possible statutes of an EU pension fund for researchers registered in Belgium and requested to operate cross- border arrangements.

4. Considerations and benchmark analysis for geographic location

4. 1. Overview of Scope and Methodology

Scope

The main objective of this section is to provide factual and empirical information that interested parties need to consider towards the identification of the locations that from a technical perspective would be most suitable within the EU to establish a pan-European IORP for researchers.

We examine the strategic drivers, make an inventory of the key characteristics of various locations and their local IORP vehicles with respect to these drivers, and present respective advantages and disadvantages from the specific perspectives of sponsoring undertaking and researchers.

Methodology

With a view to focus the research in the most pragmatic way, a short list of countries to be considered in details has been agreed with the Advisory Group. The selection reflects the number and scope of registered IORPs, the relative importance of the occupational pension market, and the diversity of the pension systems in place. This list includes Belgium, Germany, Ireland, Luxembourg, the Netherlands and the United Kingdom. Belgium, Ireland and Luxembourg in particular have already taken steps to position themselves publicly as best locations for cross border vehicles.

The financing requirements of local IORP vehicles differ fundamentally by country. It is not as much about “cheap” versus “expensive” funding requirements as it is about different methods and degrees of safeguarding vested pension rights. There are arrangements where the security is provided in advance by fully funding the IORP and building excess solvency buffers within the IORP to weather bad economic times. Alternatively, there are locations where IORPs traditionally are less well-funded, but the scheme sponsors and national guarantee system provide security and could ask sponsors (and potentially members) for additional financial resources if economic cycles become less favourable.

The ideal locations of choice depend on the availability of appropriate IORP vehicles, and also on the general pension environment characteristics of the country and the way in which the Pension Fund Directive has been implemented. We consider key differences arising from different forms of regulation, governance and permitted scope of various IORP vehicles. We also consider overall legislative pension regulatory framework to accommodate an innovative cross-border pension fund for researchers.

In addition, the tax framework of the country is also an important issue from the perspective of the effectiveness of potential pension fund vehicles. Our analysis includes reviewing the tax effectiveness of local IORP/insurance vehicles including taxation of income, dividends and capital gains, the tax implications for transfers in and out of vested pension entitlements, and the tax implications of the pay-out of pension benefits, including the impact of bilateral tax treaties. We also consider if VAT/IVA is charged on IORP related services.

In summary, the analysis per home country in this report covers the following key areas:

- Brief overview of local pension environment (including statistics on local market practices)
- National legal base and description of local IORP vehicles
- Scope, regulatory framework and governance of local IORP vehicles
- IORP financing requirements
- Cross-border considerations
- Overview of home-country tax issues
- Relative strengths and weaknesses

In relation to the taxation of the investment income and capital gains of the pension funds vehicles examined, these are broadly tax exempted locally. Where tax is withheld at source on overseas investment income or gains, double tax treaties can make it possible for such income and gains either to be paid without withholding tax or for tax to be reclaimed at a later date. All the target countries examined have double tax-treaties in place generally with between 50 and more than 100 countries. The potential tax drag effect arising as the result of withholding taxes on dividends, interest and other income has not been considered a determining factor for choosing the location of a cross-border IORP.

It should also be remembered in the context of investments within the EU that the EU treaty contains an express prohibition of national requirements that restrict the free movement of capital between EU Member States and with non-EU countries. A number of recent judgments of the European Court of Justice and of some national jurisdictions consider that outbound dividends or interest payments cannot be subject to higher taxation than domestic dividends.

In the final section of this chapter we set out a summary table including the main issues for each of the IORPs.

Key features considered for the determination of location²⁷

The location of an IORP is of key importance when establishing a cross-border pension arrangement. The legislation in a location influences many critical factors in the design, flexibility and financing of the vehicle.

We have identified a number of key features which combine to make certain locations more attractive than other locations for cross-border pension funds. The table describes why these features are important and how different locations can be assessed and differentiated.

Feature		Why is this important?
Funding requirements	Funding requirements	The IORP funding requirements could be distinguished in three elements: technical provisions, own regulatory capital and additional security mechanisms. Funding requirements especially matter if DB schemes are involved, in contrast to pure DC schemes.
	Technical provisions	Each location prescribes how the assumptions to calculate the liabilities should be determined and therefore for the same population of people the technical provision could vary significantly from location to location. If one location prescribes a higher discount rate then this would lead to a lower technical provision. The higher the liability, the more assets are required to be defined as fully funded. The above impacts on both cost and security. Some countries set the parameters by law, other leave it up to the IORP to set prudent assumptions, as long as approved by the supervisory authority.
	Own regulatory capital	If the IORP bears biometric risks (e.g. risks limited to death, disability and longevity) itself or provides certain financial guarantees, regulatory own capital has to be maintained within the IORP in order to guarantee these promises.
	Security mechanisms	Some countries have set additional security mechanisms to protect the pension promises in financial stress situations, e.g. stock market crunch or interest rate fall. This part of the IORP funding is not regulated by the Directive and is fully open to be organized by the member states. Some countries rely on a single mechanism, other allow combinations of

²⁷ Home country requirements mentioned in this report apply to all benefit schemes covered by the IORP unless otherwise stated. We have not covered the outsourcing rules for each IORP in detail in this report as they have been extensively covered by CEIOPS in its "Report on Outsourcing by IORPs" (dated 30 October 2008).

Feature		Why is this important?
		security mechanisms (see below).
	Solvency Buffers	Some countries rely on additional solvency buffers as the main security mechanism. This details the amount of "spare" money ("a cushion") on the IORP balance sheet required to be legally solvent. Each location may or may not require a buffer and this can be important in determining the overall cost for selling retirement products. Each location defines the size of the buffers itself, usually using a continuity/stress testing method, with varying parameters.
	Sub-ordinated loans	If solvency buffers have to be maintained some (not all) countries allow (subordinated) loans to finance these buffers; other countries do not allow subordinated loans. If allowed, some member states apply strict conditions. This feature permits an employer to temporarily loan money to a cross-border pension arrangement to ensure the IORP remains fully funded at all times as required under the EU Pensions Directive. Few locations offer this form of flexibility.
	Sponsor support/covenant	This is a second security mechanism. It determines how much exposure a sponsor has when the IORP is not fully funded. Some locations expect that the sponsor has unlimited liability, therefore must meet all underfunding costs, others state that they have limited or no exposure. Some member States have made the sponsor covenant mandatory, by law; others leave the level of sponsor commitment to the parties involved. The attractiveness of each option depends on the current funding position of the schemes and IORP and the view on how the client wants them/it to be financed (e.g. unlimited exposure and therefore volatile costs but no buffer, or high initial costs with a buffer but expected lower volatility). The sponsor covenant also links into IFRS/ IAS accounting considerations, playing a major role within stock quoted companies.
	National Protection/guarantee fund	A third, alternative security mechanism works along the lines of a national guarantee system (as common in the banking sector). Members' pension rights may be protected by a national guarantee fund. The IORP/sponsor needs to assess the levy and the coverage for this and compare it to the other security mechanisms offered by locations.
	Minimum founding capital per vehicle	Locations may require a minimum amount of capital required in the vehicle within a given number of years. The expected membership numbers may limit the feasibility of this in some circumstances.
Scope	Scope	An IORP vehicle can be legally limited in its scope to provide various types of benefits, and flexibility in the manner in which benefits are financed and risks shared. The Directive itself is rather flexible, but some member states have to fit their vehicle in an existing pensions system, with already existing other vehicles and vested interests of stakeholders, leading to a challenging environment. Some countries turn out to have more room for manoeuvre and tend to offer very flexible and broad IORP vehicles.
	Type of pension scheme / Benefits	IORP vehicles need to be able to provide the type of benefit schemes the sponsor wishes to cover now and potentially in the future. If a sponsor has both DB and DC schemes or hybrid mixed forms then the vehicle must allow flexibility.
	Risk bearing	Locations may forbid, compel, or allow optional choices for IORP vehicles to bear risk itself or to outsource some or part of the risks to an insurance company or back to the scheme sponsor or captive (a captive is an insurance company owned by a company which can be used to provide various forms of insurance for the business). .

Feature		Why is this important?
	Pay-out phase / Pay life-long annuities	Payment can be restricted to certain methods. The benefit form of payment made must meet scheme rules, member's expectations and local social and labour law requirements. If an IORP vehicle is not allowed to bear risk, it cannot pay-out a life long annuity itself (longevity risk). The assets have to be transferred to an insurance company. Flexibility is important to permit either lump sum benefits, or life-long annuities or a combination of both.
	Ring-fencing	Ring-fencing sets the allocation of risk and degree of solidarity among the scheme sponsor and employers involved within an IORP. In some countries vehicles forbid ring-fencing, other make it mandatory or optional. The concept of ring-fencing means the ability to consider the assets and liabilities relating to separate sections of an IORP separately (for example benefits for Dutch employees and benefits for German employees). Flexibility to permit but not require ring-fencing is very desirable.
	Outsourcing rules	Certain locations have requirements about which services must be outsourced, and whether that must occur locally. Other locations in contrast avoid outsourcing by IORPs or even forbid it completely. Full flexibility is very desirable.
Governance	Employees on the Board	Some locations locally require employees, pensioners or Trade Union representatives in the Board of an IORP. It is important to assess any statutory requirement and the conditions under which employees can/should be represented.
	Legal form	Some IORP laws restrict the legal form of an IORP to a mutual or cooperative, whilst other allow more flexible options e.g. AG or BV.
	Founders	Some IORPs can only be founded by employers and employees, while other IORPs can be founded by anybody e.g. financial services providers.
Other	Accessibility and transparency of administrative procedures	To enable a fluent process in realizing a cross-border IORP, a co-operative approach from all parties is invaluable. The set up of a cross-border IORP in a location where the support network is strong and knowledgeable will increase efficiency.
	Cross border definition	Different locations have different interpretations of when a cross border situation arises.

The following tables provide a summary of the main national specific issues for each IORP in target countries. Details on each of these countries are reported in Appendix F.

		Belgium	Germany / Pensionskasse	Germany / Pensionsfonds
Scope	Which type of schemes / benefits can be provided by the IORP?	All	All	All
	Can the IORP bear risk (e.g. financial, survival or mortality)?	Yes – but this is very unusual. Normally the employer is ultimately responsible	Yes	Yes
	Is there any restriction on the form of benefits that can be paid at retirement?	No	No	Yes (at most 30% of the retirement benefits may be paid as a single lump sum)
	Can assets and liabilities be ring-fenced inside the IORP (e.g. for different schemes)?	Yes (optional)	Yes (mandatory)	Yes (mandatory)
	Flexibility to outsource administration	High	Medium	Medium
Governance	Can scheme members be represented on the IORP Board?	Yes (optional)	Yes (optional)	Yes (optional)
	How burdensome are the compliance and reporting requirements?	Medium	Very	Very
	Legal form of the IORP	OFP, new corporate form of civil (non commercial) nature. Not allowed to make other profits than those related to their activities in relation to pensions	Corporate (AG) or mutual	Corporate (AG) or mutual
	Who can found an IORP	Employers or related entity	Unlimited – e.g. employers, trade unions, insurance companies	Unlimited – e.g. employers, trade unions, insurance companies
Financing	Level of minimum required technical provisions, solvency buffers, regulatory own funds	Low	High	High (unless employer is liable to contribute during the benefit payment phase – in which case medium)

		Belgium	Germany / Pensionskasse	Germany / Pensionsfonds
	Is it possible to finance shortfalls in assets though sub-ordinated loans?	Yes – temporarily	Yes – temporarily	Yes – temporarily
	Sponsor support / covenant	Permitted - Support is normally required from the sponsor, but this is not mandatory	Permitted - Mandatory only for German benefit scheme	Permitted – Mandatory only for German benefit scheme (or if employer chooses to contribute during the benefit payment phase)
	Is the IORP covered by a national protection or guarantee fund?	No	Optional (insurance protection scheme)	Yes
	Is there a requirement for the IORP to hold a minimum level of capital?	No	Yes (at least € 3 million (or €2.25 million if the legal form is a mutual – see section 4.4)	Yes (at least € 3 million (or €2.25 million if the legal form is a mutual – see section 4.4)
Other	What restrictions are placed on the IORP's investments?	Prudent person – flexible	Quantitative – very strict	Quantitative – strict
	Cross border definition- depends on location of...	Scheme	Sponsor	Sponsor
Overall Appreciation		+++ (DC, DB, Hybrid)	+	+

		Ireland	Luxembourg / SEPCAV	Luxembourg / ASSEP	Luxembourg / CAA
Scope	Which type of schemes / benefits can be provided by the IORP?	All	DC only	All	All
	Can the IORP bear risk (e.g. financial, survival or mortality)?	No – employer is ultimately responsible	No – is a pure DC savings vehicle.	Yes – although the employer can choose to be ultimately responsible	No – employer is ultimately responsible
	Is there any restriction on the form of benefits that can be paid at retirement?	No	Yes – benefit must be paid out as a lump sum (cash or used to purchase annuity outside the IORP)	No	No
	Can assets and liabilities be ring-fenced inside the IORP (e.g. for different schemes)?	Yes (optional) – not common (and only applies for funding purposes, not at wind up of IORP)	N/A – is a pure DC savings vehicle.	Yes (optional)	Yes (mandatory)
	Flexibility to outsource administration	High	Medium	Medium	Low
Governance	Can employees be represented on the IORP Board?	Mandatory (except for small schemes). Employees and pensioners entitled to nominate 50% (but can agree to alternative arrangement)	Yes (optional)	Yes (optional)	Yes (optional)
	How burdensome are the compliance and reporting requirements?	Medium	Medium	Medium	Very
	Legal form of the IORP	Trust	Cooperative company	Mutual	Mutual
	Who can found an IORP	Traditionally limited to employers – lately also others	Unlimited – e.g. employers, trade unions, insurance companies	Unlimited – e.g. employers, trade unions, insurance companies	Unlimited – e.g. employers, trade unions, insurance companies

		Ireland	Luxembourg / SEPCAV	Luxembourg / ASSEP	Luxembourg / CAA
Financing	Level of minimum required technical provisions, solvency buffers, regulatory own funds	Low (except for funds with high proportion of pensioners where level can be high)	N/A – is a pure DC savings vehicle.	Low	Flexible – generally medium
	Is it possible to finance shortfalls in assets though sub-ordinated loans?	No	N/A – is a pure DC savings vehicle.	Yes	Yes
	Sponsor support / covenant	Mandatory	N/A – is a pure DC savings vehicle.	Permitted - Support is normally required from the sponsor, but this is not mandatory	Mandatory
	Is the IORP covered by a national protection or guarantee fund?	No	No	No	No
	Is there a requirement for the IORP to hold a minimum level of capital?	No	Yes (€ 1 million, to be reached within first two years – see section 6.3)	Yes (€ 5 million, to be reached within first ten years – see section 6.3)	no
Other	What restrictions are placed on the IORP's investments?	Prudent person – flexible	Prudent person – flexible	Prudent person – flexible	Quantitative – strict
	Cross border definition- depends on location of...	Individual member	Scheme	Scheme	Scheme
Overall appreciation		++ (DC, DB, Hybrid)	++ (DC only)	++ (DC, DB, Hybrid)	+

		Netherlands / Pension Fund	Netherlands / PPI*	United Kingdom
Scope	Which type of schemes / benefits can be provided by the IORP?	All	All (except for Dutch DB schemes). However, the IORP is not permitted to bear any biometric or financial risks and so operates on a pure investment vehicle	All
	Can the IORP bear risk (e.g. financial, survival or mortality)?	Yes	No – all risks must be financed outside the PPI	No – employer is ultimately responsible
	Is there any restriction on the form of benefits that can be paid at retirement?	No	Yes – benefit must be paid out as a lump sum (cash or used to purchase annuity outside the IORP)	Not for overseas members (although it is theoretically possible that some forms of payment might give rise to a UK tax liability)
	Can assets and liabilities be ring-fenced inside the IORP (e.g. for different schemes)?	No (at present)	Yes (optional)	Yes (optional)
	Flexibility to outsource administration	High	High	High
Governance	Can employees be represented on the IORP Board?	Yes (mandatory). At least 50% of the Board must be employee representatives	Yes (optional)	Yes (mandatory). Employees and pensioners entitled to nominate 1/3. Minimum level expected to increase to 50% in future.
	How burdensome are the compliance and reporting requirements?	Very	Medium	Medium
	Legal form of the IORP	Normally mutual (but can in theory be corporate)	Corporate or mutual	Trust
	Who can found an IORP	Employers	Unlimited – e.g. employers, trade unions, insurance companies	Employers

		Netherlands / Pension Fund	Netherlands / PPI*	United Kingdom
Financing	Level of minimum required technical provisions, solvency buffers, regulatory own funds	High	N/A – is not permitted to bear biometric or financial risks and operates as a pure DC vehicle	High
	Is it possible to finance shortfalls in assets through sub-ordinated loans?	Yes	N/A	No
	Sponsor support / covenant	Unusual but not forbidden	No sponsor support required for PPI as it is not permitted to bear biometric or financial risks. All other risks must be borne by employer or insured.	Mandatory
	Is the IORP covered by a national protection or guarantee fund?	No	No	Yes for UK schemes. However, legislation is not clear whether protection extends to overseas employers becoming insolvent.
	Is there a requirement for the IORP to hold a minimum level of capital?	No	Yes (minimum initial founding capital € 125,000)	No
Other	What restrictions are placed on the IORP's investments?	Prudent person – flexible	Prudent person – flexible	Prudent person – flexible
	Cross border definition- depends on location of...	Scheme	Scheme	Individual member
Overall appreciation		+	+ (DB), ++ (DC)	+

*The PPI regulatory framework is still under parliamentary discussion and is not operational yet.

Key Conclusions

We have concluded that the IORP framework would be preferable for the following reasons:

- There is more established market practice under this route, and expectations indicate it will continue
- financial service providers are developing new products in this area
- in particular, this route provides more perceived regulatory clarity than the 3rd Life Directive
- there is the opportunity for full portability when researchers move cross-border
- tax equality and unlawful discriminatory national practices have been explicitly addressed by the European Commission and by the European Court of Justice.

The appropriateness of various locations as the home country for an eventual pension fund for researchers depends to a large extent on the local availability of a resilient legal framework and conditions, underpinned by effective supervisory principles and authorities, which can accommodate the widest range of pension scheme options, the diversity of sponsor undertakings and the potential modifications that over time may intervene in relation to the participating sponsors. The ideal locations of choice depend also on the broader pension environment of the country, the tax framework for local IORP, and the way in which the IORP directive is practically implemented.

Considerations about location and choice of vehicle depend on whether the promoting organisation decides to set up a new cross-border IORP, or use a cross-border product developed by a financial services provider.

Assuming that a new cross-border vehicle would be created, our research into different locations compared and contrasted ten retirement vehicles in six different EEA locations in terms of scope of benefits, governance, financing and a number of other characteristics. We concluded that the most attractive locations/vehicles are:

Belgium- OFP

Ireland – Trust

Luxembourg – SEPCAV (only for a DC plan)

Luxembourg – ASSEP

5. Cost structure and estimation of cost to set-up and administer cross-border pension arrangements

5.1. Overview of Scope and Methodology

Scope

The objective of this section is to identify and review the possible costs which would arise when running an EU pension fund for researchers.

The analysis will seek to identify comparative costs, where costs differ by type or location of the financing vehicle, benefit design and other factors such as size (in terms of membership and assets) of the pension fund. The lack of established providers in this emerging market for cross-border pension funds, which will require considerable capital expenditure by any prospective provider, makes it difficult for us to provide much granularity in our analysis; there are relatively few providers and few, if any, have a complete service as yet. As a consequence, what pricing data we have at the moment will be likely to be out of date very quickly as providers develop their offerings and new suppliers enter the market.

We suggest that the advent of the LCD television market is a good analogy; when LCD TVs were launched in the consumer market they were priced at several thousands of Euros, but now it is possible to buy such a TV for a few hundred Euros. At the moment, the cost of running cross border pension funds is at the "several thousands of Euros" end of the spectrum, though it is likely that competition will drive the price down over time; possibly a short period of time, particularly as cross-border pension funds gain in popularity.

Methodology

The cost of financing pension benefits is a material cost of employment. Depending on the type of financing vehicle and the country of registration, the cost of financing a pension can vary. This was considered in the previous chapter when we compared different "home" country regulatory environments.

In addition to the cost of financing the retirement benefits themselves, there are also the costs of running the pension fund. Pension funds will often appoint advisers, such as actuaries, accountants and lawyers, and will also require an investment manager, an administrator and perhaps a custodian of the assets under management ("depository"). Some or all of these services may be "bundled" together by some service providers, e.g. insurance companies. The work required from these service providers can vary by country of registration according to local governance and regulatory structures, and by reference to the countries of residence of the members.

When designing a new pension fund to operate on a pan-European basis, it is particularly important to give early consideration to the administration services it will require. This is because the administrator must be capable of supporting a range of contribution, benefits and reporting configurations dependent on the local regulatory requirements of each of the "host" states in which the fund will admit members. It must also be capable of supporting any governance reporting requirements in the fund's "home" state, i.e. its country of registration.

In this section we consider the technical requirements of an administration platform which is capable of supporting a pan-European pension fund for researchers. We cover four key elements:

- Member Service Centre
- Member Administration
- Benefits Administration
- Investment Funds' Administration

It would, in our opinion, be unwise to separate the provision of a Member Service Centre, Member Administration and Benefits Administration for a Defined Contribution pension fund. In practice, these

functions, whilst they involve distinct business processes, rely on core underlying administration systems. For that reason, whether the provider is offering a fully bundled insured pension service or a stand alone third party administration service, these three functions will all form part of the provider's service offer. Accordingly, we have assumed for the purposes of this report that these three elements will be "bundled" whilst the Investment Fund Administration will be provided by a separate provider (although there are likely to be some providers which will offer all four of these elements as a single "bundle", e.g. insurance companies.) We refer to the three bundled elements as the "Delivery Model" in the remainder of this report.

For all of these administration related services, we have provided insight to the likely cost structures and the possible level of charges available in the market at the moment. We have relied upon a piece of research we carried out earlier in 2009 in relation to multi-country pension administration and applied the results, as far as is possible, to the characteristics of the researchers pension fund to gain an indication of the likely costs of administering such a fund.

In addition to looking at the technical administration, we have also given an indication of other costs which can arise such as professional advisor fees and the explicit cost of compliance. Some of these additional costs could be covered within the administration fee depending on the terms and services provided by the administrator.

It should be underlined that the actual administration costs for the researchers pension fund will depend heavily upon a large number of variables including the number of participating employers and individual members, the volume of cash flows and number of transactions, the countries of employment and the benefit structure. When the European Commission and/or the sponsoring undertaking will decide upon the establishment of pan-European pension arrangements and will agree assumptions about these factors a specific updated analysis of the likely costs will be needed.

5.2. Delivery Model

The Delivery Model comprises three elements:

The Member Service Centre relates to member support from enrolment, through the benefit accumulation period and, finally, benefits payment (on retirement or death). Support requirements vary around Europe based upon such things as local cultural or regulatory requirements, but to accommodate all common usages will need to support voice (normally via a call centre), interactive internet access and paper based member support. Not all of these methods of support will necessarily be available in all countries, but any support provided needs to be multilingual, i.e. it must support a number of languages. In some cases, reporting in "host" country language is a requirement of social and labour law. Importantly, some costs can be mitigated by adopting a core set of languages rather than attempting to cater for every language irrespective of population size.

Member Administration relates to the record keeping associated with all individual member "events", for example, new joiners/enrolments, regular updates in employee data (such as covered earnings or family status), the management of the data relative to inactives (employees with deferred entitlements and retirees), contribution rate changes, fund switches (if permitted by local regulations) and the management of retirements, deaths and departures.

This is relatively straightforward within:

- one employer
- with one common HR IT system
- with one common plan design
- with earnings in a common currency
- with one contact with the employer who manages all data

However, within the context of considering the implications of a Pan European Pension Fund for Researchers, there are added layers of complexity; for example:

- multiple employers with no financial links
- based in multiple countries
- employers with no common HR IT system
- with plan designs that vary by host state (possibly even within host states)
- with earnings, contributions and benefit accumulation in different currencies and
- with data managed and controlled by many different people

It should be noted that in order to operate the proposed structure on a multi-employer basis will require the significant involvement of employers to ensure efficient administration. Indeed, there are some tasks which the employers will not be able (or are advised not) to outsource. For example, critical for the whole administration process will be the regular update of the employee data (new hires, departures, salary updates, etc). These updates can only come from the employer and they should happen on-time, automatically and in a coherent format.

Benefits Administration handles the calculation of benefit entitlement and benefit payments (though in some countries this might involve the purchase of an annuity from a third party insurer after which the administrator has no further role to play in the payment of benefits). The added complexity in this case will include the following factors:

- benefits accumulated by one member during employment in more than one host state (and, hence, different "sections" of the pan-European fund, each of which may be subject to different payment rules)
- benefits being paid in a different currency to the one(s) in which contributions were made and benefits accumulated
- benefits being subject to multiple tax deduction (or other fiscal) regulations

5.3. Factors influencing cost

The costs of administering a pension fund are influenced by a number of different factors. These factors include the number of members, the number of participating employers, the volume of cash flows in and out of the plan, the number of plan and member "events", the complexity of compliance with local Host state tax and benefits legislation and the design of the benefits.

The most significant of these factors in relation to the cost of administration will vary depending upon the business model of the administration provider. Broadly speaking, in the case of a model based upon per capita fees, then the number of members and the speed with which members join the plan will be the most significant factors; low membership and slow take up will tend to increase implementation costs, whilst the converse is also true.

Where the business model is based upon ad valorem (AMC) pricing, the critical factors will be the volume of contributions and the total of assets under management; strong positive cash flow and a rapid growth of total assets in the plan will tend to reduce implementation costs, whilst the converse is also true. It should be noted that it is possible to have a blend of per capita and ad valorem pricing, in which case a mixture of the factors indicated here will influence the overall cost of the administration. Some

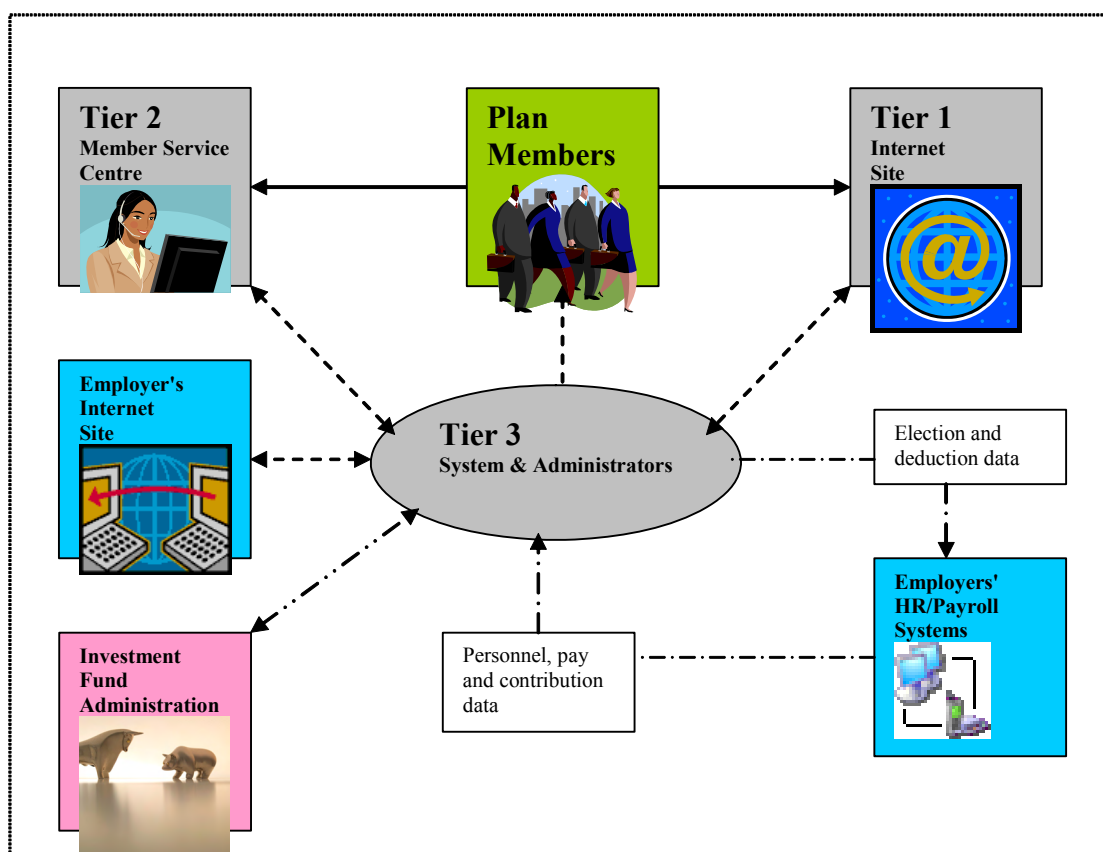
providers may be prepared to absorb some of the implementation costs if they believe that the commercial advantage to be gained from so doing is sufficiently attractive.

5.3.1. Overview of a possible Delivery Model

For the purposes of this report we have developed a member-focused Defined Contribution pension fund Delivery Model encompassing a tiered service, service centre and comprehensive self-service capabilities. We believe that this approach will conform (broadly, accepting that different potential providers might draw or express the model differently) with modern technological design and be capable of accommodating the complexities of operating a pension fund covering a variety of jurisdictions throughout the EU. We also believe that integrating the functionality in this way will be likely to keep the cost of running the fund to a reasonable level.

Importantly, the more "traffic" that passes through the higher tiers (1 and 2), the less costly the administration system will be. This reinforces the need to have a high degree of standardisation. Potential cost differences where there is more individual customisation possible is set out in section 5.4.4.

The Delivery Model is illustrated in the graphics shown below.



The following table explains the key functions of the tiered delivery approach.

	Actives	Deferreds
Tier 1 Internet site	View data	
	Specified data maintenance	
	Retirement estimates, fund balances, investment switches, changing investment options, contribution history, benefit statements, benefit modeling, selecting contribution level, plan booklets, news, etc	As per Actives, plus retirement processing (annuity applications), transfer processing, etc
Tier 2 Member Service Centre	All pension queries	
	Utilising FAQs, knowledge management & administration systems	
	Objective to deal with 90% of Tier 2 enquiries/processing. Ownership of resolution of enquiry/process.	
Tier 3 System & Administrators	Complex enquiries (e.g. guarantees), complex death cases.	
	Process periodic procedures (e.g. salary and member data updates).	

We have set out in Appendix G some further details of the processes carried out during the course of the administration of a DC pension fund using this type of Delivery Model.

5.3.2. Overview of core processing

The Delivery Model provider will need to have, as a minimum:

- Capability to administer DC pension arrangements across multiple jurisdictions.
- Support multi-currency plans (e.g., GBP, EUR, SEK)
- Support processing for:
 - Pre-joiners
 - Actives
 - Deferred
 - Dependants
- Core processes should include:
 - New entrants
 - Transfers in /out
 - Member contributions
 - Benefits Statements
 - Pensions / Retirement processing for retirements, ill health, deferment, redundancy, spouses and child benefits, trivial payments
 - Calculations in the event of death, retirement, leaving etc
 - Statutory calculations
 - Investment switches
 - Career breaks

5.3.3. Overview of Tier 1 plan member self-service

Plan member self service capability should be provided by the Delivery Model provider in the form of a web portal. This web portal should support the following functionality:

- Provide members with the ability to view and manage their account online. The system should provide the relevant data for display on the site, and the transactional capability to support member transactions such as changes to contribution amounts, switches, etc. The performance of these functions should support reasonable page response times, and the user should be informed of completed updates.
- The web solution should also be a vehicle for member communications and education around benefits. This includes a range of generic and personalised information, decision support tools and targeted communications features. The pensions system should provide the data and/or calculations needed to support such features.
- The provider should be able to demonstrate readiness to perform or support a third party penetration test to confirm the security of the web offering. Subsequent major changes may be subject to the same requirement
- The site should be available to all classifications of membership via internet with appropriate access rights by member.
- The site should have the ability to view, store, retrieve and print projections, quotations, benefit statements, daily visit statistics.
- The site should provide the ability to securely edit personal data, contribution and investment details (switching) online together with ability to set up pension online for deferred members (options on tax free cash sum, ability to provide details of bank accounts to receive pension payment etc).
- The site should enable tracking of member queries and service requests.

The Tier 2 Member Service Centre picks up all pension queries which cannot be resolved through Tier 1. A typical target is to resolve 90% of such cases.

5.3.4. Overview of Tier 3 interfaces

- Numerous flexible interfaces will be required, including:
 - HR System and Payroll of each participating employer
 - Pensioner Payroll
 - Clients' websites / intranets
 - Cash / workflow management systems
 - Investment Fund Administrator
- The system should be capable of receiving data in a secure, user friendly format e.g. Excel or csv, enabling the user to check and use the data without any additional file format manipulation.
- It should carry out all the necessary validations on the data received or sent on the interface in a holding area, before the data is committed to the system; and provide a facility to cleanse / update the errors prior to updating the system or sending the data.

5.3.5. Overview of Tier 3 investment related functionality

- **Funds**

We have assumed that the fund will offer a range of asset class sub-funds in order to cater for the requirements of members and local Host state regulations. Ideally all funds will be “unit-linked” as this will considerably ease the fund administration.

- **Lifestyle**

The Delivery Model administration platform must support “lifestyle” options. There should be flexibility around the types of lifestyle strategies capable of being supported and it is likely that the plan will need to support multiple lifestyle strategies, e.g. one for each Host state.

- **Default**

It will be necessary to set a default strategy for the fund, usually but not necessarily the lifestyle strategy, and possibly different defaults for different groups of members, e.g. dependent upon the Host state in which they are employed.

- **Fund Selection**

Subject to legal restrictions in each Host state, members who do not wish to be invested into the default strategy, can choose where they would like to have their contributions invested and can elect to move:

- Existing holdings
- Future contributions
- Both

Changes to investments can be made by members by:

- Accessing their account via the web-based tool
- Calling the Member Service Centre
- Submitting a paper form, obtained from the Member Service Centre, online tool, or via their HR/benefits department.

There should be no restriction on the number of switches which can be placed (subject to settlement periods and other Host state legal considerations).

There should be no additional charge made to members for switching funds.

- **Transactional Processing**

Potential Delivery Model providers should be able to aggregate member level transactions into one bulk deal per agreed dealing period. Additionally, the ability to net purchases and sales per fund to create one bulk net transaction would be highly advantageous for both administrative and investment efficiency.

5.4. Indicative Costs

As indicated in the foregoing we have described a notional Delivery Model which is consistent with the likely requirements for a member-focused DC pension fund operating across border in the EU. The costs quoted in this section are based upon the Delivery Model described and a quotation received from a leading UK pension fund administration company. These costs should be taken as **indicative only** of the likely costs of operating an EU Pension Fund for researchers as the true costs of operating such a fund can only be specified with certainty once the plan design, its likely membership, the numbers of participating employers et cetera can be described in more detail for the purposes of seeking a competitive tender from a number of potential providers.

5.4.1. Plan level fees

These fees cover the set up and maintenance of the core services of the Delivery Model.

- The charge for set up would be €45,000. This would cover such items as:
 - Online services
 - Creating standard interfaces (e.g. with the fund platform)
 - Establishing the required governance framework
 - Establishing the required MI and reporting
 - Input to any marketing documents, plan brochures et cetera
 - Call recording service (core team set up, staff training et cetera)
- There would be a minimum annual fee to maintain these core services of €140,000. Depending upon the take up of employers and plan members this minimum will be exceeded by the actual ongoing fees payable (see below) at some point and will not therefore apply.

5.4.2. Territory level fees

These fees apply to territories (i.e. "Host" states) in which the administrator has no current capabilities and will need to reconfigure its administration systems and processes to accommodate the local labour and social law requirements.

- The best estimate is €50,000 per territory as a minimum, but this will depend upon the legislative / regulatory burden in each country.
- To establish core services in each territory is similar in nature to those for the core services of the Delivery Model, so is likely to require:
 - Configuration of the core DC operating model, workflow, processes and documentation
 - Online services incorporating local legislative and language requirements
 - Creating standard interfaces (e.g., with local payroll systems)
 - Any local changes required for the governance and reporting framework
 - Additional staff training
 - Establishing treasury and fund accounting requirements, including local bank accounts

5.4.3. Employer level fees

The employers' set up fees assume that there will be a charge to install the plan infrastructure and routines for each employer on a bespoke basis. This fee would be €35,000 per employer. However, if the fund were to be configured on a standard basis across all employers some (perhaps all) of the installation fees would not arise. In addition, the following on going charges would apply:

- Annual per capita membership fees of €16 for active members and €10 for deferred members
- A plan management fee of €10,000 per employer to cover matters such as
 - Operation of treasury and fund accounting
 - Legislative compliance

As with the set up fees, we anticipate that if the plan can be configured in a standard manner for all employers in a particular jurisdiction then the plan management fee per employer could be reduced or perhaps dispensed with altogether.

5.4.4. Illustrative example

The cost of administration is very sensitive to the degree that individual employers could configure the design of the pension fund for their own purposes. The cost also depends on numbers of employers, number of researchers, actual locations and several other factors. The variability is best illustrated by looking at specific examples.

The table below looks at two different examples. Both cover 10 countries, and assume 500 researchers per country spread over 5 different employing entities per country. You will notice that both the establishment cost and the ongoing cost is very sensitive to whether individual employers are allowed to configure the "standard" country design.

			Example A	Example B
	Unit cost	Number	Standard configuration by country	Variable configuration by employer
One-off set up fees				
Central administration	€ 50,000	1	€ 50,000	€ 50,000
Country fees vary by existing administrator capabilities				
no capabilities	€ 50,000	2	€ 100,000	€ 100,000
some capability	€ 25,000	4	€ 100,000	€ 100,000
full capability	€ 10,000	4	€ 40,000	€ 40,000
Configuration by employer	€ 35,000	50	€ 0	€ 1,750,000
Total set-up fees			€ 290,000	€ 2,040,000
Ongoing annual fees				
Per member	€ 16	5000	€ 80,000	€ 80,000
Per employer (standard)	€ 2,500	50	€ 125,000	€ 0
Per employer (variable)	€ 10,000	50	€ 0	€ 500,000
Total ongoing annual fees			€ 205,000	€ 580,000
Total ongoing annual fee/member			€ 41	€ 116

A certain amount of variability is available at the individual member level through the self-service functionality. This includes member choice of investment fund and choice of level of contribution, and as such are common in both examples above. The variable configuration in example B covers cases

where individual employers would require customised reporting to members, different range of investment funds on offer, different additional benefits and a number of others such as frequency of paying contributions.

We stress that these figures are based on an extrapolation of an existing proposal and **entirely indicative** at this stage. It should not be relied upon as actual quotations from specific providers for a certain benefit design/number of members/countries are likely to be considerably different.

5.5. Delivery Model: Concluding remarks

It will be gathered that the scope and scale of these estimates is very broad and will give only an indication of likely costs of running the EU Pension Fund for researchers. We have deliberately quoted these costs as fees for reasons of clarity and transparency, but it would be possible to apply them either in whole or in part as a fund based charge, i.e. as a loading to the annual management charge (AMC) for the investment funds. The AMC basis of charging will most often occur when the Delivery Model and the Investment Fund Administration functions are bundled together by a single provider. It is also the basis upon which insurance company pension products are priced.

A key difference between a fee based charge and the AMC approach is who meets the cost. Generally speaking, fees associated with a Delivery Model such as the one under discussion here will be met centrally by the plan: in other words by the sponsoring employer(s). By contrast, the AMC will have the effect of reducing the rate of return on the investment fund(s) and so the members' accounts: in other words the members bear the costs.

On actual implementation, there is likely to be a large difference in the level of fees quoted by different administration providers. Some providers will feel the need to recoup their establishment fees quickly and will prepare their quotations accordingly. Others will view this as a great opportunity and will almost certainly offer more attractive terms taking into account commercial opportunities.

5.6. Investment Fund Administration

Investment funds' administration is particularly important in the context of a defined contribution (DC) framework, where members' investment options can vary from, at one extreme, multiple options in the pure defined contribution model, to, at the other extreme, no options at all which is a more common DC model in certain European countries. A further complexity will be the currency denomination of the investment options. Generally speaking, in the context of a single state pension plan, the denomination of the pension plan's investment fund(s) will be the same as that in which the contribution is made. However, in a pan-European fund a member might be working in a state within the Euro currency zone, but be planning to retire outside of the Euro zone; in which case investing his contributions in a non-Euro denominated investment option would be entirely logical.

This problem can be addressed in a number of ways which we will consider, but in essence there are two options:

- Creating a single asset pool administered centrally on a single funds' administration platform, but having that pool "carved up" into multiple investment options to cater for the variety of fund and currency choices which are likely to be required by a pan-European membership
- Creating multiple, discrete pools in each state in which the members in that state invest

Both options carry with them their respective advantages and challenges and there are, in fact, a number of variations within each. More positively, however, there are a number of service providers (custodians and/or investment managers as well as consultants, such as Hewitt) which are developing solutions in this area.

Factors influencing cost

In broad terms and conceptually, Fund Administration is quite straightforward. Contributions are collected by the Member Administrator which prepares a bulk buy/sell order for each Investment Fund for which there is a cash flow. The Fund Administrator transacts the buy/sell order with the relevant fund manager(s) and then prepares a deal confirmation report for the Member Administrator. The Member Administrator then updates the personal record of each member to reflect the cash flow on his/her account.

In practice, it is possible either to have Fund Administration provided by the same supplier as Member Administration (which itself will often be bundled with Benefit Administration and the Member Service Centre) or provided by a stand alone supplier. Both approaches have their advantages, and corresponding disadvantages, and may be priced differently.

We have considered below some general observations about segregated and pooled investment approaches and bundled and unbundled fund administration services, in what circumstances either one or the other approach may be most appropriate and, finally, an indication of the possible costs.

Segregated or Pooled investment funds

Broadly speaking there are two investment approaches which are catered for by DC fund administration services.

A pension fund might choose to invest its assets directly into the market, appointing an investment manager to take the day to day decisions about which asset classes to invest in and the individual equities, bonds and other investable instruments to buy and sell. This is often referred to as "segregated" fund management. Usually the fund administration for segregated funds will be a custodian (or "depository") which will be responsible for recording all the individual assets held by the fund, claiming dividends or coupons, and reclaiming tax where appropriate.

A significant number of pension funds rely on the services of a global custodian as the Fund Administrator. From actively settling the investment transactions carried out on their behalf by their investment managers, to providing investment accounting and performance measurement information, custodians can play a pivotal role in pension fund administration and governance arrangements. In our experience, the focus that is placed on this relationship tends to be less than that placed on investment managers and other related parties. However, the custodian undertakes a key function in the safekeeping of the fund's assets, and indeed is often asked to provide other activities such as:

- cash management services
- securities lending
- foreign exchange transactions

In terms of the way in which segregated investments are recorded at member level, it is generally considered impractical to allocate every member account with a share of the plan's investments. Instead the custodian will be responsible for calculating the performance of the fund as a whole and providing that information to the Member Administrator who will then use the performance data to calculate the value of each member's account, which will rise or fall in line with the performance of the plan's investments.

The segregated investment fund approach will work best in DC plans in which there is a single investment fund and/or the members have limited or no investment choice, which is the case in many EU countries. Where members have choice over the investment of their plan investments, in countries like the UK and Ireland (and in other countries around the World where DC plans have been the norm for many years, like the US and Canada, Australia and South Africa) the segregated approach gives

rise to considerable practical complexities for the Member Administrator and is generally not used. Instead plan investments are made through pooled ("mutual") investment funds.

Pooled funds come in many different forms across the EU. Some are local vehicles, like unit trusts or "open ended investment companies" (OEIC) in the UK and Ireland, whilst others have been targeted at cross border investors in the EU, like the Irish "common contractual fund" (CCF) or the Dutch FGP or Luxembourg FCP. Some other pooled funds are structured within life assurance companies. Whatever the legal structure of a pooled fund, they all operate in broadly the same fashion and may or may not comply with the UCITS directives (broadly, retail funds will and institutional funds will not).

A pooled fund is normally established by an investment manager (or perhaps a life assurance company). The fund holds investable assets directly and investors in the fund hold "units" (or "shares") in the fund itself. The value of an investor's units will rise or fall in line with the value of the underlying investments and valuations (and unit pricing) will be carried out periodically, the timing of which will be dependant upon the frequency with which investors wish to trade their units; a frequently traded fund will probably have a daily pricing cycle, whilst a fund which is traded less frequently (often such funds hold illiquid asset classes, such as property) might only be priced monthly, quarterly or even annually.

A DC plan investing in pooled funds will therefore hold units in one or more pooled fund. These units may be bought direct from the manager(s) or via a "fund platform" which provides investors with simplified access to a range of funds managed by a number of different investment managers. In such plans the investment and member record keeping typically operates in one of two ways.

Contributions are collected by the Member Administrator which prepares a bulk buy/sell order for units of each pooled fund for which there is a cash flow. Then either:

- The Member Administrator transacts the unit buy/sell order with the relevant fund manager(s) and then updates the personal record of each member to reflect the cash flow on his/her account by reference to numbers of units bought and sold on his/her behalf; or
- A Fund Administrator (in this case a "fund platform") transacts the buy/sell order with the relevant fund manager(s) and then prepares a deal confirmation report for the Member Administrator. The Member Administrator then updates the personal record of each member to reflect the cash flow on his/her account by reference to numbers of units bought and sold on his/her behalf.

There are now a number of fund platform providers in Europe. Several large asset managers, for example Fidelity and BlackRock, and a number of life assurance companies, for example AXA, Standard Life and Aegon, have developed (or are in the process of developing) platforms.

A possible third approach might include the growing number of pooled funds which are traded on stock exchanges, so called "exchange traded funds" (ETF). In this case a Member Administrator might consider it more convenient to transact on an exchange rather than directly with the pooled fund manager(s). However, as ETFs still represent the minority of pooled fund types available in the market, either dealing direct with managers or via a fund platform will provide a plan with access to a greater range of funds and managers.

Bundled or Unbundled fund administration

As described above the role of the Fund Administrator will vary depending upon whether the DC plan's governance determines that the plan assets should be invested in segregated or pooled funds and in the latter case whether the Member Administrator transacts directly with the pooled fund manager(s) or via a fund platform. Determining to what extent the services provided by the Fund Administrator are or can be either bundled or unbundled with other services provided to operate the plan is as much a matter for interpretation as of fact.

For example, in most cases a large part of the back office operation of a fund platform will be provided by a custodian, although their role is not obvious to an investor and the platform's costs are all rolled into the prices of the pooled fund units traded through the platform. As far as the platform operator is concerned, the structure of the platform is unbundled, because they will have a contract for services with the custodian and could, if they wished, change the custodian at some point in the future. However, as far as a plan making investments through the fund platform is concerned the services are bundled and, whilst it is theoretically possible for a plan to unbundle the different elements that go to make up a fund platform and contract separately with the service providers (effectively creating the plan's own fund platform), in practice it is impractical to do so for all but the very biggest pension plan sponsors (such as Unilever).

However, a plan might choose to either bundle or unbundle the two roles of Member Administrator and Fund Administrator. As described above it is entirely feasible in several countries in the EU and elsewhere for a DC plan to appoint a Fund Administrator and to use an entirely separate fund platform, in which case the plan would have a contract for services with each entity. It is also entirely feasible to bundle these two functions; both Fidelity and Standard Life (to pick just two suppliers mentioned previously) offer combined Fund and Member Administration on a bundled basis to DC plans which prefer this approach.

The decision to bundle or unbundle services in the EU is largely a matter of preference and/or local practice. There are some economic considerations, but on their own these are unlikely to be the key driver; indeed the economic considerations will be academic in member states where suppliers cannot (or will not) offer their services on both a bundled and unbundled basis.

To illustrate this by way of an example, in the UK the trustees of pension plans tend to evaluate and appoint suppliers on a "best of breed" basis, appointing managers, administrators, custodians and a range of advisers through a series of separate contracts for services. There is possibly a trend for trustees of UK DC plans to bundle member and fund administration into a single mandate, this being driven in part by suppliers like BlackRock and Aegon offering to bundle these services and in part by some plans' poor experience of getting these two key operational functions to work properly when split between different suppliers. But elsewhere in the EU the UK's unbundled approach would be considered bizarre; a French employer would consider that he had selected a best of breed supplier if he appointed AXA and it would never occur to him to ask whether that assessor is both the best Fund and Member Administrator because he will not think of the two as divisible functions (and AXA would not offer them as separate services in France).

5.7. Indicative Costs

In our opinion, given the range of different investment approaches in DC plans around the EU and the need to cater for all of them, a fund platform will be the best operational Investment Fund Administration option for the EU Pension Fund for researchers. It will then be the responsibility of the Member Administrator to configure the Delivery Model in each member state in a manner which directs members from each state to the appropriate fund links on the fund platform; this is a relatively straightforward configuration of the member interface technology.

The price paid for the investment funds and the fund platform will be a matter for negotiation by the plan's governance entity (and/or its advisers). The volume of assets that the plan builds up on the platform and with each of the managers will be the key drivers of price; there are potentially significant economies of scale which will reduce the prices offered to large plans.

Fund pricing

Pooled fund pricing is a highly technical and complex process. Most fund managers will outsource their fund pricing to a third party, often a custodian. These complexities need not be of concern to most investors although the governance entity of a pension plan will normally have some mechanism in place to carry out periodic audits of cash flows into and out of the funds in which the plan invests to satisfy itself that there are no pricing anomalies. This is particularly important in DC plans where fund prices directly affect the value of members' accounts. Fund platform providers can provide an additional level of assurance that funds are being priced correctly by managers because they will normally have their own audit processes within the platform's operational structure.

There are generally two elements to the price of a pooled fund that will be the principal focus of interest to a pension plan: an initial charge; and an annual management charge (AMC).

Initial charges are most significant in the retail market where the bid and offer spread (that is the difference between the buying and selling price of the fund's units) may be as high as 6 or 7%, though more typically around 4-5%. In the institutional market (in which most pension plans will invest), funds are generally single priced (that is that the price swings to reflect whether the fund is a net seller or buyer of its underlying assets on the trading day, i.e. the investor bears only his fair share of the fund's trading expenses on the day he buys or sells his units). The implied initial charge on such an institutional fund is generally not more than 1% in normal market conditions and for most asset classes, though it can be higher where, for example, the underlying assets are not readily realisable.

AMCs will vary by asset class and the type of fund used. For funds that are suitable for use in an EU plan it will be necessary to use funds registered in Luxembourg or Ireland, for example. Such funds tend to have higher AMCs than those institutional funds that a domestic pension plan might access in its home market; we anticipate that as more providers enter the multinational pensions market, prices will become more competitive. Looking at the core actively managed funds that might be used in a DC plan, we anticipate that the AMCs will be roughly as follows:

- Equity and Global Equity 0.75%
- Bonds 0.50%
- Property 1.0%
- Balanced 0.75%

Passively managed funds would be likely to have a lower AMC, so an index tracking equity fund would be available for perhaps 0.2-0.25%

Fund platform pricing

The fund platform provider will add an additional AMC to cover their services. Their loading will be subject to negotiation, as will the AMC of the underlying manager's fund, but it is reasonable to assume 0.05% for a passive fund and up to 0.2% for some of the more esoteric actively managed funds, a diversified growth fund created by blending together some of the core funds for example.

5.8. Fund Administration: Concluding Remarks

In developed DC markets pooled funds are generally thought to be more appropriate than segregated funds for DC plans which seek to offer members a degree of investment choice, perhaps between funds which invest in different asset classes.

A fund platform may be appropriate for more complex DC plans in which, for example, members are to be offered choice between not only asset classes but also managers, or where different member peer groups are to be offered access to different asset and manager choices (possibly priced in different currencies if it is a multinational plan). The fund platform approach may also benefit from economies of scale because the volume of money flowing through the platform from multiple plans should allow the Fund Administrator to negotiate keener prices with a manager than could an individual plan which approaches a manager direct.

Pricing generally will be subject to negotiation and the precise investment requirements of the plan.

We have added some additional information about the operation of fund platforms in Appendix H.

5.9 Other costs

Other costs include professional advisor fees, and governance/compliance related fees and vary enormously depending on the vehicle, size, complexity, governance structure and location. Below we set out some very indicative costs which could apply for a cross-border arrangement established in Belgium:

- a. Establish governance structure: €60,000 - €80,000

Includes byelaws, pension rules, management agreement with sponsoring companies, financing plan, statement of investment principles, internal control procedures, business continuity policy, integrity policy, and outsourcing policy
- b. Secretarial services: €60,000 - €80,000

Includes organising General Assembly, Board meetings, Management Committee, Social Committees (per country), Investment Committee
- c. Annual reporting: €10,000 - €15,000
- d. Compliance officer: €10,000 - €15,000
- e. Internal auditor: €15,000 - €20,000
- f. External auditor: €15,000 - €20,000
- g. Tax declarations, bookkeeping and reporting to authorities: €20,000 - €30,000

Some of these services could be provided by an administrator and included in the administration fees particularly if a semi-bundled service is adopted.

Key Conclusions

The optimal delivery model for administration will need to be structured in a tiered approach. Members should have access through an on-line portal where information is provided, where they are able to make standard selections. The next level is a member service centre which covers queries which are

not resolved in the on-line system, and the final tier is the system and administrators who deal with complex queries and have interfaces with employers, investment administrators, accounting and pensioner payroll.

We believe that this approach will conform with modern technological design and be capable of accommodating the complexities of operating a pension fund covering a variety of jurisdictions throughout the EEA. We also believe that integrating the functionality in this way will be likely to keep the cost of running the fund to a reasonable level.

The costs of administering a pension fund are influenced by a number of different factors. These factors include the number of members, the number of participating employers, the volume of cash flows in and out of the plan, the number of plan and member "events", the complexity of compliance with local Host state social, labour and tax legislation, the design of the benefits and the degree of standardisation within country sections.

The cost of administration is usually met by a fixed charge per member, an asset management charge (AMC) expressed as a % of assets under management, or a combination of both. Irrespective of the charging basis, the degree of standardisation will have a key impact on the overall cost of administration.

6. Overview of labour law, social security and tax conditions applicable to employees governed by the "host" country legal framework

6. 1. Overview of Scope and Methodology

Scope

This section is designed to assess the "host" country requirements for researchers based in particular countries joining a pan-European IORP which has its "home" country in another EEA member state, and assess any implications for the design and operation of the pan-European pension fund.

In agreement with the Advisory Group and on the basis of the larger number of researchers operating in the respective EU countries, the "host" country analysis has focused on the following countries:

- Belgium
- France
- Germany
- Ireland
- Italy
- Netherlands
- Poland
- Spain
- Sweden
- United Kingdom

In addition, for a second tier of countries a high level review has been undertaken aiming to check the possibility of principle for researchers whose labour contract is governed by each of the respective national statutory conditions to join a cross-border IORP set up abroad.

In agreement with the Advisory Group, we have based our research on the premise that the benefits provided to researchers under the pan-European Pension Fund will be defined contribution in nature with the possibility of some investment guarantees. This ensures our research is focused on the most relevant features.

Methodology

For each of the ten countries mentioned above we have investigated the specific issues set out below.

- The key social and labour law requirements, information requirements and investment restrictions which are determined by the local “host” regulator. This item of research is the most challenging as several jurisdictions have still not defined these requirements explicitly. Defining the relevant host country social and labour law conditions is particularly pertinent as it defines the conditions under which locally based researchers can join a cross-border IORP or insured arrangement, and will dictate certain features which the eventual cross-border pension fund will need to be able to accommodate in respect of certain local groups of researchers. This includes
 - General Retirements of pension plan (e.g. benefit structure investment guarantees, inflation protection, risk coverage, approval changes, etc.)
 - Membership (e.g. minimum/maximum entry age, retirement age, anti-discrimination, mandatory/optional membership)
 - Contribution levels)
 - Pension rights (e.g., vesting, transfer etc.)
 - Benefit structure (e.g., lump sums, minimum benefits, interrelationship with 1st pillar pension provisions, relationship with collective bargaining agreements, pre-retirement/late retirement, currency, etc.)
 - Potentially conflicting home/host requirements regarding prudential requirements, governance, ring-fencing, etc.
 - Investment restrictions and information requirements
- Local tax and social charge implications of belonging to an IORP or insured retirement arrangement from the perspective of an individual and of an employer. This is then compared to implications for joining an IORP of an insurance arrangement in another country. This research stream enables the Advisory Group to understand the implications for researchers joining local retirement arrangements, and any remaining differences which exist for joining cross-border arrangements despite rulings of the European Court of Justice and the European Commission's communication on taxation of complementary pension funds.
- Any implications for the portability of retirement assets from country to country when researchers move countries. .
- The employment status of researchers – it is important to differentiate between different local employment statutes and the implications for joining retirement arrangements. In particular, whether Researchers are employed as private employees or public employees. This analysis also includes details of any compulsory membership of host country pension arrangements which could impact the desirability or possibility to include researchers in a different cross-border pension fund, and any impact on the issues discussed above.

6.2. Key features to consider from a host country perspective

The EU Pensions Directive requires that an IORP based in one Member State (the home state) and providing benefits for members located in another Member State (the host state) fully respects the provisions of the social and labour law in force for the host state insofar as it is relevant to occupational pensions.

All the countries covered in this report have a body of Social and Labour Law (SLL) that governs the treatment of employees working in that country.

In some countries this contains extensive requirements relating to pensions for employees in that country – but in others there are few restrictions about what can be provided. SLL can contain requirements for what must be done, as well as prohibitions about what must not be done.

CEIOPS has carried out a survey of national SLL rules in a range of areas. The results of this are summarised in the table in Appendix J, which is taken from the document published by CEIOPS (dated 12 October 2009 reference CEIOPS-OP-27-09). That table simply states whether the local authorities in each member state believe that their SLL has any restriction in each area for an overseas IORP.

Our review follows a similar approach to the CEIOPS study and we have grouped the 14 headings in the study into the following five main groupings:

- **Benefits and Contributions**– does SLL place any restrictions on the benefits that can be provided, or the contributions that can be paid? If so, what would these restrictions mean for benefit design/administration (for example, because benefits must be paid in pension form)?
- **Access** – does SLL place any restrictions on who can join an occupational pension scheme? Does this restrict the ability of a non-domestic IORP to include only researchers as members (for example because it is not possible to provide a pension plan only for one group of employees?)
- **Investments** – does SLL place any restrictions on the investment choices that can be offered to members? Some countries permit member investment choice, but some do not. Some require a minimum level of return on the funds. Further, are there any investment restrictions in addition to those required under the EU Pensions Directive?
- **Management of IORP**– does SLL place any restrictions on how the IORP can be managed in respect of members in a particular country, for example minimum employee representation requirements?
- **Information Requirements**– does SLL contain any requirements for member information?

We also address the tax implications of pension plans in each country. In some countries the taxation system influences the benefits provided by a pension plan even more than the SLL – for example, SLL might permit payment the payment of lump sum benefits but it may not be tax effective.

This covers a range of issues, including:

- **Employer and employee contributions:** what are the implications for employers and employees?
- **Benefit payments:** how are they taxed?
- **Investment returns:** how are they taxed, and who pays the tax (employer, pension fund, employees)?
- **Social security or payroll taxes:** are there additional charges arising in respect of contributions or benefits?

We have also reviewed the taxation of benefits from domestic and non-domestic IORPs.

Next we have looked at the portability of retirement assets. Employees who join an EU pension fund for researchers may wish to transfer their accrued benefits from a domestic plan into the EU fund. Is this permitted and does it have any tax implications? Conversely, an employee who changes career may wish to transfer the accrued benefit out of the EU fund into a new employer's fund or an individual contract – is this possible?

Finally we have reviewed the pension rules for public sector employees (including those of researchers at universities). In many countries, these employees have different, often more generous, pension plans (or, indeed, social security plans). This can mean that these groups of researchers may be very unlikely to join a new EU fund, either because they are prohibited from leaving the existing pension plans or because those are so generous that they have no incentive to leave them.

Similar issues arise in some countries due to the widespread existence of pension plans set up on an industry-wide basis, or due to Collective Labour Agreements. These can either mean that the employees are not able to join a different pension plan – or that they have no incentive.

The following table sets out why the various issues are important for the feasibility, design and administration of a cross-border pension fund for Researchers.

Feature	Why is this important?
Benefits and Contributions	SLL may restrict the benefits or contributions that can be provided and when they can be provided. Usually this is not normally more than an administrative issue. A requirement to provide benefits as an annuity could cause problems for some IORPs
Access	SLL may mean that it is difficult to offer membership of the IORP to only researchers – leading to limited membership.
Investments	SLL may mean that different investment choices will need to be offered to different groups of members – some will have to have only one choice. Some funds will need to meet specific minimum investment guarantees.
Management of IORP	SLL may affect the way that the IORP can be operated – for example, minimum levels of employee representation
Information Requirements	SLL imposes different requirements in each country for the information that must be provided to members. These requirements will all need to be met, in the relevant languages.
Taxation	May affect the benefits or contributions that can be provided. May impose requirements for the IORP to deduct tax on contributions, benefits or investment returns.
Portability	Employees may wish to transfer existing benefit rights into the IORP, or to transfer accrued benefits out of the IORP at a future date. The ability to do this varies between different member states.
Public sector pensions	Special pension plans for public sectors may mean that they cannot (or would not be expected to) leave those plans and join a Researchers' fund – leading to limited membership
Collective Labour Agreements	Collective labour agreements may specify special pension plans for covered employees - meaning that they cannot (or would not be expected to) leave those plans and join a Researchers' fund – leading to limited membership

6.3. Summary of country specific implications for researchers in first tier target countries

The table below summarises the impact of different features of host country social and labour law on the feasibility of establishing a cross border pension fund for researchers from the perspective of design and access. We have adopted a "traffic light" approach under which we show the relative impact across countries:

- Green indicates no particular issues
- Amber indicates possible issues
- Red indicates significant issues
- Red and Green stripes indicate the possibility to have issues solved under specific circumstances

We have also included some summary comments by country to enable the reader to appreciate the implications.

	<u>BE</u>	<u>ES</u>	<u>FR</u>	<u>DE</u>	<u>IR</u>	<u>IT</u>	<u>NL</u>	<u>PL</u>	<u>SE</u>	<u>UK</u>
Flexibility in benefit design	Green	Yellow	Yellow	Green	Green	Green	Green	Yellow	Green	Green
Flexibility in investment options	Red	Yellow	Green	Yellow	Green	Red	Green	Green	Green	Green
Flexibility to make extra contributions	Red	Green	Yellow	Green	Green	Green	Green	Yellow	Green	Green
Representation issues	Yellow	Yellow	Green	Yellow	Green	Green	Green	Green	Green	Green
Reporting requirements	Green	Green	Green	Yellow	Green	Yellow	Yellow	Yellow	Yellow	Green
Private Sector access	Yellow	Red	Red	Yellow	Green	Yellow	Red	Red	Red	Green
Public Sector access	Red	Green	Red	Red	Yellow	Green	Red	Red	Red	Yellow
Tax/social charge issues	Yellow	Green	Green	Green	Green	Yellow	Green	Green	Yellow	Green
Portability issues	Green	Green	Green	Yellow	Green	Green	Green	Green	Green	Green

More details for each country are set out in Appendix I

Belgium

- There is a guaranteed minimum investment return of 3.25% on employer contributions and 3.75% on employee contributions. This will normally lead to a much more restricted (and cautious) range of investment options for Belgian members, compared to those from other countries.
- Voluntary employee contributions are not permitted
- If employees contribute to the fund then a Belgian committee will need to be set up to supervise the fund. Given the likely number of different employers involved, this could be a complex process.
- Additional local tax requirements increases administrative complexity
- Membership of a pension plan must be open to all employees within a well-defined employment category. In order for Belgian researchers to be admitted to a pan-euro fund it would be necessary for each employer (separately) to create an objective definition of a researcher. All eligible employees of that employer would then have to join the pan-euro fund. However, if the researchers are already covered by an existing pension plan then their employers will need to decide whether researchers will automatically join the newly established plan. In this case the works council will need to be informed and consulted. The exception is where the existing plan covers all employees and also has employee contributions – in this case the plan will be included in the CLA and that will need to be amended.
- Most public sector employees (including employees of some universities) are not "contractual" employees and are covered by different SLL. The public and private sector employees are eligible for different first pillar pensions, and due to the public sector being more generous it is not market practice that public sector employees have access to a second pillar pension.

France

- The IORP must be treated as an Article 83 plan if there are employer contributions. However, this means all employees in a wide group (for example, white collar) must become members. Except for pure research companies it does not seem possible for only researchers to be granted access. Further, contributions must be at fixed rates for all employees in this case.
- If the IORP is classed as a PERP then only employee contributions are permitted and access must be offered to all employees in a wide group (for example, white collar). Employees can choose their own rate of contribution.
- Public sector employees are unable to opt out of their mandatory pension plan which already provides a relatively high level of benefit.

Germany

- Design requirements include that payments must generally be made in annuity form and with minimum indexation requirements. Risk benefits cannot be paid in lump sum form
- No investment choice is permitted and a minimum 0% investment guarantee must be provided for DC-type plans.

- Access to an employer sponsored pension arrangement must be open to all employees. Care will need to be taken in defining researchers as an objective group so membership of the cross-border pension fund can be restricted to just those people.
- If a researcher works for the public sector they may be covered by the VBL (which they are not allowed to opt out of). Alternatively they may be covered by other public sector plans which they also cannot opt out of or may not wish to leave.
- There are detailed member information requirements
- Works council approval is needed for changes to the benefit structure
- Mandatory insolvency insurance applies where the IORP is classified as a Pensionsfond
- A transfer of assets from a non-domestic IORP to a German IORP may cause tax issues

Ireland

- Public sector researchers have been covered on a compulsory basis in public sector DB arrangements. We expect researchers would be unlikely to opt out

Italy

- The contributions required for each member will need to at least meet the minimum required for that member's collective bargaining agreement.
- The IORP must offer an investment option which complies with the minimum expected return requirement of 1.5% plus 75% of inflation
- A record must be kept of which contributions have been taxed and which have not, and whether the investment return has been taxed.
- There is a requirement to send information to Italian regulator about on an annual basis
- CLAs often require that membership of a domestic pension arrangement is offered. Employers are required to contribute unless members choose voluntarily to opt out.
- Potential taxation when benefit paid in respect on untaxed investment income

Netherlands

- Local member reporting requirements are strict
- In the private sector, many researchers will be members of industry-wide funds. They are not permitted to opt out of these funds on an individual basis. Employers are able to out but may choose not to if that means that other non-research employees also have to leave the fund and have alternative pension provision elsewhere. No issue private sector access where no CLA, and researchers can be covered under a separate pension fund.
- Dutch public sector researchers (including those at universities) are grouped together within the ABP pension fund and are unlikely to want to (or be able to) leave their existing DB pension schemes.

Poland

- Benefit flexibility is limited if the vehicle is classified as a PPE in terms of level of contributions
- There is a requirement to send information to Polish regulator about the Polish section on an annual basis
- Access must be offered to all employees within an organisation. To cover only researchers, it will be necessary to treat the cross-border IORP as a non-qualified plan
- PPE benefits are taxed on a favourable basis. Non-qualified plans receive no preferential tax treatment, although benefits are tax-free
- Transfers to other arrangements from PPEs are limited

Spain

- Contributions are limited in cash amount by individual member under SLL.

- Individuals have no investment choice
- It is necessary to establish a Control Committee with equal employer and employee representation – and there must be a Spanish-based official representative for the cross-border IORP
- If an employer sets up a company pension plan then all employees of that employer must be eligible to join the plan (if the employer and employees are to receive tax relief). It is possible to have different sections with one representing researchers, and there is no requirement for the employer to contribute for those other employees. However, employers can only operate one qualified pension plan, and can only have one IORP providing DC benefits for their employees. This means the only potentially viable route in Spain is to create a professional industry-wide plan for researchers, which would not restrict employers providing domestically financed benefits to other groups

Sweden

- Member reporting requirements are relatively extensive and extend to key features of tax implications
- Additional local tax requirements increases administrative complexity
- Private sector access is complicated with CLAs which mandate relatively generous and usually DB plans. 80% of the private sector workforce are covered under such arrangements. Employees can opt out only with employer consent. No issue with private sector access where there is no CLA.
- Public sector access is limited as researchers are covered under relatively generous DB plans. Opting out on an individual basis is possible but very complicated, and unlikely.

United Kingdom

Public sector access is possible but unlikely as researchers are already covered under generous DB plans and are unlikely to opt out voluntarily.

6.4. Summary of country specific implications for researchers in second tier countries

For this second tier of EU countries, that represent less than 20% of the estimated population of current researchers, it has been assessed whether researchers can join a cross-border pension fund and provide a short description highlighting any legal or other barriers.

This section, contributed by the lus Laboris network of local attorneys, covers the two situations below:

- Researchers working within a company in the private sector (including also the situation where researchers represent only a proportion of employees).
- Researchers working within the public sector.

Austria

In principle, additional pension rights for employees can be introduced through plant agreements or through individual promises by the employer or contractual arrangements with the employee. For employees working in operations with a works council, participation to a pension fund can be made possible only through plant agreement; in other plants such participation can be ensured by individual arrangements, but model for such arrangement must be approved in advance by the Federal Minister for Economics and Labor. Practically all existing pension rights of employees will be covered by the Company Pension Act. The Company Pension Act covers three types of pensions. The employer's participation in a pension fund, where the employer will pay regular contributions to a pension fund and the employee will receive the pension from the pension fund is one of the three types. If a cross border researchers pension funds meets all statutory requirements researchers can join such type of fund.

As far as the public sector is concerned researchers with a civil servant statute are rather rare, most of them are nowadays employed as employees.

Bulgaria

Second pillar pension arrangements under the Bulgarian Social Security Code cover all individuals (who are covered by the first pillar of the state social security) irrespective whether they are working in the private or the public sector. According to the said Code additional mandatory pension security (second pillar) is implemented through participation in universal and/or occupational pension funds. These funds have to be incorporated and managed by pension insurance companies licensed according to the procedure established in the Code. Further the Code expressly indicates that pension insurance companies include companies licensed and registered under the legislation of another Member State.

The contribution (under the second pillar) has to be made initially in favor of the Bulgarian revenue authorities and then distributed by these authorities to a private fund chosen by the individual (researcher). Therefore we are of the opinion that it is theoretically possible to have such individuals working in Bulgaria choose a cross-border pension fund, incorporated and managed by a pension insurance company registered under the legislation of another Member State, to which the Bulgarian revenue authorities would further distribute the contribution made by them. However there could be practical implications due to inconsistency of the legal framework.

Cyprus

The Law allows a Company (and by inference an employee) to make contributions to a cross-border IORP.

The Public sector is covered by a generous mandatory retirement plan. It is unusual for public sector employees to be members of additional retirement plans. However, membership seems legally possible if public sector workers don't need to opt-out from the existing plans.

Czech Republic

The Czech pension system consists only of two main pillars: a compulsory pension system organized by the state ("State pension system") and voluntary supplementary pension insurance organized by Czech pension funds ("Supplementary pension insurance"). The State pension system is based on obligatory contributions made by every employee (including researchers) and employer as part of their social security contributions. Participation in the Supplementary pension insurance is voluntary and is supported by a state contribution. A limited amount of such pension contributions is tax deductible for the employer.

At present, there is no occupational pension system (so-called second pillar occupational pension arrangements) based on a contractual agreement between employers and their employees in the Czech Republic. However, this does not mean that the researchers as well as all employees may not join foreign retirement arrangements. According to Act on the activities of institutions for occupational retirement provision from other EU member states (Act No. 340/2006 Coll.), foreign pension funds may pursue their activity also in the territory of the Czech Republic. In addition to the State pension system, membership in the foreigner retirement arrangements is voluntary.

It seems that there is no legal restriction for the researches (both from private and public sector) to join a pan-European solution.

Nevertheless, the researchers as well as their employers are obliged to contribute to the State pension system. As the amount of mandatory contributions is relatively high, we may not exclude that neither the researchers nor their employers will be interested in joining additional retirement arrangement (employees contribute to the social security schemes with premiums amounting to 6.5% of the employee's gross income and employers pay a contribution to the social security fund amounting to 25% of the gross income of all its employees).

Moreover, on 14 January 2010 the European Court of Justice ruled on the implementation of the Directive 2003/41/EC in the Czech Republic. Although the ECJ ruled that the Czech Republic breached its obligations while implementing this Directive, the decision of the ECJ cannot be interpreted as imposing the introduction of "second pillar" occupational pension arrangements in the Czech Republic. However, with respect to the decision, we may not exclude that the current legislation relating to activities of institutions for occupational retirement provision will be subject to change.

Denmark

This will depend on whether the employer is bound by a collective bargaining agreement. If not, it may be possible to establish such a scheme provided that the general principles for establishing such schemes are met (license from the relevant authorities, etc). However, it will most likely be difficult to transfer existing pension schemes to a new pensions provider, as this could be regarded as a material change of employment terms, see below.

In practice, most public sector researchers are covered by collective bargaining agreements stipulating that pension contributions must be paid to a specific pension provider. Derogation from such provisions will normally require explicit consent from the parties to the relevant collective bargaining agreement, i.e. either the specific employer or the employee's or employer's association.

Generally speaking, any pension commitments in connection with employment must be covered by either a pension scheme or an insurance company.

In Denmark, employees' pension entitlements are often governed by collective bargaining agreements and, consequently, there is an obligation on an employer covered by such an agreement to contribute to the pension scheme established in accordance with it. An employer who is not covered by such a collective bargaining agreement - but still under an obligation to establish and contribute to a pension scheme - may satisfy that obligation by entering into an agreement with a pension provider or by setting up a company pension fund.

If no collective agreement regulates the employees' entitlement to pension contributions, the employer is normally entitled to decide unilaterally to establish a pension scheme for the employees and to modify this scheme in the future. However, if such future modifications are to the detriment of the employees, the employees must be given the same period of notice as their contractual period of notice before the modifications may be implemented. If an employee does not wish to accept the modification, the employee is entitled to consider the notice as a notice of termination of the employment contract.

If the pension fund/pension provider is established outside the EU/EEC, it is not possible for the employee to obtain the same lenient taxation, which is applicable (provided certain conditions are met) to pension contributions paid to providers established within the EU/EEC.

Estonia

Law does not provide different regulation for employees who work in private sector and employees who work in public sector.

Employers are not obliged to make direct contributions to employee's pension schemes. However, employers are involved in employees' pension schemes indirectly by paying social tax at the rate of 33 per cent, of which 20 per cent is considered to be pension insurance part.

Estonia's pension system consists of the following pillars:

- pillar I : state pension: financed by the social tax from the state budget;
- pillar II: mandatory funded pension: all employees are obliged to pay 2 per cent of their gross salary to the pension fund (it is withheld by the employer), to which the state adds 4 per cent;
- pillar III: supplementary funded pension: these are voluntary for employees.

Every individual employee is free to choose which mandatory and voluntary pension fund he/she wishes to join. Employer can not force employee to choose one specific fund. Employees can not opt out of mandatory pension plan (II pillar), although they are free to choose the fund as such. Mandatory pension funds can not be managed through branch office or as cross-border service (as described below).

In addition to mandatory funded pension, employees are free to pay additional contributions to a supplementary funded pension (III pillar) from which they receive tax relief. Only insurers who have the right to deal with insurance activities in Estonia and who have annual activity license, have the right to enter into insurance contract for supplementary funded pension. Supplementary funded pension may also be provided through branch office situated in Estonia or as cross-border service, but in such case cross-border service provider or branch office shall meet same requirements as provided for Estonian insurer and shall receive respective permit from Financial Supervision Authority. Considering this regulation, supplementary contributions to a non-domestic cross-border pension fund should be subject to tax relief, if foreign insurer (cross-border service provider or branch office) meets all necessary requirements. In such case it is likely that employees might be interested in joining pan-European supplementary funded pension solution. For the sake of clarity, pan-European solution is not an option for mandatory funded pension as mandatory funded pension may be managed only by Estonian national pension fund.

The employer and the employee are also free to make additional agreements that provide pension schemes in addition to the mandatory pension scheme (not to be confused with supplementary funded pension). In practice, this is very uncommon, because in such case pension contributions are not subject to any tax relief.

Finland

In Finland, all private sector employees are entitled to statutory pension. Pension insurance contracts concluded between an employer and an insurance company and the pension contributions are paid by the employer and the employee together. The pensions of the employees of the Finnish state and the municipalities, on the other hand, are provided by government pension institutions.

There are no statutory restrictions regarding a Finnish researcher's right to participate in an additional pension scheme provided by a cross-border service provider. Additional pensions are typically taken as a voluntary individual pension insurances. As of 2010, an employee may also participate in a long-term savings plan which essentially contains the same elements but is not issued by an insurance company. However, due to the quality of the statutory pension schemes, it is not typical for the Finnish employees to take additional pensions, even though the number of such employees is increasing. One reason thereof is that additional pension contributions are mostly tax-deductible provided that the service provider is located within the EEA.

A pension fund established within the EEA is generally entitled to operate in Finland provided that certain requirements set forth by the mandatory law are fulfilled. As a main rule, such foreign service provider may offer services in Finland either directly or by establishing a Finnish branch. If the services are offered from abroad, an advance notification thereof must be made to the Finnish Financial Supervisory Authority. Should the service provider wish to establish a Finnish branch, the notification obligation remains, even if the requirements relating to the notification are not the same.

Finland has implemented all the relevant directives regarding cross-border provision of financial and insurance services.

Greece

It is possible under the condition that the Pan European Pension Fund will provide only supplementary insurance protection in addition to compulsory social security (main and auxiliary) for the insurance risks of ageing, disability, death, work accident, sickness and labor interruption as this rules applies also for Occupational insurance scheme introduced in Greece with Law 3029/2002. Occupational Insurance Funds are set up on a facultative basis per enterprise, branch, or employees' branches on the initiative of employees or employers, or by agreement between employers and employees, or on the initiative of the self employed or freelance professionals, on the condition that the number of insured exceeds 100. It would be necessary to define the notion of "researcher" in order for the researchers to be considered as a separate branch of the enterprise. However, if the researchers are already covered by an existing

occupational insurance plan then they should decide whether researchers will automatically join the newly established pan European pension fund. In any case the compulsory social security plan (e.g. IKA) remains in force.

For researchers of the public sector, it can be also possible but under the same condition that the Pan European Pension Fund will provide only supplementary insurance protection in addition to compulsory social security (main and auxiliary). To be noted that occupational pension plan for public-sector employees has been already established for the employees in the Ministry of Economy and Finance. Consequently, the Greek compulsory social security plan will remain valid (the employees are unable to opt out of their mandatory pension plan) and the Pan European Pension Fund only in facultative basis could be applicable.

Hungary

It would be possible to affiliate researchers employed in the private sector to an occupational pension plan governed by a Pan-European Pension Fund (some administrative conditions would apply to the pension fund itself, which need to obtain a Hungarian VAT number). According to the applicable act, additional employer's contributions should apply to all employees of the employer. The act can be interpreted as allowing an occupational pension plan to an objective category of employees, but since this legislation is very recent there is no case law yet in this respect. Employer's contributions to an occupational pension plan are limited to 10% of the gross salary. Above that amount, they will be qualified as a benefit in kind, subject to different taxation and social security charges.

Although the same rules apply for the public sector as for the private sector, it may be more difficult to affiliate (only) researchers of the public sector to an occupational pension plan governed by a Pan-European Pension Fund because the discrimination principle is applied more strictly in the public sector. In other words, it would be more difficult to defend the affiliation of a specific category of persons employed in the public sector, at the exclusion of the others.

Latvia

Each researcher can choose to participate in a Pan-European Pension Fund in addition to the mandatory state pension schemes. Upon mutual agreement, contributions can be made by the employer on behalf of and for the benefit of the employee.

Each researcher can choose to participate in a Pan-European Pension Fund in addition to the mandatory state pension schemes. Most probably the employees would have to make contributions themselves.

Lithuania

Private sector employees may become members of a pension association. The Law on Accumulation of Occupational Pensions of the Republic of Lithuania does not make any distinctions for researchers' participation in pension association (and, accordingly, occupational pension funds) compared to other employees. In general, activities of occupational pensions fund are similar to third-pillar pension plans (i.e. voluntary scheme on top of social security contributions that may be sponsored by the employer or employee or both).

Please note that by now there is no occupational pension funds established in the Republic of Lithuania. Therefore, there is no practice with this regard and it is difficult to estimate whether researches would be defined as an objective group etc.

Lithuanian laws do not make any distinctions between employees of public and private sectors as regards their participation in second-pillar and third-pillar pension plans. There is currently no practice regarding their membership in a pension association.

Luxembourg

Researchers may join a cross-border researchers pension fund provided that each employer and the pension fund itself give an objective definition of a researcher. Indeed, employers may only affiliate their employees to different pension funds if the employees may be classified in different categories through the use of objective criteria. Such distinction should not give rise to illegal discrimination (i.e. discrimination which does not result from an objective criterion and which is not reasonably justified). Provided that these conditions are met, in principle all cross-border researchers meeting the affiliation conditions shall automatically be affiliated to the pension fund.

Now, if the researchers are already affiliated to a pension fund by their employer, the latter may, in principle, freely choose to affiliate researchers to the cross-border researchers pension fund or to grant them the right to remain under their current pension fund. The employer would only need to request the prior non-binding opinion of the staff delegation or of works council (if any) and should notify the change to the concerned employees. The employer should also follow the rules and conditions of the researchers' current pension fund in order to be able to disaffiliate these employees from the pension fund.

However, if it results from the change of pension fund that it would be at the detriment of the affiliated person (e.g. loss of right, increase of the employee's contributions, etc.), the employer may not impose it to the concerned researchers, except if this change occurs due to legal changes in social security or tax fields or where the general economic situation or the internal financial situation make the employer's contributions to the current scheme excessive. In addition, if the change of scheme implies an increase of the researcher's contributions, the researcher has the right to refuse his participation in the new pension fund and to obtain the right to remain affiliated to his current pension fund.

Similar rules apply to the public sector. However, it should be noted that public bodies and public administrations (e.g. State, town administration, etc.) may not establish or affiliate their civil servants to pension funds offering supplementary pension rights exceeding the level of pension rights that may be granted to civil servants by their statutory pension scheme.

Malta

For both private and public sector employees there is in Malta a compulsory pension scheme whereby every employee or self-employed individual in Malta has to contribute by force of law, more specifically in terms of the social security act of 1987. However, this does not preclude the researcher from contributing also to a pan-European fund. The local pension payments however, remain payable regardless.

Portugal

Researchers, working in Portugal, under an employment relationship with a Portuguese employer (including universities) or self-employed, are mandatory covered by the general security system and bound to make the contributions established for the same.

This mandatory system does not affect the possibility of researchers having access to complementary pension schemes, either based on a collective initiative (including professional complementary schemes) or based on an individual initiative (retirement saving plans, pension funds, life-insurances, etc.). However, such complementary schemes do not avoid the obligation to perform the mandatory contributions under the general social security system.

Additionally, should be noted that contributions to non-domestic IORPs are not likely to qualify for tax relief purposes.

Public sector employees were integrated in the general social security system applicable to private-sector employees, of which they may also not opt out. As so, access to complementary pension schemes is only permissible on a supplementary basis.

Romania

Researchers do not represent a distinct category of persons insured for pensions under the Romanian legislation. The Romanian legislation allows employees or freelancers to participate in cross-border pension funds. Thus, in case they are employees or freelancers, researchers may join a cross-border

researchers' pension fund. However, employees and freelancers (including researchers) are mandatory insured in pension arrangements corresponding to pillars I and II. Therefore, it is most likely that they will join a cross-border researchers' pension fund if the contribution (or part of the contribution) will be born by their employer. However, they may decide to participate in such supplementary pension funds by paying themselves the entire contribution to the fund.

The Romanian legislation does not make any distinction between employees working within the private sector and those working within the public sector. However, although any employees (including researchers) may join a cross border researchers pension fund, it is highly likely that the researchers working within the public sector will not do it. Thus, due to the lack of funds of the public employer to cover itself the contribution to the respective fund, such employees will have to cover the entire contribution while they generally have lower salaries as compared with the employees in the private sector. In addition, also in their case the participation in pension insurance arrangements corresponding to pillars I and II is mandatory.

Slovenia

In the private sector, researchers may be members of either a collective and/or an individual pension plan. Researchers employed with large companies are likely to be members of a collective pension plan and may not opt-out on an individual basis. The employer of the researchers may opt-out from such collective pension fund, but is unlikely to do so. All employees of the employer included in the collective pension plan have the right to be included in the collective plan under the same conditions. Considering this, it is, in our opinion, not likely that the employer will opt-out from the collective pension plan to become a member of a pension plan for researchers.

With respect to the membership in a pension plans, it should be noted that an employee may, at the same time, be a member of one collective pension plan and one individual pension plan.

All public sector employees (including researchers) are members of a closed pension fund for public sector employees and are unable to opt-out of this pension plan. The public sector employees may pay additional premiums to either this closed pension fund for public sector employees or other pension funds and receive tax relief (if the pension fund fulfils certain criteria and is registered with the Ministry for Labour, Family and Social Affairs). Provided that a foreign (cross-border) pension plan meets the requirements of the relevant Slovenian legislation, we understand that additional premiums to foreign (cross-border) pension plan can be paid, but such payments do not necessarily give tax relief to the insured person.

Slovakia

In the Slovak Republic the pension system is mandatory and is strictly governed by social security laws. The mandatory pension system applies to all employees, including researchers (regardless they work in private or public sector). In the Slovak Republic, the mandatory pension system consists of two pillars (both these pillars are obligatory and the social security contributions are halved to state first pillar run by the public Social Security Insurance Company and the second pillar run by private licensed pension insurance companies). There is also a third pillar, which is voluntary for employees. Participation in the third pillar is supported by state, as limited amount of contributions is tax deductible - both for the employer and the employee. Employers can decide to contribute their employees to supplementary pension scheme within the third pillar (run by licensed private pension savings companies).

There is no occupational pension system scheme in the Slovak Republic that would be applied to specific employers based on an agreement with the employees. The Slovak pension system is only functioning within the three pillars described in the previous paragraph. Moreover, Slovak pension system does not recognise any special pension system for researchers and no researcher's pension funds are functioning within the Slovak social security pension system.

The Slovak laws do not restrict the employees to take part also in foreign occupational pension systems. However, we are not aware of any situation that the employers contribute their employees also

to foreign occupational pension system (social security contributions are relatively high in the Slovak Republic and participation in the pan-European solution would be additional to mandatory pension system). There is not also any case law of Slovak courts regarding this issue.

Summary table of possible legal restrictions for resident researchers to join a cross-border pension fund abroad

	BG	CZ	DK	EE	EL	CY	LV	LT	LU	HU	MT	AT	RO	PT	SL	SK	FI
PR	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
PB	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

Private Sector : PR

Public Sector : PB

Legally possible ■

Some restrictions apply ■

Key Conclusions

The host country analysis shows that it should be possible to provide a defined contribution type benefit from a cross-border pension fund for researchers. Meanwhile, legislation may need to be addressed at the national level in some countries where current statutory requirements restrict the possibility to provide researchers with access to a different pension arrangement than other employees working within the same organisation or sector of economic activity.

The chart below gives an overview of possible hurdles due to be overcome in some specific countries

	BE	BG	CZ	DK	DE	EE	IR	EL	ES	FR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SL	SK	FI	SE	UK
PR	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
PB	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

Private Sector: PR

Public Sector: PB

Legally possible: ■

Some restrictions apply: ■

Significant issues: ■

Possibility to have issues solved under specific circumstances: ■

In all cases it will be necessary to consider the establishment of different country sections to ensure compliance with national social and labour law requirements of various EEA member states.

These differ in several ways including:

- permitted contribution structure (flat rate, age-related)
- maximum legally permitted contribution amounts
- maximum tax-effective contributions
- ability of members to make additional voluntary contributions to the same pension fund
- the right for individual members to determine how their contributions are invested
- minimum investment guarantee requirements
- flexibility in benefit payment form – pension and or lump sum
- indexation requirements
- eligibility conditions
- minimum/maximum retirement age
- provision of additional risk benefits
- language and information requirements
- member representation

In terms of the overall design, it is possible to design a common overall structure which has the ability to meet all requirements, and then make those parts available or mandatory on a country specific basis to comply with the social and labour law requirements.

Contribution levels will need to differ by country taking into account existing levels of local social security and other mandatory retirement arrangements.

There needs to be an appropriate balance between flexibility and administrative efficiency. Each country should have a common benefit design to facilitate cost-effective administration. However, even within the common country design, there can be some variability (such as contribution level) as far as this variability is supported automatically in the administration system.

Flexibility in contribution design will also be important where certain groups of researchers are covered under existing local pension arrangements and either choose or are required to remain in these arrangements. In these cases, it may be desirable to offer researchers the opportunity to contribute to the cross-border pension fund to enable them to make additional retirement saving where this is possible. .

7. Impact Assessment Providing Estimated Pension Rights for Researchers Moving Across EU Countries

7 1. Overview of Scope and Methodology

Scope

The objective of this section is to provide a model for assessing the conditions under which a given aggregated replacement rate at retirement can be reached by a typology of researchers moving across EU countries during their professional carrier. The aggregated replacement rate is build upon an estimation of state social security benefits and on complementary pension fund contributions. Given the wide differences of pension regimes among EU countries, the integration of the compulsory pension contribution/benefits is particularly important to ensure the accuracy of the output model. The model is designed to be interactive with a view to allow the possibility of exploring the impact of different benefit structures on different researcher profiles with a view to enabling interested parties to appreciate and quantify the impact of different conditions at stake.

Methodology

In agreement with the Advisory Group, the following assumptions were made and apply to the interactive modeler:

- Target aggregated replacement rate at retirement at 70% of average career salary for a single employee. Replacement ratios express the equivalent annuity of retirement income as a percentage of career average assumed pay before retirement. The methodology allows conclusions to be drawn about the relative generosity of different types of retirement benefits arising from different researcher career profiles and benefit arrangements.
- The modeler calculates the expected retirement income from the Social Security and statutory programs as well as the proposed supplementary program for each career entered.
- The modeler shows the impact of "sample" contribution rates. In fact we anticipate that individual employers/employees will have the flexibility to select their own choice of contributions (within a range of those legally permitted).
- To ensure the modeller presents coherent results it is key to ensure that the salary changes when moving from one to another country and when changing from private to public sector stayed within certain limits. The salary scales developed are built around average salaries on the basis of the results provided in the context of another EC study focusing on salary scales by country and by job status (public/private sector)²⁸.
- Pension plan design (defined contribution), future pay increases, future investment returns, future inflation assumptions, taxation, etc.
- The target countries covered by the modeller (selected on the basis of the larger resident population of researchers), are: France, Germany, Italy, Poland, Spain, and UK.

We describe below how to use the modeller and interpret the results.

²⁸ Remuneration of Researchers in the Public and Private sectors, study published by European Commission – Research Directorate, April 2007

Finally, we consider "with and without" scenarios, showing the effect on researchers on their pension rights if a common cross-border pension fund is established, compared to the situation where no such fund exists

Input Page - Career Pattern

The input page has different sections. The first section allows the user of the modeller to enter a career pattern into the following table:

<i>Country Employment</i>	<i>Start age</i>	<i>End age</i>	<i>Sector</i>
Italy	25	34	Public
Poland	35	44	Public
Spain	45	54	Public
UK	55	65	Public

In the first column; using a dropdown menu, any of the six countries can be entered.

The modeller allows the user to enter a possible career path consisting of four different employment periods.

In theory many more combinations could have been allowed but the restriction to four is recommended to ensure a user friendly assessment of the results.

The length of each assignment is assumed to be a multiple of one year and the total of the four assignments is assumed to be 40 years, i.e., start at 25 and end at 65.

In the second and third column the user can enter any combination starting at 25 and ending at 65.

Finally, in the latter column can be entered whether the researcher is employed in the private or public sector.

The choice between private and public sector affects in some countries the Social Security and statutory benefits the employee is entitled to.

In France the Social Security pension for the public sector was not programmed as it is always in excess of the targeted income of the plan.

In Germany and Spain, we allowed for the difference in statutory benefits between the private and public sectors. For the other countries there is no difference in statutory benefits related to the sector the researcher is employed in.

The salary tables by sector are shown in Appendix K.

Input Page - Contributions Paid

The Advisory Group agreed that the plan for the researchers would be of a defined contribution nature.

The Commission expressed the wish that the theoretical replacement income from the defined contribution plan, including income from Social Security and statutory programs, would be 70 percent of the employee's career average earnings. In addition we assumed that the supplementary pension should be indexed with inflation but without survivor's pension. Where the conversion of lump sum into pension is concerned we therefore used a factor of 15.5, i.e., to purchase a lifetime pension of 1 indexed with inflation we need 15.5;

The choice for the career average earnings (versus a final salary) as measure was a logical consequence of the mobility, i.e., the difference in salary levels between the different countries is in some cases material.

We estimate that ignoring social security, a contribution of 18 percent would be needed to target a benefit of 70 percent of career average earnings allowing for 40 years' contributions.

The modeller however allows the user to assume any multiple of 10% of this contribution being paid.

The user can enter at one extreme 0% and at the other extreme 100%. Using 0% shows the income the mobile employees would receive from social security and statutory regimes only.

Normal contribution 18% of salary

% of Normal Contribution Paid 100%

The modeller doesn't show a split between employee and employer contributions. This split is not relevant from the perspective of the replacement income calculation. Such split should be considered by stakeholders when deciding about the final design of the pension plan and could potentially differ among sponsoring undertakings.

Input Page Country Specific Contributions

The input page does not indicate the actual country specific variations that are made to the overall contribution level target.

These variations are necessary to reflect the existence of Social Security and statutory programmes that provide in some countries material benefits. Therefore the actual contribution used in each country is determined automatically to reflect the value of the mandatory benefits in each particular jurisdiction. This means that we are targeting the overall replacement ratio of 70% including mandatory benefits.

These variations in the country specific contribution schedules are described in Appendix L.

In Spain, the Social Security and statutory programmes provide already for the level of salaries used in the modeller a replacement income in excess of the target set by the EU Commission. This means that no additional contributions to the cross-border pension fund in Spain would be needed.

It is important to stress that if the salaries would be double or triple the salaries currently used as a reference, in each of the six countries modelled, the replacement income from Social Security or statutory programs would be materially lower and additional contributions would be needed in these countries.

Input Page – Expected Return on Assets

The last variable that can be modelled is the net investment return in excess of inflation. We assumed the return to exceed inflation of two percent. The user of the modeller can alter this return from 0% to 4% in excess of inflation to show sensitivity.

Investment Return in Excess of Inflation

2%

Output Page

The results are shown in the Output Tab of the spreadsheet. – see example below:

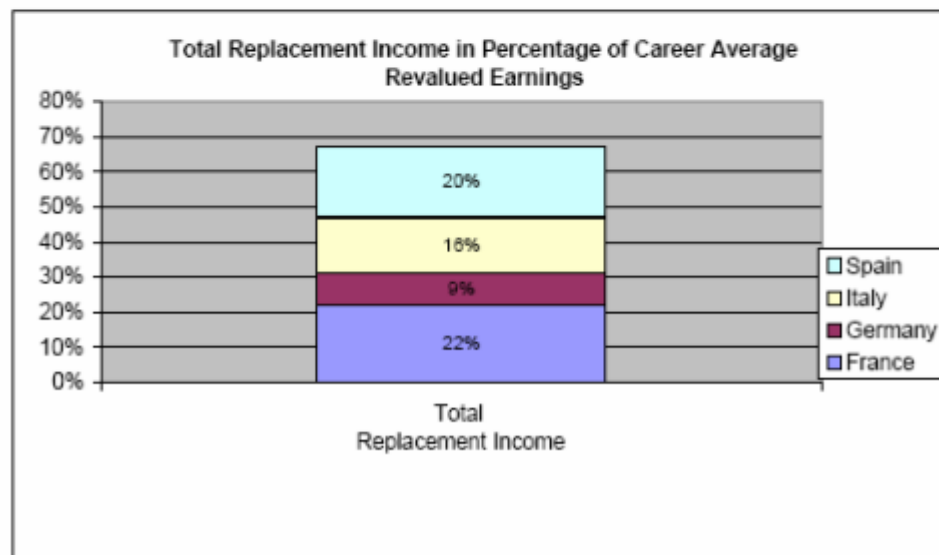
Summary Results

Career Pattern Entered

Country	Start age	End age	Sector
France	25	34	Private
Germany	35	44	Public
Spain	45	54	Private
Italy	55	65	Private

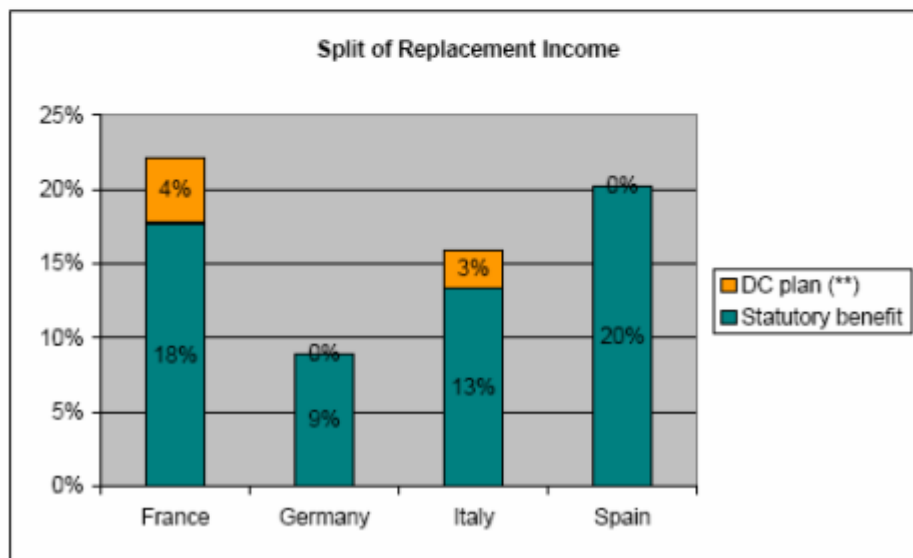
Replacement Income by Country

Country	Statutory benefit	DC plan (**)	Total Replacement Income
France	18%	4%	22%
Germany	9%	0%	9%
Italy	13%	3%	16%
Spain	20%	0%	20%



Assumptions

Normal Contribution	14%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Input Page Country Specific Contributions

On the input page are not shown the country variations that were made to the contributions.

15 Sample Calculations of Pension Estimates Researchers

In Appendix M we report 15 samples calculations that illustrate how - on the basis of a proposed contribution schedule- a mobile researcher will accrue during his career supplementary benefits sufficient to supplement their Social Security and statutory benefits to reach a replacement income of about 70 percent of his career average revalued earnings.

The contributions paid to the supplementary plans in this modeller are in some countries relatively small due to the generosity of the Social Security in these countries for the level of salaries modelled.

However, in the case of salary schedules that are two or three times those assumed in the current schedules, the contributions needed to ensure adequate sufficient replacement income would have been closer to the maximum of 18 percent that to their current levels described above. This reflects the fact that Social Security benefits will have maximum benefits target which for higher paid researchers would be far below the 70 percent target set.

Also, in our model we assumed a full career after 40 years of service, if the full career would be reduced to 35, the standard contribution of 18 % would have to be increased to ensure the same targeted benefit is accrued over a shorter period of time.

Key Conclusions

It was assumed that an adequate replacement income, payable at age 65, would be 70% of the career average revalued earnings. The calculations assumed the provided future pension would be indexed with inflation. A modeller was prepared with a view to estimate for any mobile career within six countries the expected replacement income from Social Security and statutory programs. The outcome of this first calculation was used to determine for the six countries in-scope the additional contributions needed from the supplementary pension plan to ensure an adequate aggregate replacement income.

The calculations illustrated wide variations in the needs for supplementary benefits. These variations are obviously closely related to the generosity of the underlying Social Security systems. The highest contributions required were as high as 18% of salary, the lowest, in one country, was close to 0%.

The outcome of the simulations is closely related to the salary levels assumed on the basis of available statistics. Overall these levels were relatively low, with higher salaries the lower contributions required would have been considerably higher. Meanwhile in the case of incomplete career (less than 40 years), higher contributions would be required to fill the gap for years without contributions.

In aggregate the modeller allowed to confirm the increasing importance that complementary pension plans are likely to have in the retirement planning of researchers.

8. Operational conclusions and possible next steps

We conclude that there is demand for a cross-border pension fund for EEA based researchers, and that it is now possible to establish such an arrangement. This project has shown that:

- There is demand from employers of researchers;
- Multinational companies are already establishing EU cross-border pension funds;
- Financial service providers are entering the market and are establishing products;
- A number of EEA countries are positioning themselves as locations of choice;
- There appear to be no insurmountable barriers to implementation, although it will not be possible to include all researchers due to restrictions imposed in certain potential host countries;
- To be economically viable, benefits and reporting structures should be standardised within each country

In addition to the benefit structure, on the basis of the number, diversity and scope of sponsor undertakings interested in setting up a common cross-border framework for complementary pensions, the promoting organisation should consider whether to set-up a cross-border pension fund or use a cross-border product developed and delivered by a financial services provider or a consortium of such providers responding to agreed and well defined specific terms of reference.

The strategic implementation path chosen by the promoting organisation and the founding sponsors will determine the depth into which to consider issues such as such as location, vehicle, administration and investment policies

8.1. Results of employer survey

The employer survey shows most employers perceive a potential EU cross-border pension arrangement to be relevant and valuable. The key drivers for such arrangements are: policy consistency, better managing employee mobility and meeting employee expectations.

More generally, the most important HR challenge indicated by participating organisations is to attract and retain key employees; 76% of employers believe that complementary pension benefits to R&D staff will be more important in the future to retain and attract key employees.

Actual participation rates in new arrangements will be influenced where researchers are members of existing domestic retirement benefit arrangements. The survey showed that 42% of organisations currently operate complementary pension funds. The proportion is higher and reaches 55% when considering only the private sector. The main reasons to provide occupational pension benefits beyond regulatory requirements indicated by survey participants are related to the need of being in line with market practices and attracting talent. In the majority of cases (53%) existing pension fund provisions are designed to cover all employees. While in 10% of cases these arrangements cover senior R&D staff.

Where employers provide the same retirement benefits to all employees irrespective of their function, there may be some resistance for providing "special" benefits for researchers only. In addition, some researchers are in mandatory pension arrangements where, unless there is a change in national provisions, it is not possible to choose to participate in a cross border pension arrangement instead.

8.2 Type of Cross-Border Vehicle

Regulatory framework

Cross-border retirement solutions could be established as IORPs and regulated under the EU Pension Directive, or otherwise using the 3rd Life Directive or simply grouping local retirement products.

We have concluded that the IORP framework would be preferable for the following reasons:

- There is more established market practice under this route, and expectations indicate it will continue
- financial service providers are developing new products in this area
- in particular, this route provides more perceived regulatory clarity than the 3rd Life Directive
- there is the opportunity for full portability when researchers move cross-border
- tax equality and unlawful discriminatory national practices have been explicitly addressed by the European Commission and by the European Court of Justice.

Location and Vehicle

Considerations about location and choice of vehicle depend on whether the promoting organisation decides to set up a new cross-border IORP, or use a cross-border product developed by a financial services provider. For the remainder of this chapter we have assumed a new cross-border vehicle would be created.

Our research into different locations compared and contrasted 10 retirement vehicles in 6 different EEA locations in terms of scope of benefits, governance, financing and a number of other characteristics. We concluded that the most attractive locations/vehicles are:

Belgium- OFP
Ireland – Trust
Luxembourg – SEPCAV (for DC plan only)
Luxembourg – ASSEP

These locations should be further considered notably in conjunction with the benefits provided.

8.3 Benefit Structure

The Advisory Group has suggested that the benefit structure for researchers should be defined contribution, potentially will some form of investment guarantee options where this is required or desirable. We fully support this direction given that:

- most new retirement arrangements in the EEA are now defined contribution in nature and hence market competitive and attractive to employers²⁹.
- employers typically prefer arrangements which avoid the need for cross-subsidies between themselves and other employers; defined contribution arrangements typically meet this need if any investment guarantees are implicit within the investment funds offered.

The host country analysis shows that it should be possible to provide a defined contribution type benefit from a cross-border pension fund for researchers. It will be necessary to establish different country

²⁹ Our own research and other available studies confirm this trend. See inter alia the results of the "Expert Survey on the Future of DC Pensio Plans in Europe" carried out by the Centre for European Economic Research of Mannheim for Allianz Global Investor AG (September 2009), and "Workplace Pensions – Defined Contributions" results of the DC pension survey carried out by the European Federation for Retirement Provision (March 2010).

sections to ensure compliance with the different specific social and labour law requirements of various EEA member states.

These differ in several ways including:

- permitted contribution structure (flat rate, age-related)
- maximum legally permitted contribution amounts
- maximum tax-effective contributions
- ability of members to make additional voluntary contributions to the same pension fund
- the right for individual members to determine how their contributions are invested
- flexibility in benefit payment form – pension and or lump sum
- indexation requirements
- eligibility conditions
- minimum/maximum retirement age
- provision of additional risk benefits
- language and information requirements
- member representation

In terms of the overall design, it is possible to design a common overall structure which has the ability to meet all requirements, and then make those parts available or mandatory on a country specific basis to comply with the social and labour law requirements.

Contribution levels will need to differ by country taking into account existing levels of local social security and other mandatory retirement arrangements.

There needs to be an appropriate balance between flexibility and administrative efficiency. Each country should have a common benefit design to facilitate cost-effective administration. However, even within the common country design, there should be a certain amount of variability (such as contribution level) as far as this variability is supported automatically in the administration system.

Flexibility in contribution design will also be important where certain groups of researchers are covered under existing local pension arrangements and either choose or are required to remain in these arrangements. In these cases, it may be desirable to offer researchers the opportunity to contribute to the cross-border pension fund to enable them to make additional retirement saving where this is possible.

A common theme emerging from our analysis is that legislation may need to be addressed in some countries where it appears impossible to provide researchers with access to a different pension arrangement that other employees working within the same organisation or sector of economic activity.

8.4. Investment

The cross-border pension fund will need to offer a range of investment funds to support the defined contribution structure and be capable of meeting local investment requirements in terms of the required currencies and guarantees. These will be made available to each country section depending on local requirements, and should be offered in as consistent a manner as possible.

For those countries requiring all members to invest contributions in the same investment fund, it will be necessary to develop a suitable common investment strategy. There are a variety of approaches possible ranging in complexity and cost.

Some countries require a minimum investment guarantee. We recommend that such guarantees should be provided directly through the investment options rather than as a guarantee from the sponsoring entity. This will result in a lower expected investment return as the guarantees have a cost. However, it is considerably administratively simpler and takes account of the need to avoid cross-subsidies between sponsoring entities.

Some countries permit members to choose how to invest their contributions on an individual basis. For these countries, it will be necessary to offer a reasonable choice of investment options and decide on an appropriate default strategy. Members who do not wish to be invested into the default strategy should be able to elect to move existing holdings, future contributions or both.

Further thought should also be given to appropriate member education so they appreciate the potential impact of different investment choices.

Broadly speaking there are two different overall investment approaches which a cross-border DC pension fund could adopt; segregated and pooled fund management.

A pension fund might choose to invest its assets directly into the market, appointing an investment manager to take the day to day decisions about which asset classes to invest in and the individual equities, bonds and other investable instruments to buy and sell. This is often referred to as "segregated" fund management, and works best in DC plans in which there is a single investment fund and/or the members have limited or no investment choice.

Where members have choice over the investment of their contributions, the segregated approach gives rise to considerable practical administration complexities and is generally not used. Instead plan investments are made through pooled ("mutual") investment funds. A pooled fund is normally established by an investment manager (or a financial service provider). The fund holds investable assets directly and investors in the fund hold "units" (or "shares") in the fund itself.

Once the design of the cross-border framework has been finalised, it will be necessary to decide the most appropriate balance of segregated and pooled investment approaches.

Finally, the investment approach will need to be multi-currency notably to reduce currency risk exposure and to reflect the different currencies in operation within the EEA.

8.5. Administration

The optimal delivery model for administration will need to be structured in a tiered approach. Members should have access through an on-line portal where information is provided, where they are able to make standard selections. The next level is a member service centre which covers queries which are not resolved in the on-line system, and the final tier is the system and administrators who deal with complex queries and have interfaces with employers, investment administrators, accounting and pensioner payroll.

We believe that this approach will conform (broadly, accepting that different potential providers might draw or express the model differently) with modern technological design and be capable of accommodating the complexities of operating a pension fund covering a variety of jurisdictions throughout the EEA. We also believe that integrating the functionality in this way will be likely to keep the cost of running the fund to a reasonable level.

The costs of administering a pension fund are influenced by a number of different factors. These factors include the number of members, the number of participating employers, the volume of cash flows in and out of the plan, the number of plan and member "events", the complexity of compliance with local Host state social, labour and tax legislation, the design of the benefits and the degree of standardisation within country sections.

The cost of administration is usually met by a fixed charge per member, an asset management charge (AMC) expressed as a % of assets under management, or a combination of both; different providers have different models. A key difference between a member-based charge and the AMC approach is who meets the cost. Generally speaking, fees associated with a delivery model as set out above are usually met by the sponsoring employer(s). By contrast, the AMC will have the effect of reducing the rate of return on the investment fund(s) and so the members' accounts: in other words the members bear the costs.

Irrespective of the charging basis, the degree of standardisation will have a key impact on the overall cost of administration. The model we have developed allows for a certain amount of variability is available at the individual member level through the self-service functionality including member choice of investment fund and choice of level of contribution. However, other features which individual employers might like to choose on an individual basis should be standardised to reduce overall administration expenses. These include features such as customised reporting to members, different range of investment funds on offer, different additional benefits and a number of others such as frequency of paying contributions. Even if particular employers are willing to pay for additional features, this functionality increases the cost for all employers.

On actual implementation, there is likely to be a large difference in the level of fees quoted by different administration providers. Some providers will feel the need to recoup their establishment fees quickly and will prepare their quotations accordingly. Others will view this as a great opportunity and will almost certainly offer more attractive terms taking into account commercial opportunities.

8.6 Governance

The establishment of a best in class governance framework and the implementation and monitoring of related principles are the preconditions for efficient, reliable and sustainable private pension arrangements.

In the context of this project, this is even more crucial given the diversity of nature, scope and location of potential sponsor organisations, and the different employment histories, statuses and locations of potential pension beneficiaries.

Taking into account the principles for the governance stated in the IORP EC Directive and the best country specific practices of pension fund governance, we have reviewed the key possible options and examined the terms and conditions for a governance structure that can match the needs of both sponsor organisations and beneficiaries.

The analysis of possible options for a reliable, transparent and best in class governance structure is mainly a function of:

- The type of legal contractual vehicle that will be chosen to collect contributions/premiums and deliver benefits. This often consists of a segregated pool of assets without legal personality and capacity that is governed by a separate entity such as a bank, insurance company or a pension fund management company, or trust/foundation.
- The level of independence in terms of legal capacity that the sponsoring employers will wish to attribute to the chosen vehicle. In this context, the pension fund takes the form of an independent entity with legal personality and capacity with its own internal governing board which often includes representatives of both sponsoring employers and beneficiary employees. There are countries where this takes the form of a dual-board structure (with a distinction between management board and supervisory board).
- The location, in the case of a pension fund. For example, in countries with an Anglo-Saxon legal tradition, the legal form of governance chosen by the pension fund will take the form of a "Trust" with the "trustees" legally owning the pension fund assets. While some features of the trust are similar to that of an independent foundation (i.e. assets to be administered in the sole interest of pension scheme participants), others features may be closer to those of a contractual arrangement.

The definition of a best in class governance structure requires the identification and review of the following most critical aspects:

- Possible legal form of the pension entity and of its objectives
- Clear accountabilities with separation of operational and oversight responsibilities;
- The scope and form of the by-laws with reference to the role of the Scheme sponsor and the rights of the Scheme/fund members
- Financial institutions responsibilities and contractual conditions in the case of establishment of a separate account
- Core and specific functions of the governing body for operations
- Terms and conditions for the supervisory/ or oversight committee (composition, responsibilities, appointment, renewal, etc).
- Terms and conditions for delegation of tasks and acquisition of expert advise
- Audit, actuarial valuations, custodians
- Terms and conditions for accountability of governing body
- Nature and scope of risk-based internal controls processes
- Reporting to sponsors, beneficiaries and financial supervisory authorities

In the context of our study we have presented two possible options of governance structure which are function of the applicable legal framework in two different jurisdictions. The first is applicable in a common law context having the institution of the “trust” at the centre of the system of governance. The second, is applicable in a specific mainland European jurisdiction that relies on an ad hoc and autonomous legal framework designed to respond to the objectives and operations of pension funds, potentially irrespective of the status of affiliated members (employees and self-employed), of the nature of sponsor undertakings, of the scope, terms and conditions of pensions plan design.

Nevertheless the basic governance principles and the main tasks and goal of an IORP remain the same, ultimately to serve as a secure source of retirement income for its beneficiaries by administering and managing pension schemes rules in compliance with their fiduciary and biometric obligations.

8.7. Implementation

Fundamentally, this will depend by the willingness of stakeholders concerned to operationalise cross-border pension arrangements for researchers. In the context of a common framework involving multiple employers, challenges arises because of the diversity in status and scope of potential sponsors that employ researchers in the EEA.

A group of employers interested in setting up such arrangements will need to decide whether to establish a cross-border IORP themselves, or use a cross-border product developed and delivered by a financial services provider or a consortium of such providers responding to agreed and well defined specific terms of reference. In addition, such a group could set up an intermediate body that represents the interest of the sponsoring undertakings and with the mission of defining and setting up pension arrangements in accordance with the mandate given by the sponsors.

The European Commission could enable this open co-operation process among potential sponsor undertakings via the establishment of a dedicated task-force on occupational pension for researchers.

Meanwhile, provided that there is enough support from stakeholders - including a critical mass of potential sponsor undertakings and national authorities, a more immediate practical follow-up could be ensured by the European Commission by supporting, through a call for proposals one or more projects:

- promoted by sponsors undertakings and aiming to establish cross-border IORP that covers researchers in Europe;
- promoted by pan-European service providers that fulfil minimum terms and conditions considered suitable for both employers and researchers.

Both approaches, which are neither without alternative nor do they exclude each other, would have the advantage to encourage cooperation and mobilise potential stakeholders and financial service providers towards the practical implementation of pension arrangements that improve pension benefits for researchers and are cost-effective for the employers. They will require a well articulated and dedicated system of governance with specific funding, expertise and market knowledge to be available up-front for setting up and coordinating all the various aspects -from inception to daily management- and ensure every function operates in a smooth and coordinated manner.

When working with a single or a consortium of financial service providers in some capacity, generally there are less direct implementation issues as the provider or providers would coordinate the majority of the implementation process. In this approach a single or a consortium of financial service providers would be called to develop an offer for the delivery of a full bundled common product for researchers leading to maximum geographical coverage and shared development costs.

If a fully bundled solution is adopted by the group of sponsor undertakings, these will need to define strict and transparent terms of reference with the potential providers. Typically administration is financed through internal charges on the investments. At first glance, this can appear "cheap". However the "price" is reduced investment performance and lower retirement benefit amounts for members. As such, it will be necessary to ensure full transparency in the charges applied in a fully bundled solution. In addition, ensure there is a need for a strong governance structure reflecting the needs and interests of the researchers within a bundled product.

The most significant potential hurdle to widespread implementation is existing local coverage of researchers in second pillar occupational pension arrangements, and those in public sector pension arrangements. Membership in these arrangements can be mandatory in some cases, or even where there is flexibility in terms of membership, we believe a significant number of researchers are likely to choose to remain in domestic retirement arrangements, notably when they offer already a replacement rate of benefits at retirement that is considered satisfactory without additional costs or investment.

Membership in the cross-border pension fund can be maximised by ensuring the contribution design is as flexible as possible to permit smaller "top-up" contributions, and by considering whether any specific countries could be asked to review their eligibility requirements.

A further part of the implementation process will be the pace of geographical coverage. On one extreme, the cross-border fund could involve most EEA member states immediately. However, this may be less practical in terms of establishing efficient administration procedures. We would recommend focusing on a core of countries to be covered initially, and then build out and add further countries in a step-wise manner. Other implementation issues will be to build in the facility for the cross-border fund to be able to receive assets in respect of past service pension rights where this is possible and tax-efficient. This will greatly increase the operating size of assets under management and improve the charging basis the fund will be able to negotiate. In addition, the fund should consider how to provide annuity benefits where these are required under local social and labour law. In particular whether these should be paid directly from the pension fund, or whether they should be provided by a financial service provider.

Finally, due consideration must be given to how researchers and their employers are informed about the cross-border pension fund and their opportunity to join such an arrangement. In this respect, the European Commission and European and national associations could play a critical role by deploying an information and communication campaign that target researchers and their employers with a view to raise their awareness on the benefits of occupational pension.

Table 1 – Cross-border Pension Product Initiatives of Insurance Companies

Insurance Company	Current Product(s)	Planned Initiatives
A	A has a number of Category 2 Third Life solutions forming part of its international risk pooling solution. These products are not primarily aimed at retirement solutions. However, A is making strong progress and has developed 2 registered Category 1 IORP products using a CAA vehicle in Luxembourg and a Liechtenstein Fonds. The former is intended to cover groups of local employees, and the latter is intended to cover mainly expatriates.	Pro-active approach. A has created a dedicated Pan European Pensions Team and is further concentrating efforts to develop Category 1 Products with an active marketing approach.
B	None	No concrete plans disclosed at this time for either Category 1 or Category 2 products. Strategy is currently being determined. May cooperate with Provider C below.
C	C actively markets a Category 3 co-ordinated virtual pension pooling product in conjunction with another financial services provider, covering up to five EU countries. It also sells a category 2 Third Life expat product. No Category 1 product to date.	Pro-active approach. C is considering a Category 1 IORP product (PPI subsidiary in NL) or an extension of Category 2 Third Life products and expects to have strategy developed by end-2009.
D	D actively markets a Category 3 co-ordinated virtual pension pooling product covering up to seven EU countries. A wide range of supporting services is offered. D also has a Category 2 Third Life product (variable annuity) offered in multiple countries.	Pro-active approach. D is considering cross-border registration of an OFP in Belgium and has developed a blue-print design. D will then probably market a Category 1 product, but further details are not available at this time.
E	Unable to provide information	No concrete plans disclosed at this time. E's Dutch subsidiary is considering a Category 1 IORP solution (PPI subsidiary in NL) and has a pro-active approach
F	F is in the final stages of developing a Category 1 IORP product, using an OFP in Belgium. It has also developed strong supporting services to assist in practical implementation. It also has a Category 3 co-ordinated virtual pension pooling vehicle in place.	Pro-active approach. F has a close relationship with various local providers. They have considered Category 2 Third Life options, and prefer the Category 1 IORP route.
G	No products disclosed. G focuses on Category 3 solutions but not in a pro-active manner	No concrete plans disclosed at this time.
H	H is establishing a Category 3 co-ordinated virtual pension pooling product. H will offer coordinated products using its extensive local coverage.	No plans to develop Category 1 (or Category 2) cross-border pension products at this time. Investigation and strategy development is underway. H cited discrimination in many countries under the Category 2 route as a major barrier
I	None	None – I is waiting to assess developments in taxation and social and labour laws among EU

		member states.
J	Category 2 Third Life Directive products selling services into the UK and Italy. Retail products only, so not relevant for this study.	No further plans disclosed at this time.
K	Category 1 IORP multiemployer product based in Liechtenstein is offered to German based employees.	None explicitly disclosed
L	Category 2 Third Life Directive product only.	No plans to offer Category 1 or 3 products at this stage. L is planning to extend its Category 2 product to include disability.
M	No direct response; no publicly available information	Unknown.
N	Only one domestic product developed used for a partial cross-border application. Neither Category 1, 2 or 3.	N is considering offering Category 1 or Category 2 products and is undertaking legal research under both routes. Category 2 research involved defining "General Good" to help break down barriers for the Category 2 approach.

Table 2 - Cross-border Pension Product initiatives of other financial services providers

Company	Current Product(s)	Planned Initiatives
O	Operational Category 1 IORP product established as an AG and based in Liechtenstein. Single or multi-employer product.	Actively Looking for clients. Expect to offer benefits in Austria, France, Germany, Italy and Liechtenstein.
P	None	No plans to enter the cross-border pensions market at this time. Only offering offshore pension arrangements for internationally mobile employees.
Q	None, but provide services to an operational Category 1 IORP ASSEP product in Luxembourg.	Pro-active approach. As a key service provider, Q expects to increasing offer services to enable other entities Category I IORP products. No intention to develop own Category 1 IORP product.
R	None	No plans to provide services in the cross-border pensions market at this time.
S	S has a category 3 asset pooling-centred solution available (FGR in The Netherlands)	Pro-active approach. Aiming for a Category 1 IORP product (PPI subsidiary in Netherlands). Cooperating with an Italian Pension Services Provider
T	None	Aiming for a Category 1 IORP product (PPI subsidiary in Netherlands)
U	In conjunction with insurance company F	Pro-active approach. Strategy under development
V	None	Pro-active approach. Aiming to create a Category 1 IORP solution
W	None	No plans to enter the cross-border pensions market at this time.
X	Several Category 2 Third Life Products in force through related companies.	Currently researching opportunities under the IORP directive.

Appendix A: Summary of 3rd Life Directive

The Third Life Directive or "Life Assurance Directive" (2002/83/EC) was published on 5 November 2002. Its aims are to complete the internal market in direct Life Assurance within the EC both in terms of the right and freedom to provide services, and to ensure adequate protection for policyholders and beneficiaries in all Member States.

The approach adopted provides the harmonisation necessary to permit mutual recognition of authorisations and prudential control systems and remove discrimination with regard to freedom of services by the fact that Life Assurance undertakings are supervised in the Member State where it has its head office. This means that home country supervision is valid throughout the EC and Life Assurance undertakings do not need separate authorisation and supervision for each Member State in which they are offering services.

Scope

The Directive defines 9 generic types of contractual assurance activities covered. These include:

- Life assurance (including both assurance on death and/or survival)
- Annuities
- Risk insurance (e.g., sickness, accident, disability insurance)
- Management of group pension funds

It does not cover certain bodies including mutual benefit institutions, insurance forming part of a statutory social security system, and a few other specific undertakings.

Authorisation

As mentioned above, authorisation should be obtained from the authorities in the home Member State where the undertaking has its head office. Authorisation is applicable for a particular class of assurance, or for part of the risks within a particular class, and can cover more than one class if permitted locally. Importantly, authorisation is valid across the EC.

A "home" Member State should withdraw authorisation if it believes that a Life Assurance undertaking has selected its jurisdiction for the purposes of evading stricter regulation; the Directive sets out a minimum standard, and Member States may impose stricter rules for all Life Assurance Undertakings authorised by its own authorities. Further, "home" Member States must require that a Life Assurance undertaking has both its Head Office in its jurisdiction and also carries out business there.

While provisions for prior approval or systematic notification of policy conditions, premium rates and technical bases for provisions cannot be adopted by Member States, they can require notification of technical bases to verify compliance with national actuarial provisions. However, these requirements cannot form a prior condition for carrying on business.

Operational Requirements

The Directive requires that the competent authorities in every Member State have the powers necessary to supervise the undertakings with head offices within their jurisdiction. This includes ability to collect information, carry out investigations, take measures to comply with laws, regulations and administrative provisions, and enforce measures. The Directive also covers matters when Life Assurance undertakings struggle financially, including financial recovery plans and withdrawal of authorisation.

There are detailed rules about portfolio transfer, qualifying holdings, professional secrecy and auditor duties. It also requires a segregation of Life and non-Life business to protect the interests of underlying policyholders. Composite undertakings can be active in both life and non-life business, but should have separate undertakings for each business line.

The Directive requires every assurance undertaking to establish sufficient technical provisions. It sets out the principles for the determination of technical provisions, selecting the rate of interest, allowance for expenses and full disclosure of methods and bases used. However, an overall minimum reserving basis is not specified. Assets covering technical provisions are limited to specific investments, and there are minimum diversification requirements.

Importantly, the Directive requires every Life Assurance undertaking to hold at least a minimum solvency margin (determined by class of business covered) to act as a buffer against adverse business fluctuations. Security is further provided by defining a guarantee fund, of which all or a specified part must be backed by explicit assets.

Finally, operationally the Directive requires minimum information to be supplied to policyholders, and allows a 14-30 day cancellation policy.

Freedom of Services

This section of the Directive covers the rights of establishment and freedom to provide services.

If a Life Assurance undertaking wishes to establish a branch in the territory of another Member State, a notification process is followed whereby the home Member State authorities notify the authorities in the Member State of the branch. The latter then informs the home Member State authorities of any conditions, which in the interest of the general good, must be carried on in the Member State of the Branch.

Although the concept appears to be transparent, the Directive can be complicated to use in practice. Some provisions can create barriers to successful commercial implantation despite the fact that the same provisions must be applied to all undertakings operating in that Member State. For example:

- Member States can require that all information they are authorised to request is supplied in the official language of that Member State
- Member States can require a non-systematic notification of policy conditions and other printed documents
- Potential restrictions in advertising adopted in the interest of the general good.

Other

Other provisions apply to the authorisation of branches or agencies whose head offices are outside the EU, and to undertakings governed by the laws of a third country, and following the acquisition of holdings by such parent undertakings.

Appendix B List of participants responding to cross-border products survey

Insurance Companies

AEGON

AIG

Allianz

AVIVA

AXA

Fortis

Generali

ING

Legal & General

LV1871

Prudential

Standard Life

Swiss Life

Zurich Financial Services

Other Financial Service Providers

APG

Saint Honoré

Euroben

Euvidéa

Fidelity Investment

Northern Trust

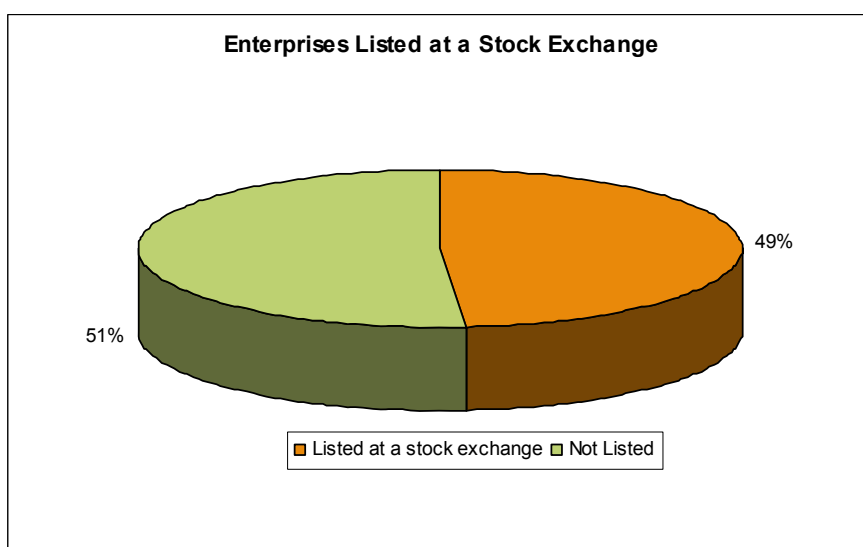
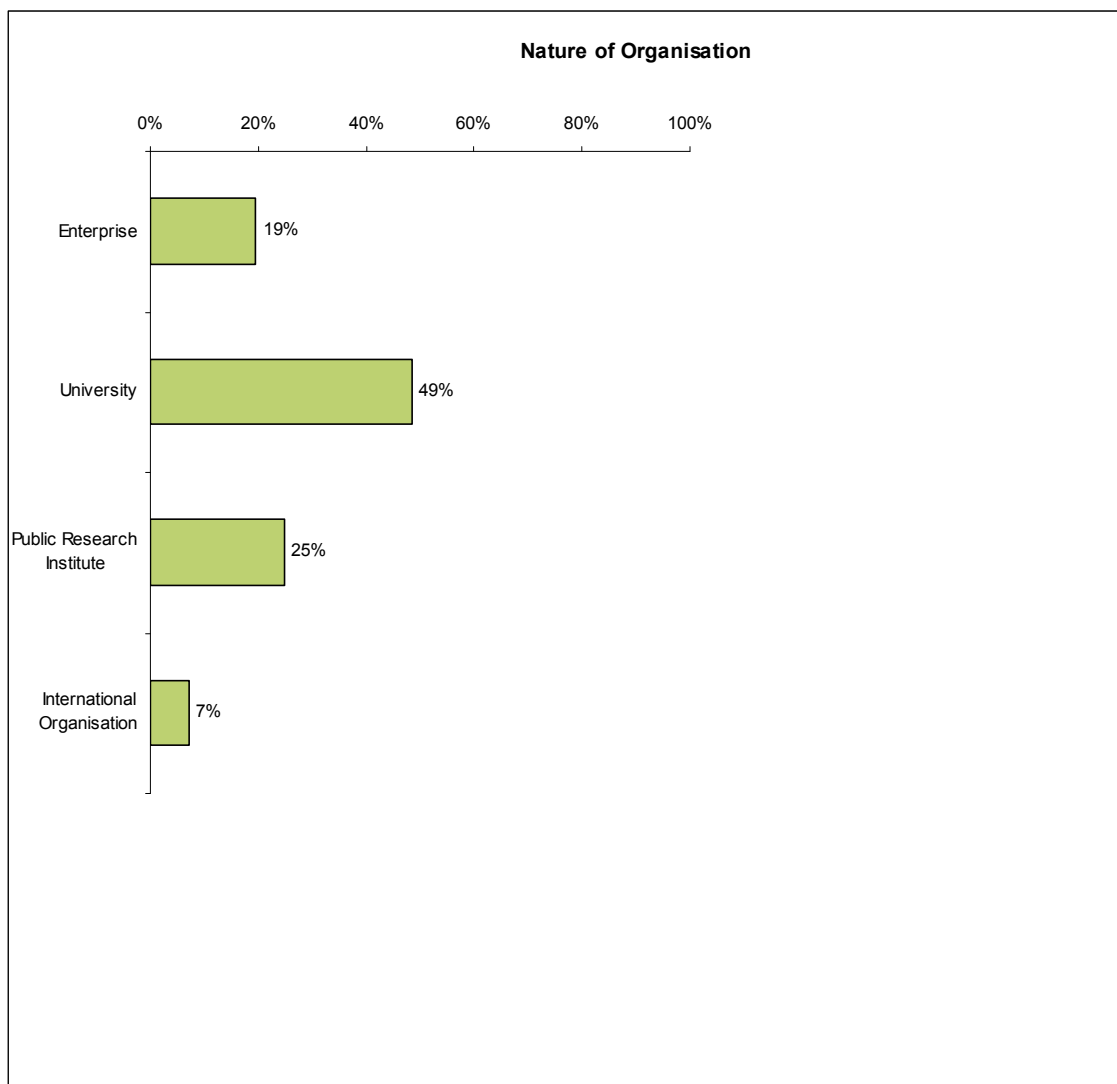
PGGM

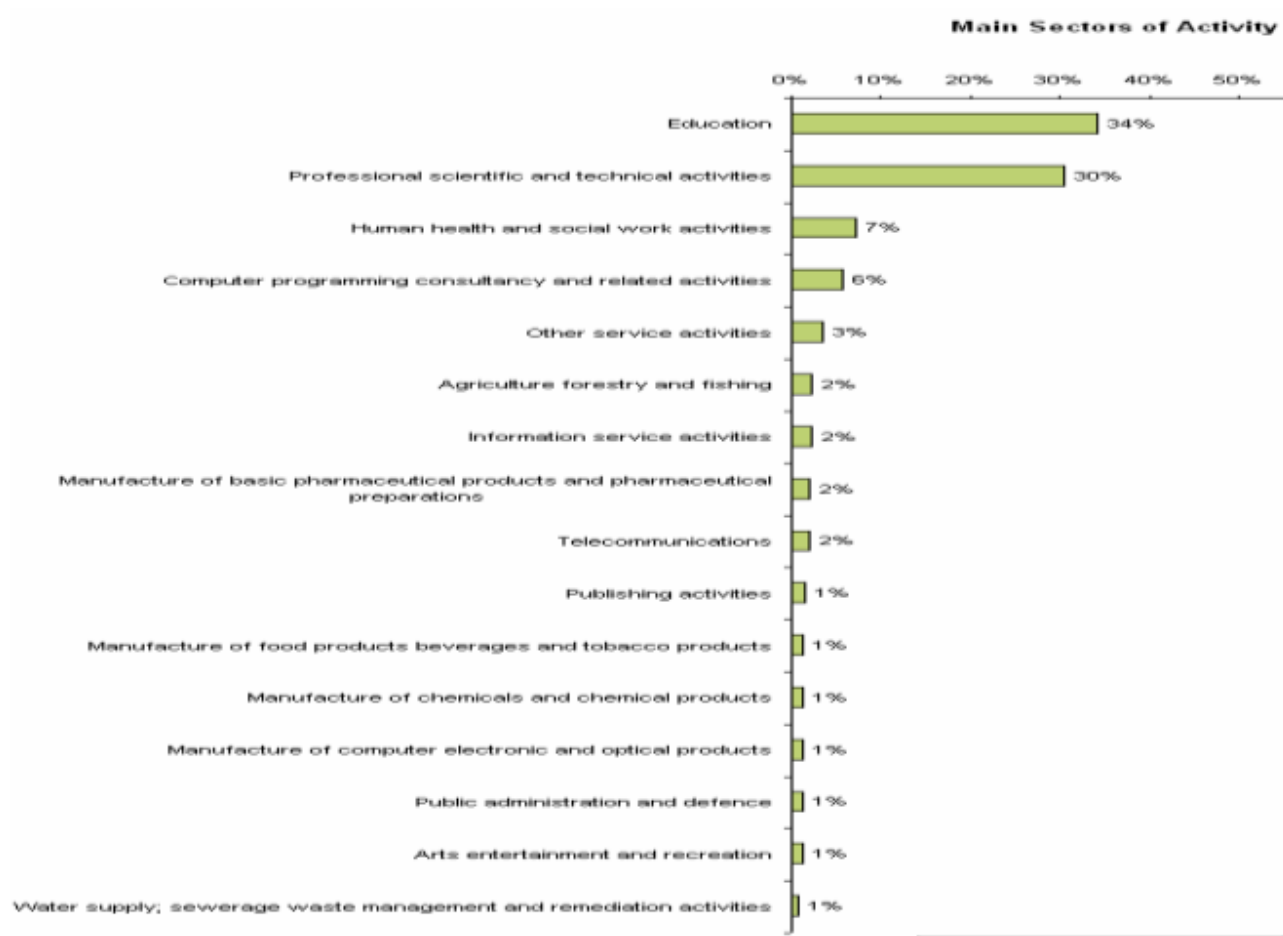
Robeco

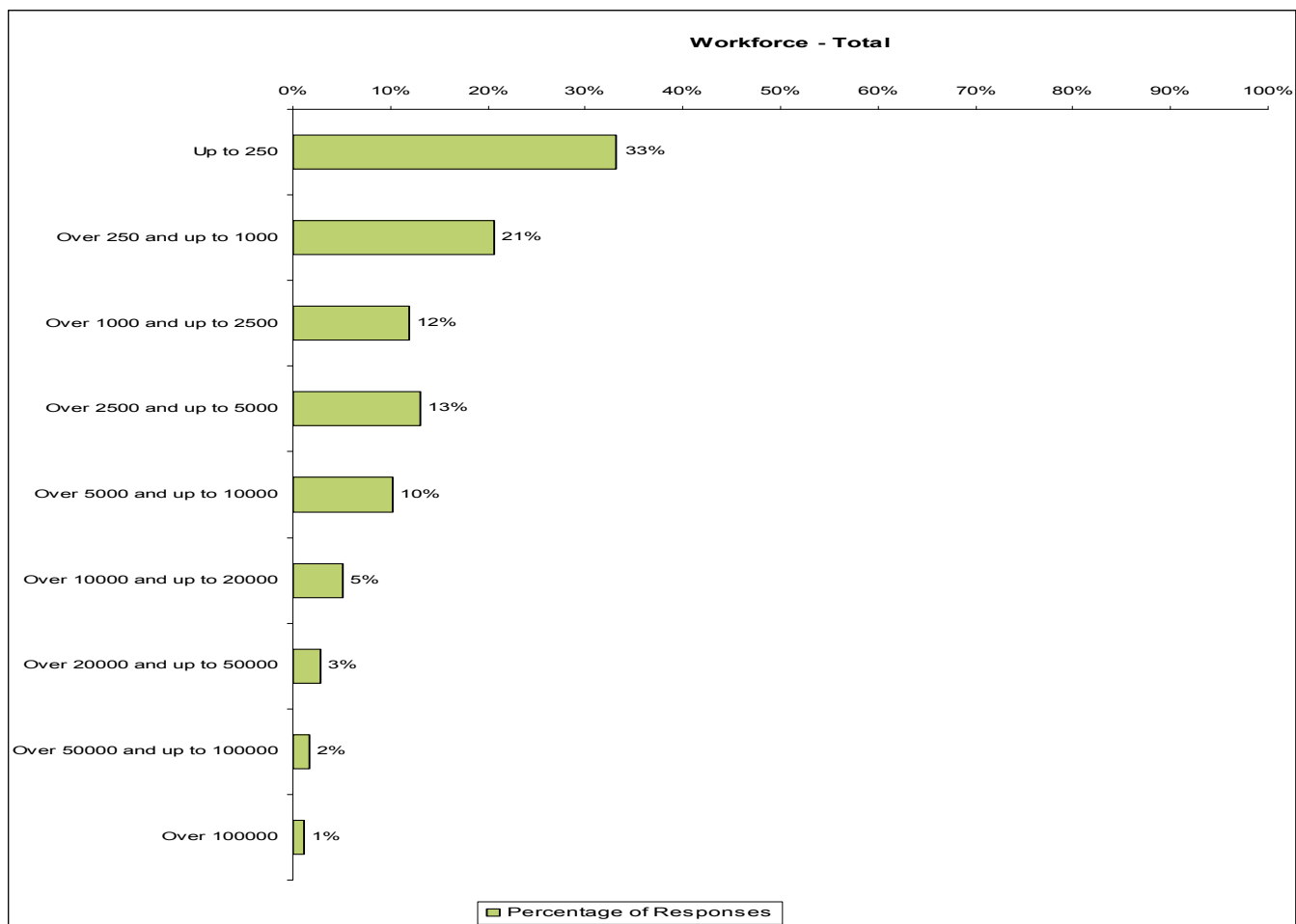
Syntus/ACHMEA/Eureko

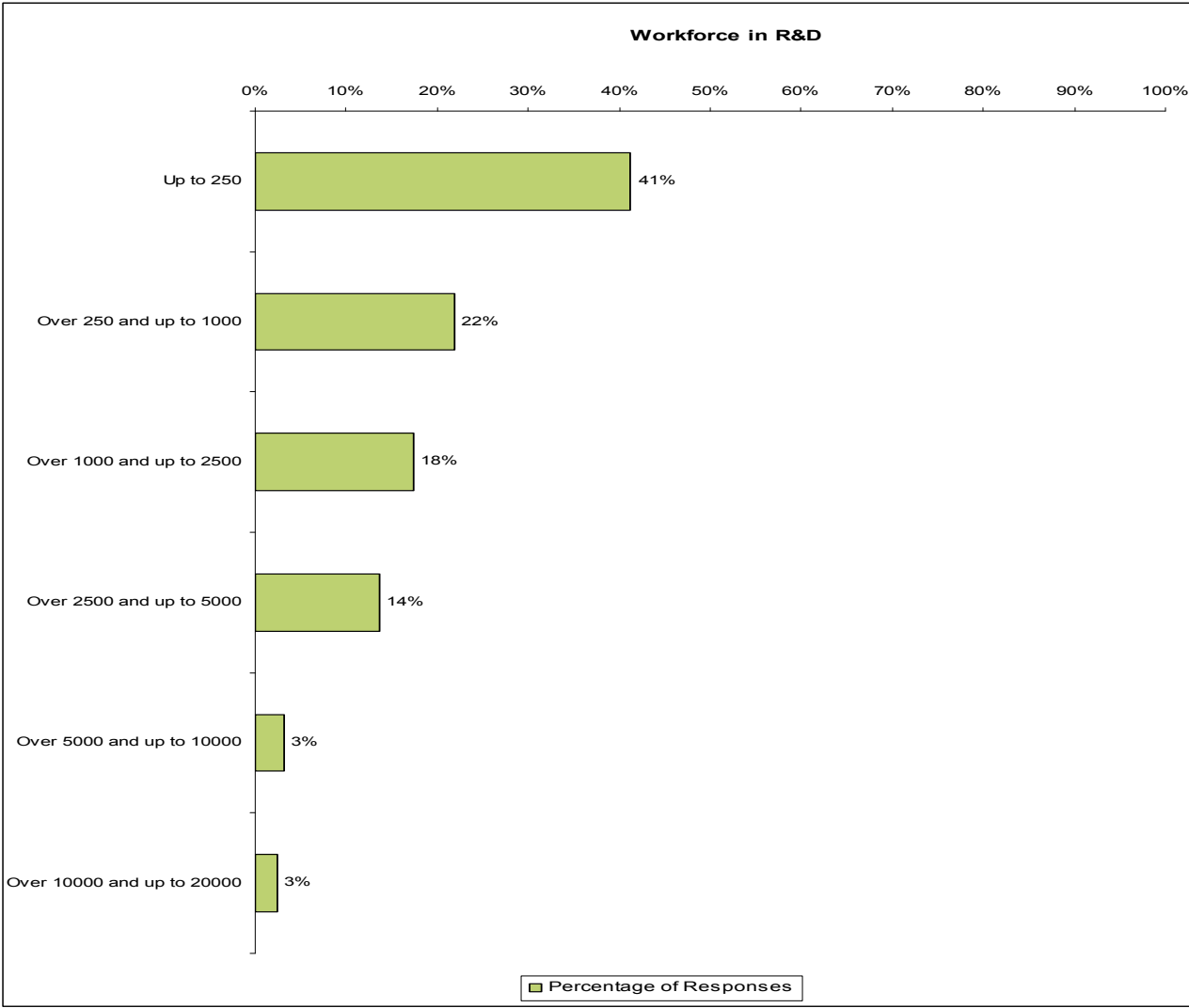
Vanbreda International

Appendix C Employers' Survey Results – Charts

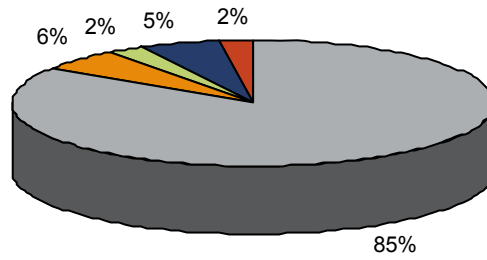






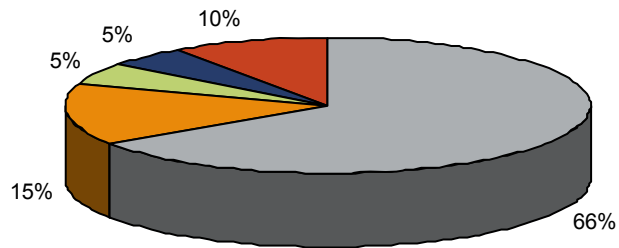


% of Participants by N° of expatriates posted abroad >1 years



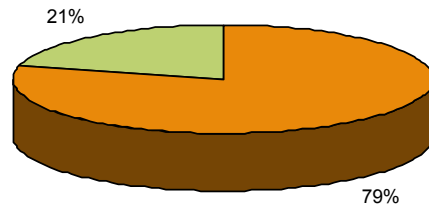
<= 100 employees
 >100 - <= 300 employees
 > 300 - <= 600 employees
 > 600 - <= 1000 employees
 >1000 employees

Segmentation of Participants by size of mobile workforce (multiple posting)



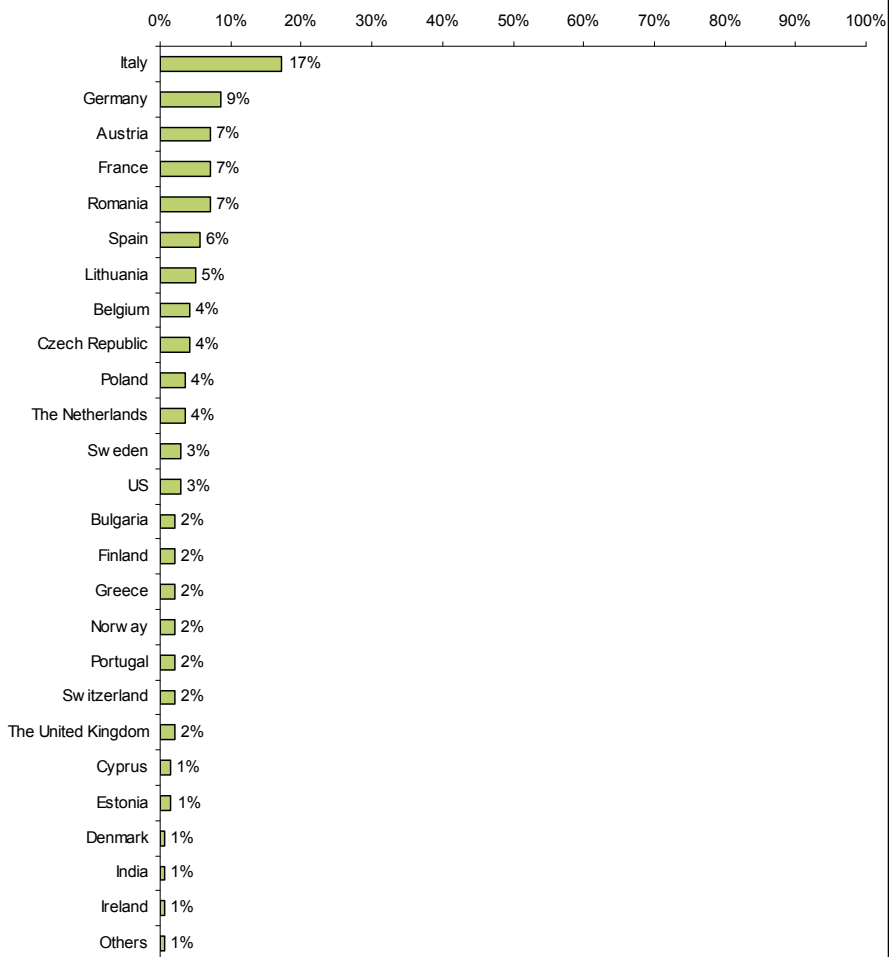
< 5% of total workforce
 > 5% < 10% of total workforce
 > 10% < 15% of total workforce
 > 15% < 20% of total workforce
 > 20% of total workforce

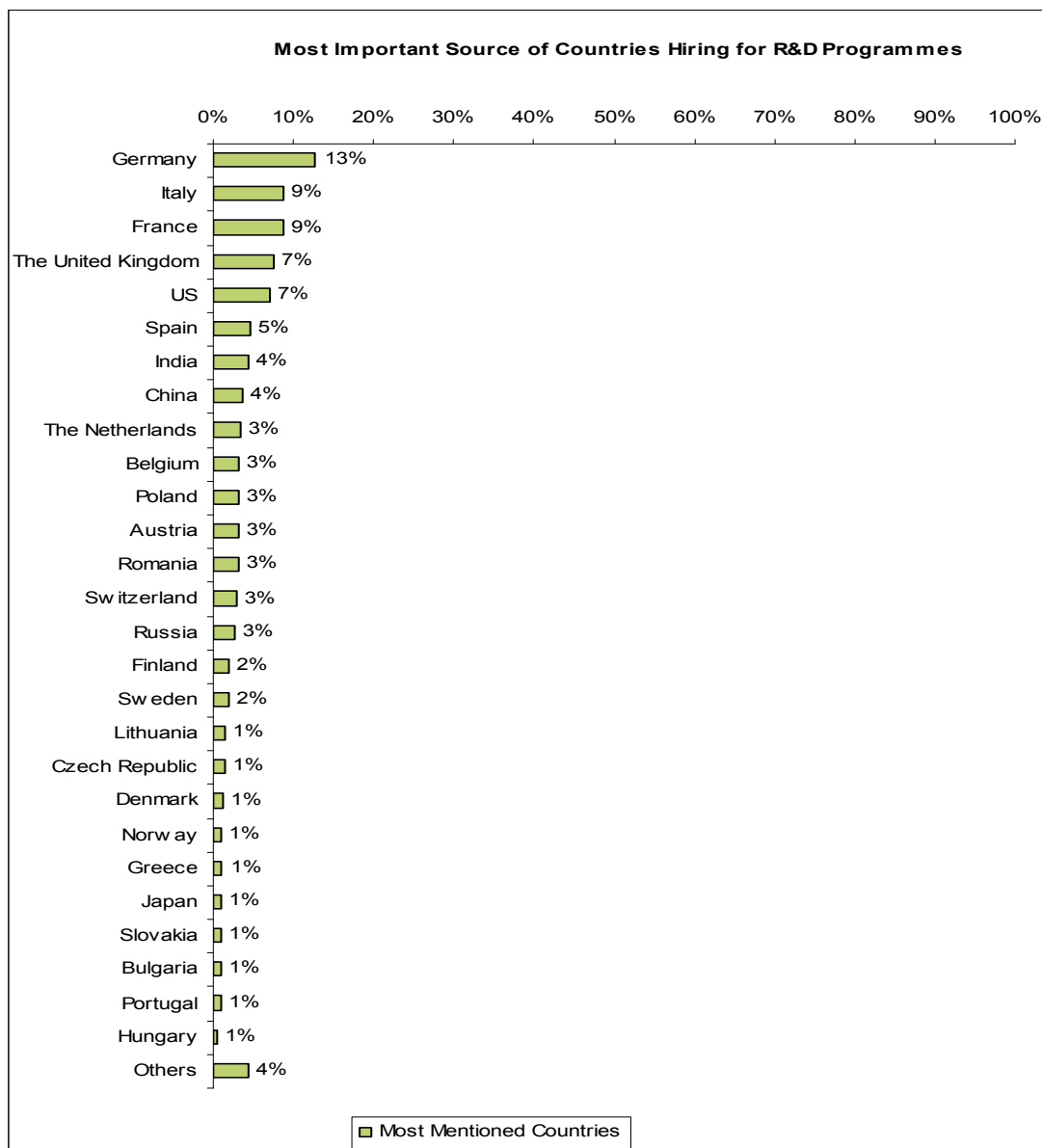
**% Of Organisation with
Centralised and Decentralised R&D Activities**

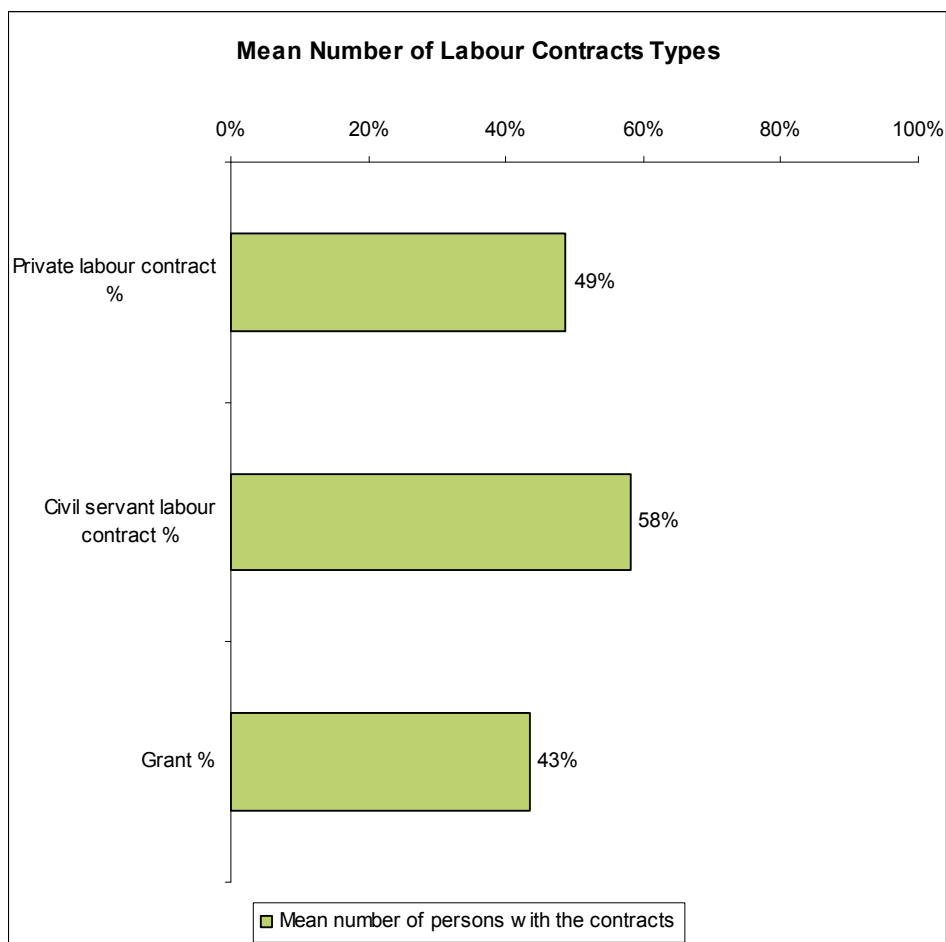
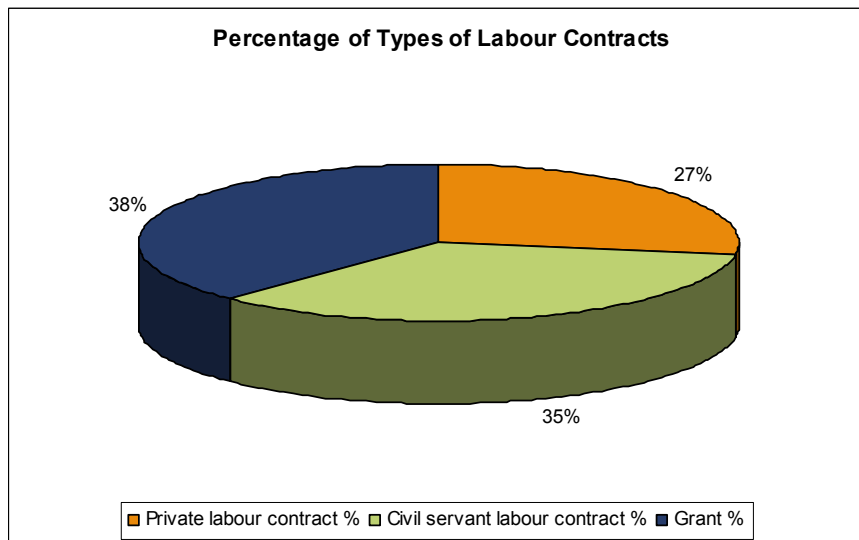


- All or most R&D activities (majority of investment and people employed) centralised in one country
- R&D activities spread in different countries

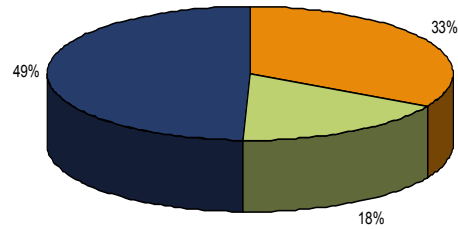
Countries Concerned With Centralised Structure





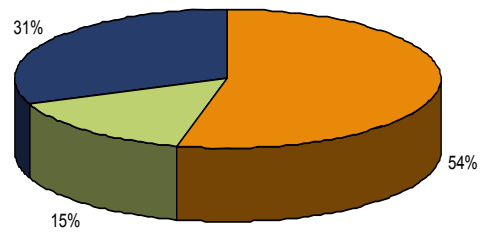


Percentage of respondents who are aware of European Charter for Researchers and Code of Conduct



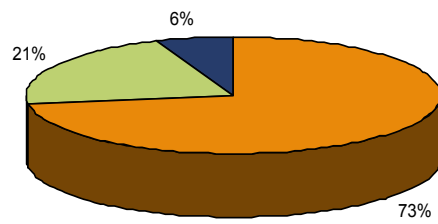
Yes and our organisation adhere to them Yes but we do not subscribe No I am not aware of it

Perception about Charter & Code improving researchers working conditions



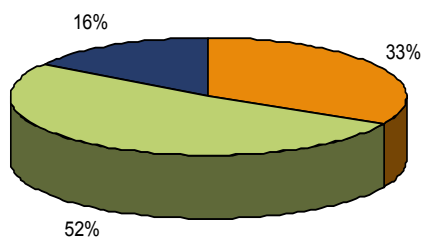
Yes No Don't Know

Benefitted over last 3 years on financial support from EU frame work for research(e.g. Marie Curie action)

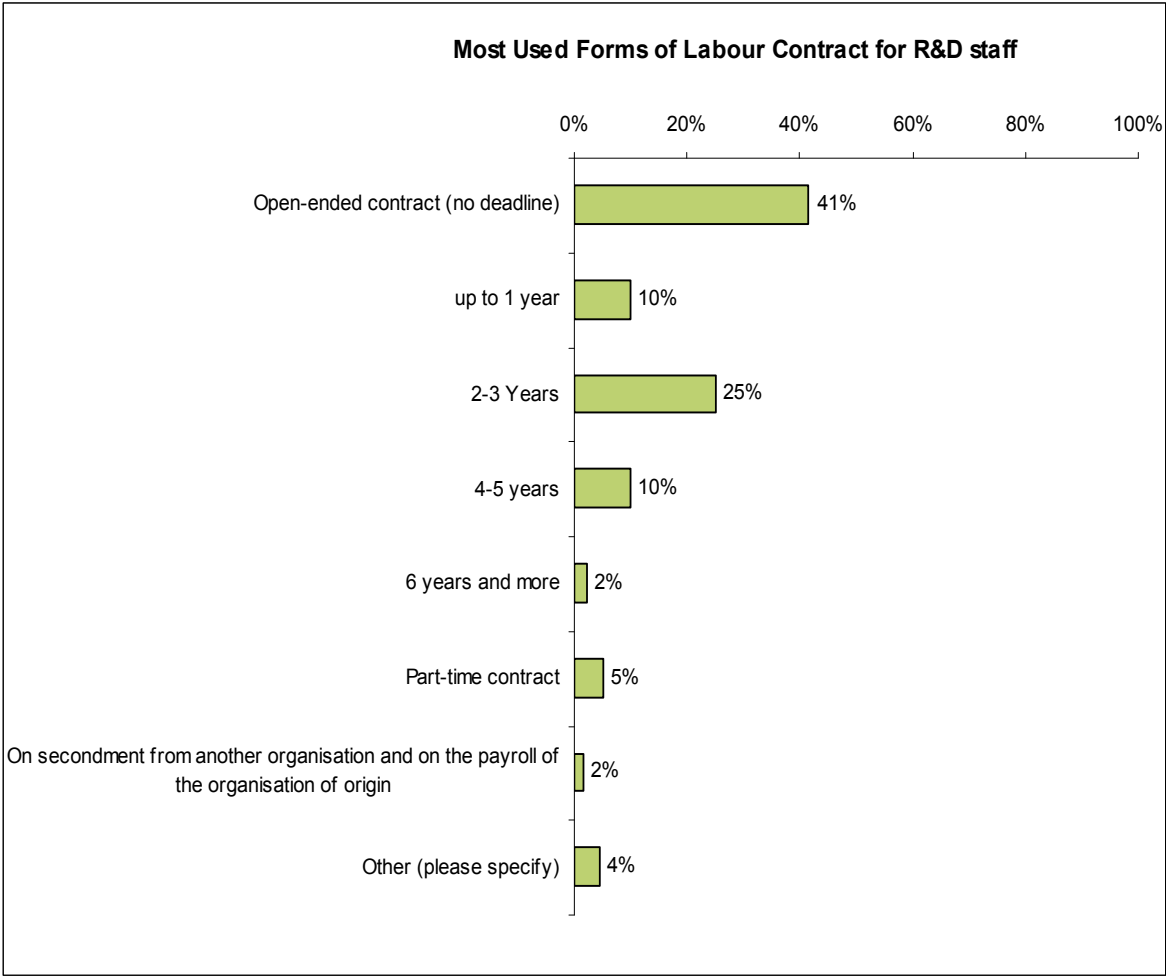


Yes No I am not aware of the opportunities offered by this EU programme

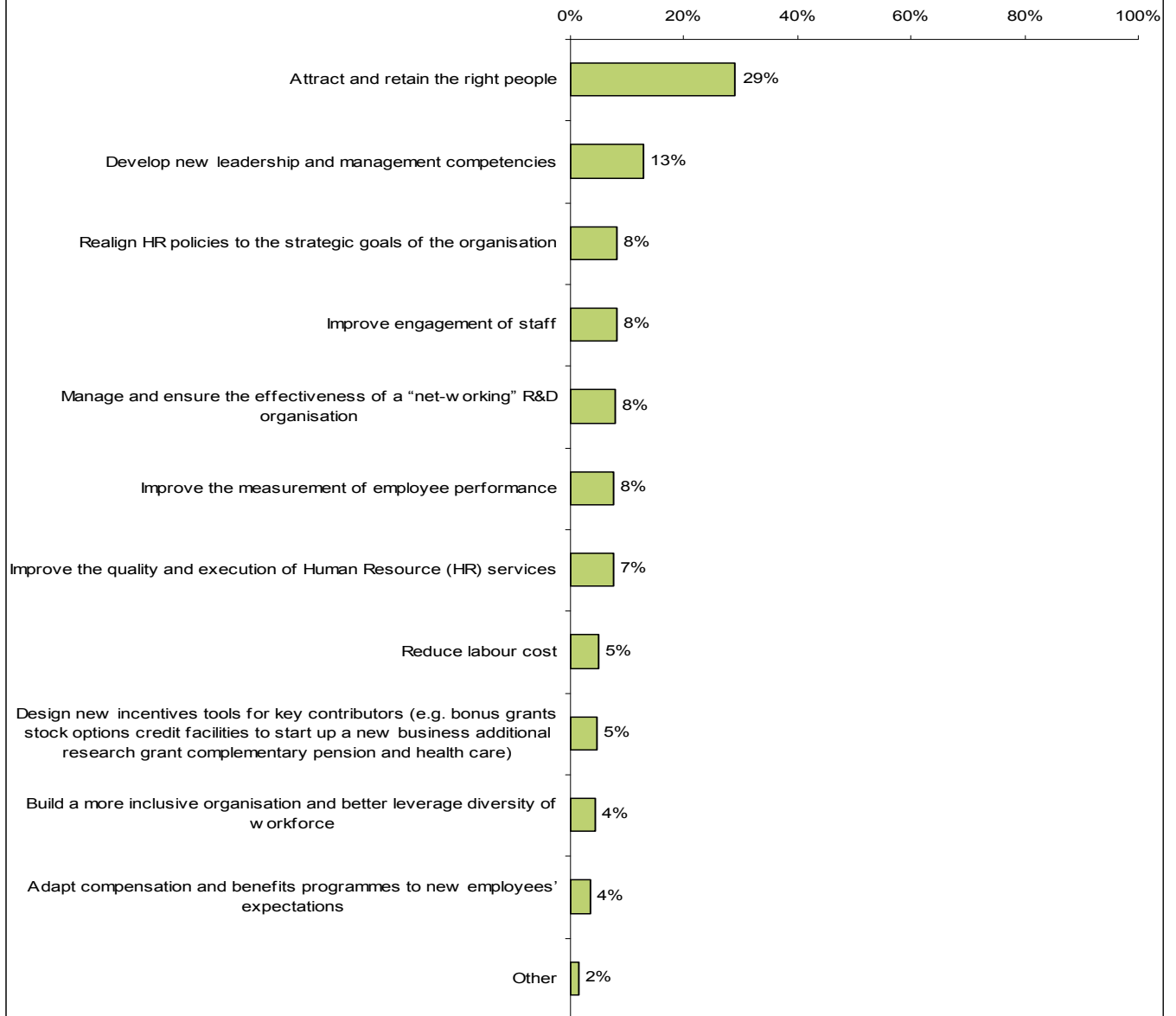
Perception on Improvement on Employee Conditions

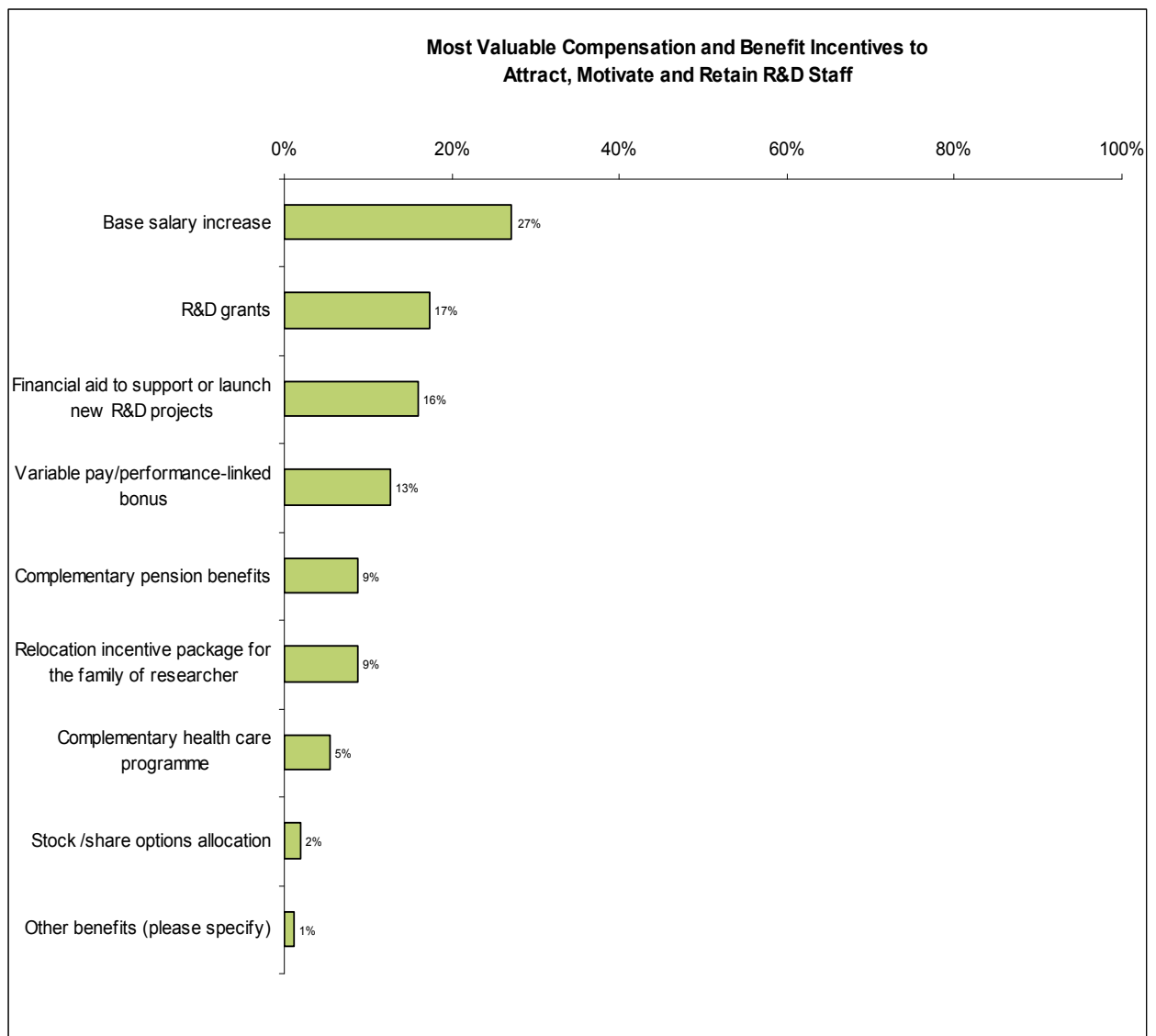


Improved No change Don't Know

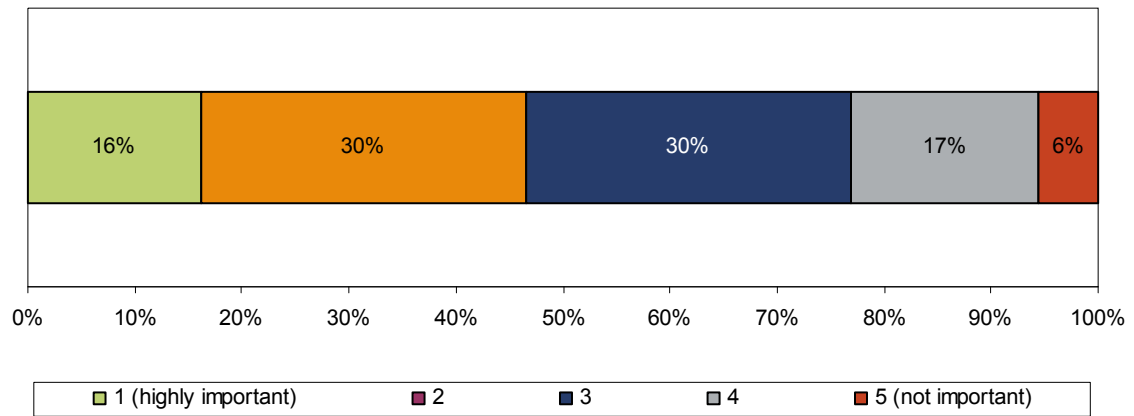


Most Important Challenges that Your Organization will face in next 3 years

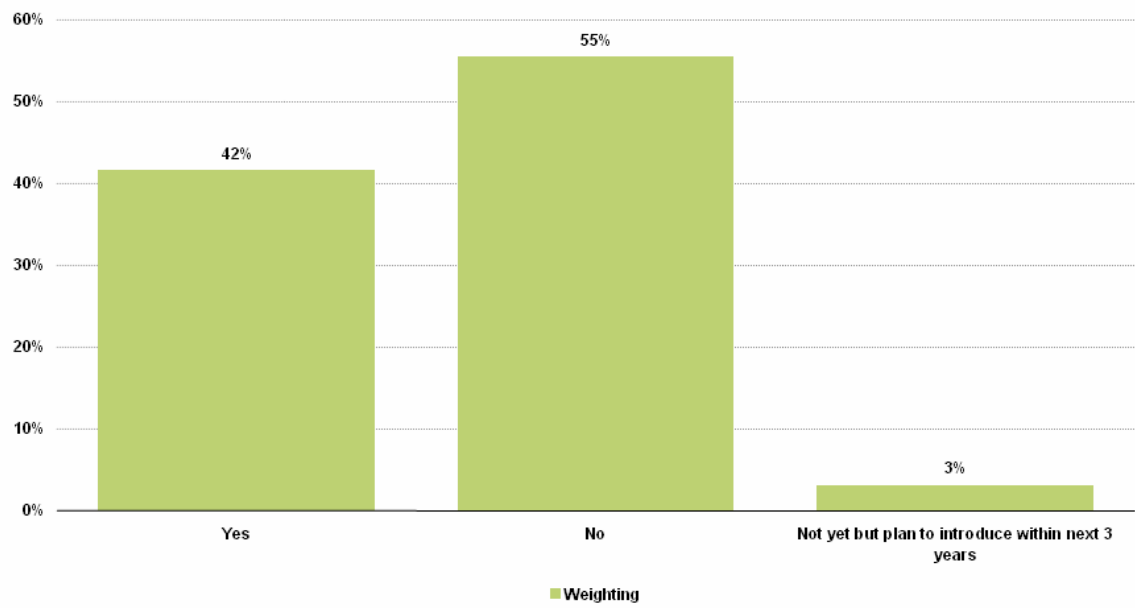


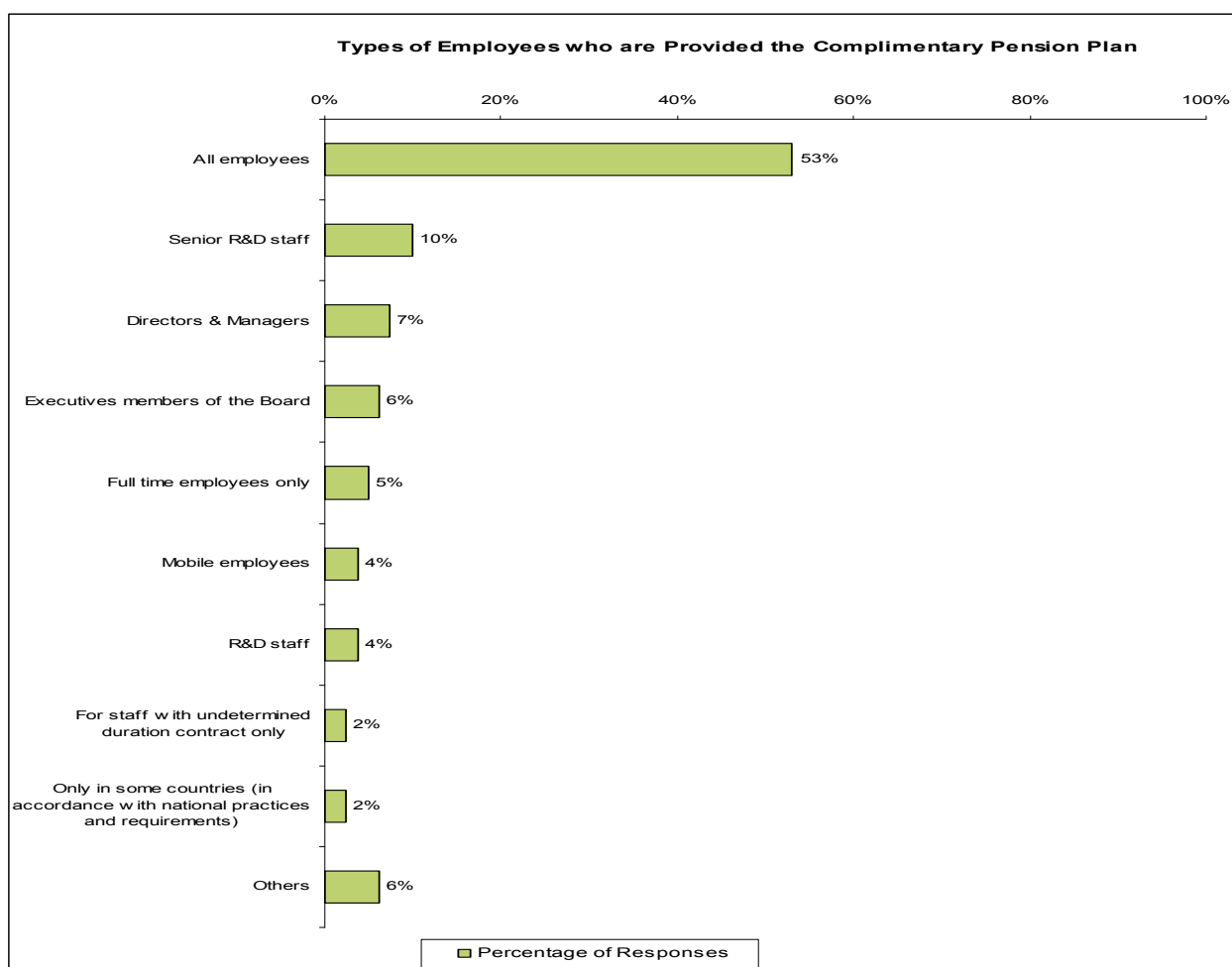


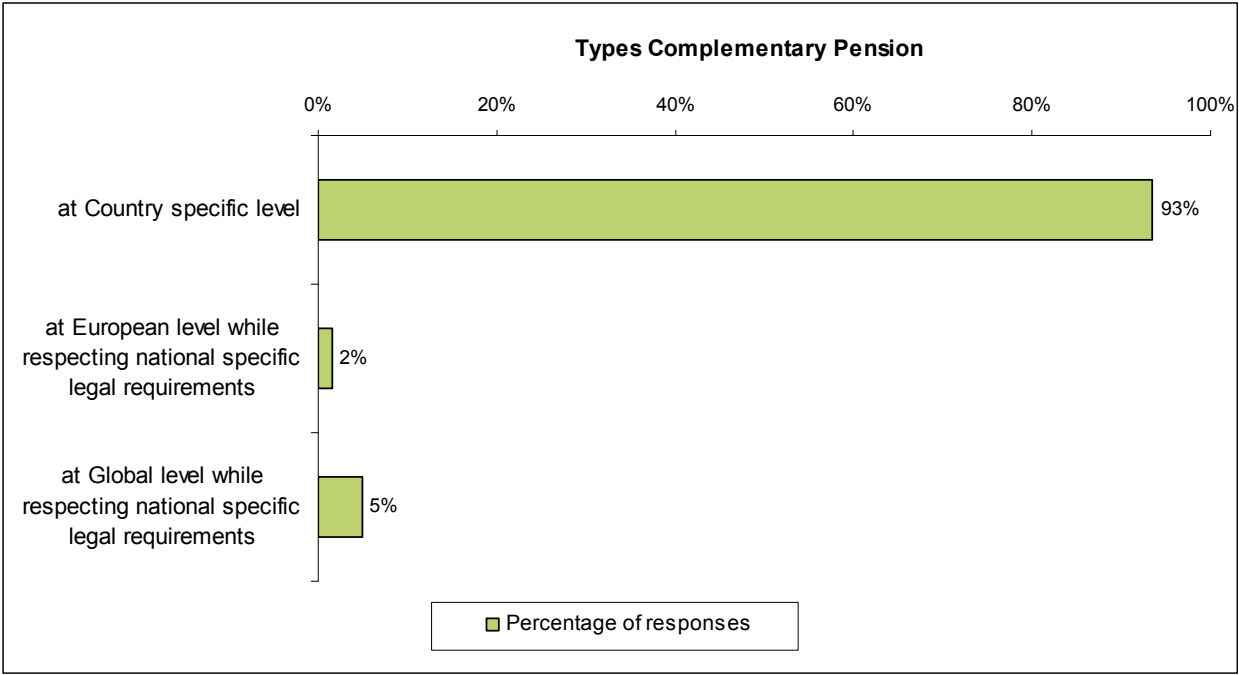
Perception on Complimentary Pension Benefits to R&D Staff will become more Important in attracting and retaining talents

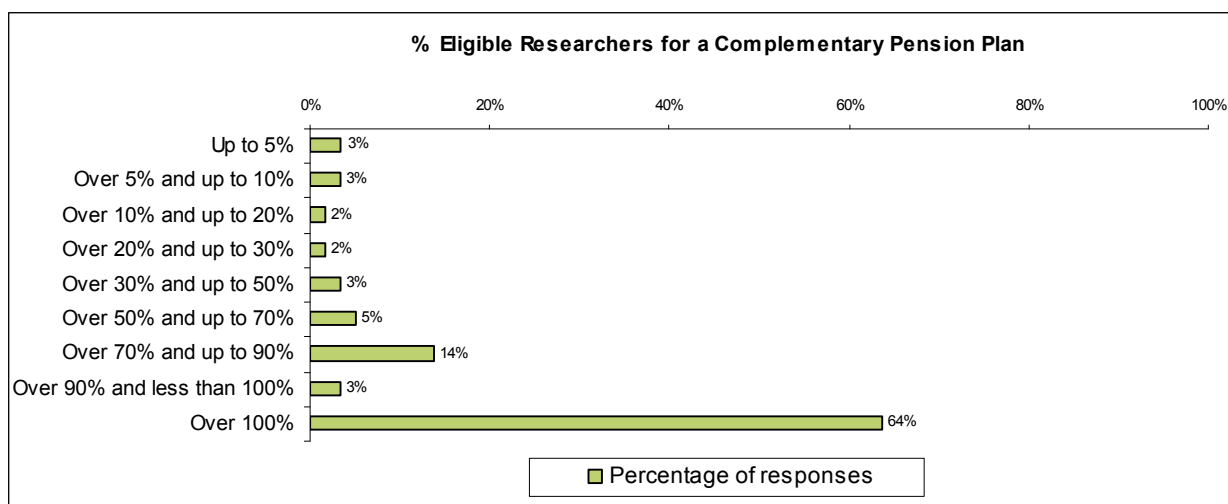


Organizations providing a complementary pension

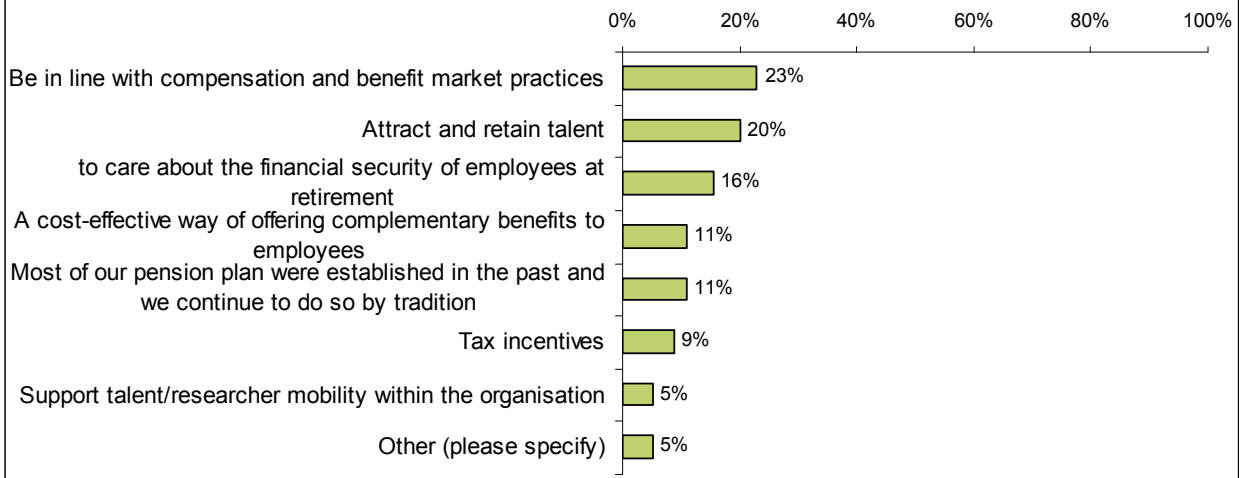




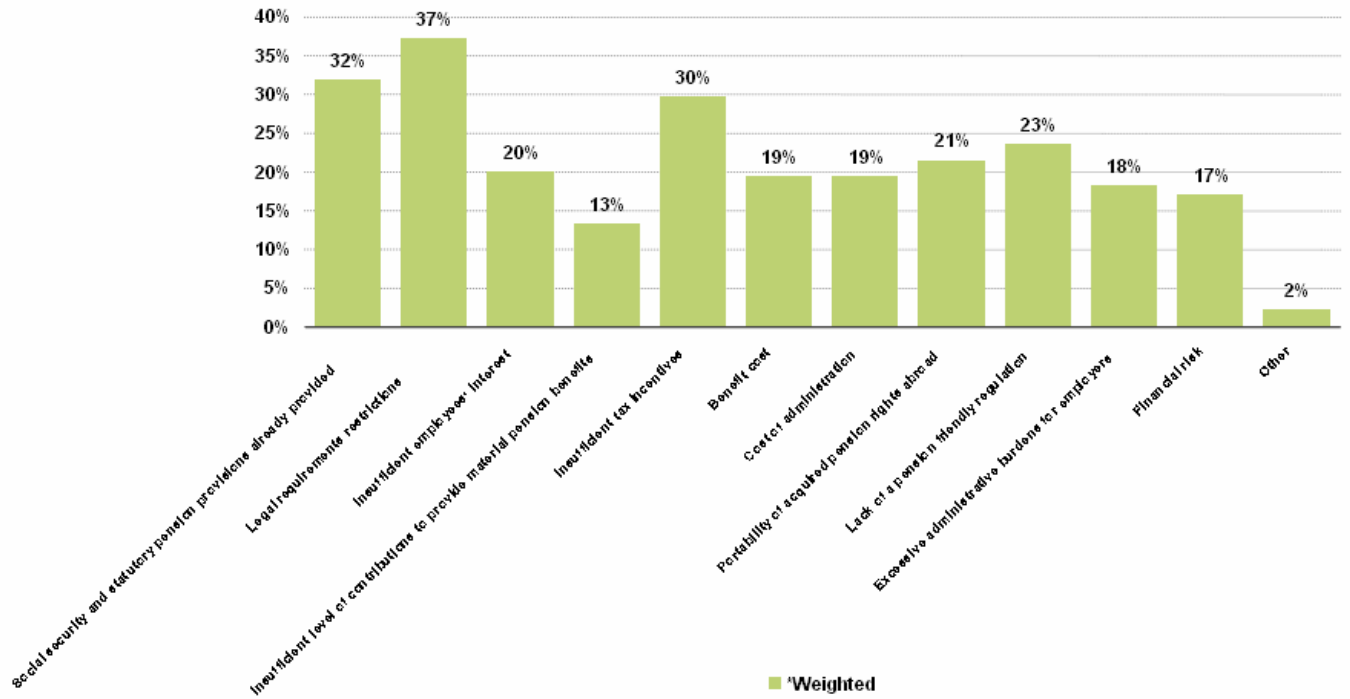


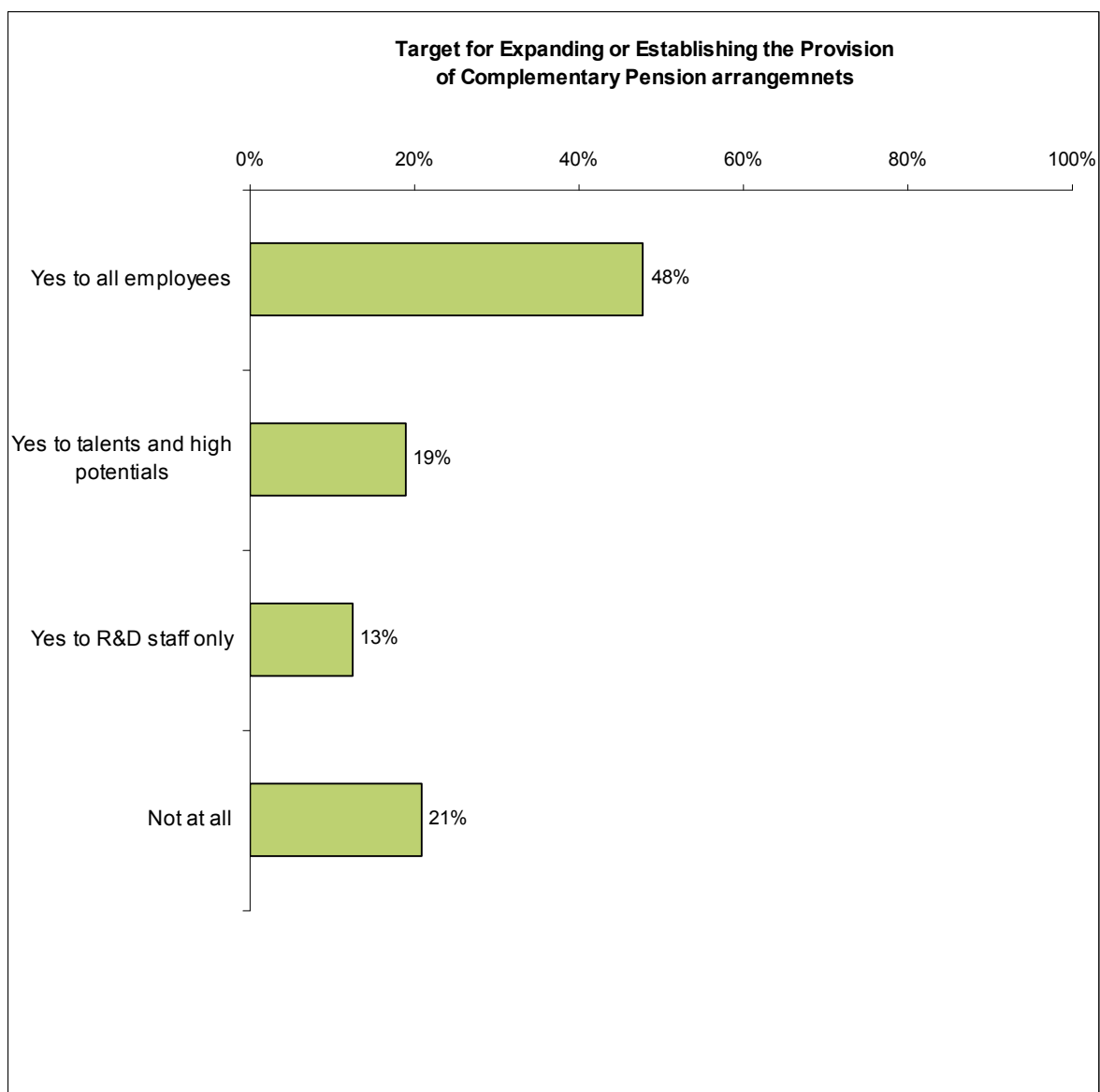


**Most Important Factors that Motivate Your Organisation to
Provide Complimentary Pension Plan beyond regulation**

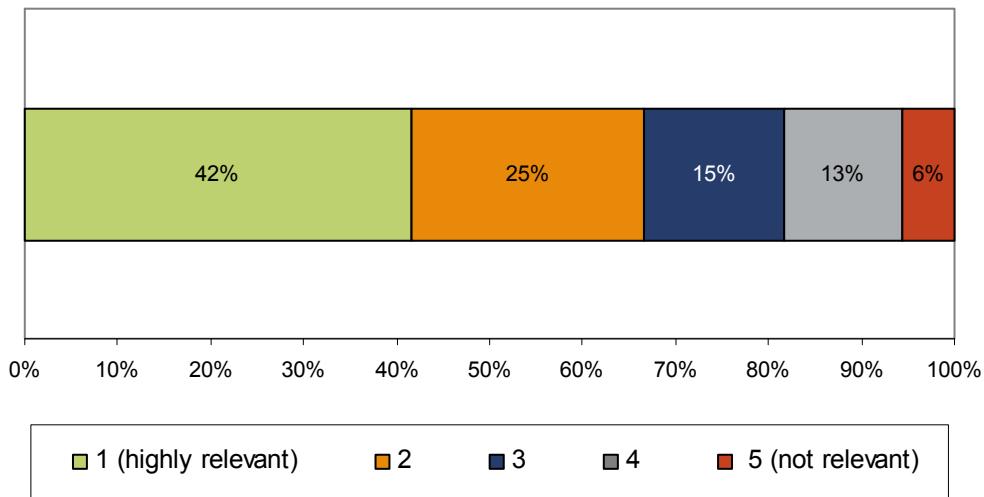


Factors hampering the provision or the expansion of occupational pension benefits*

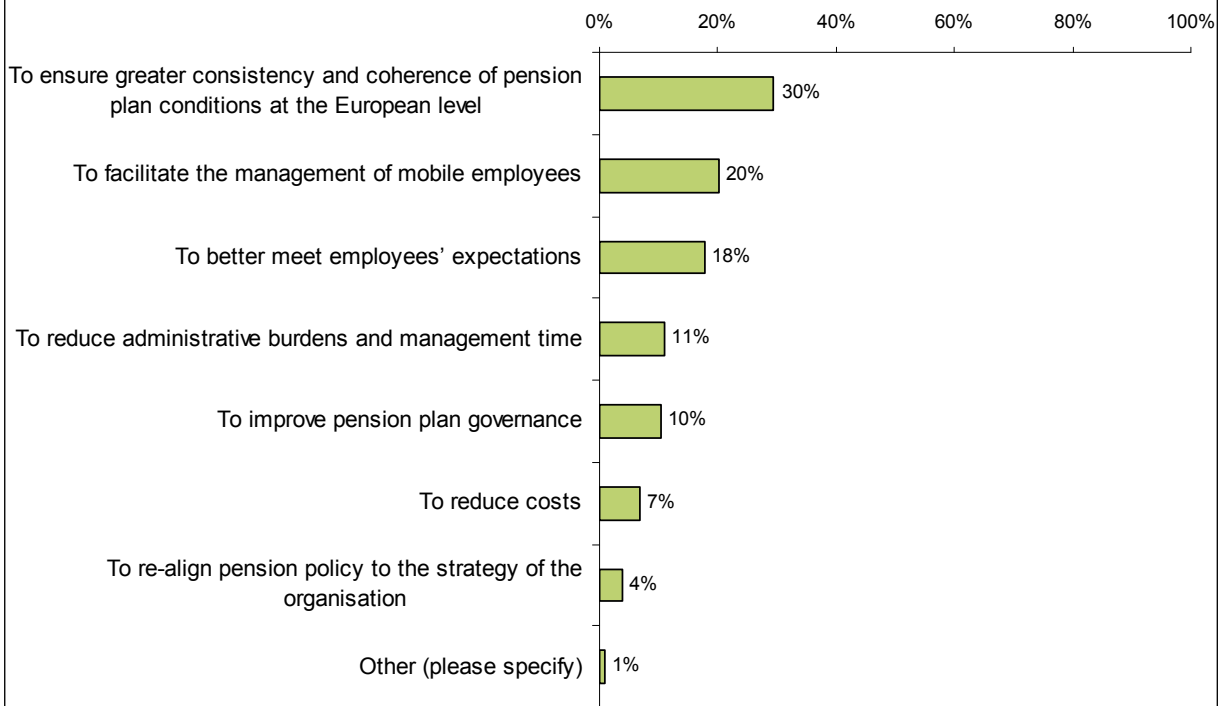




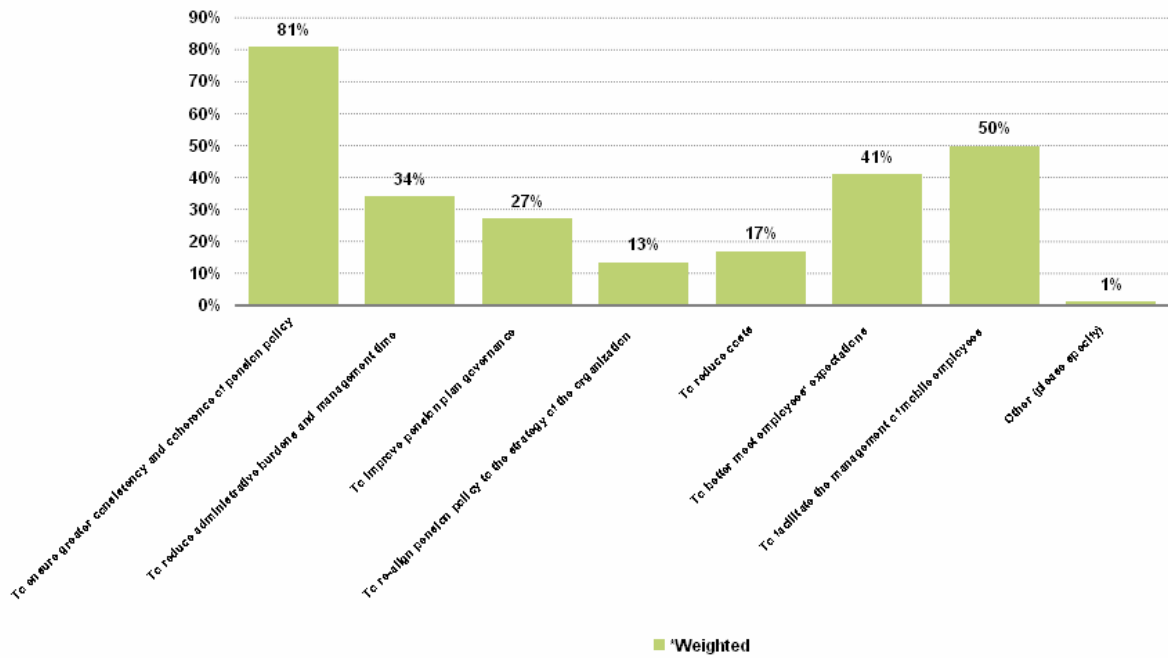
**Importance of Cross-Border Arrangements
for Occupational Pension**



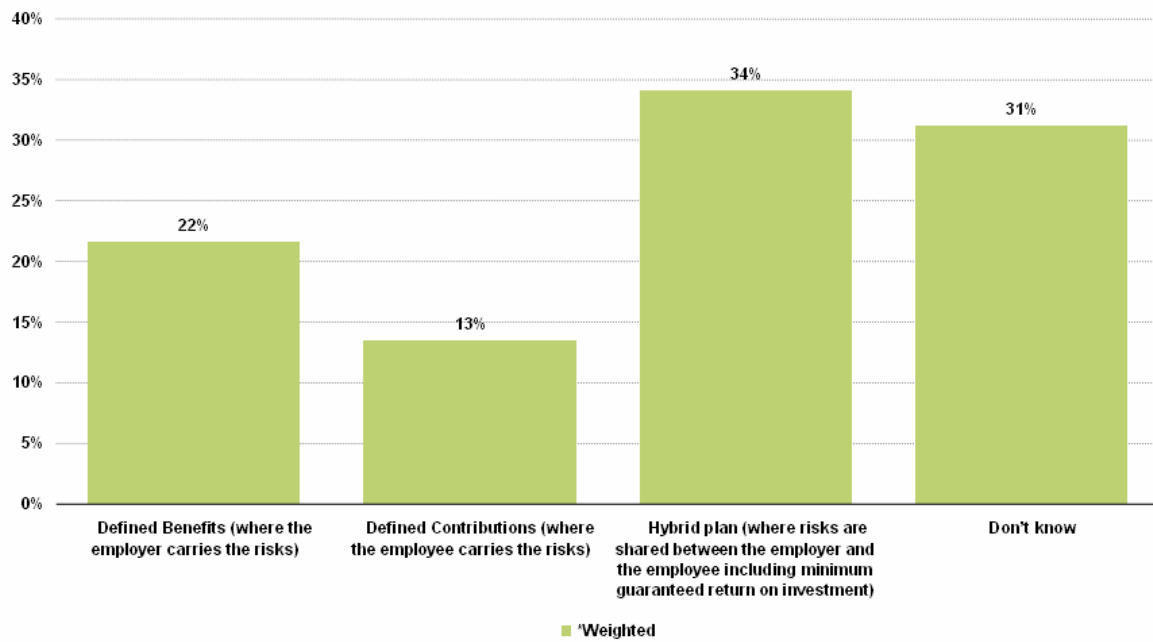
Reasons that would plead in favor of Cross-Border Arrangements for Occupational Pensions

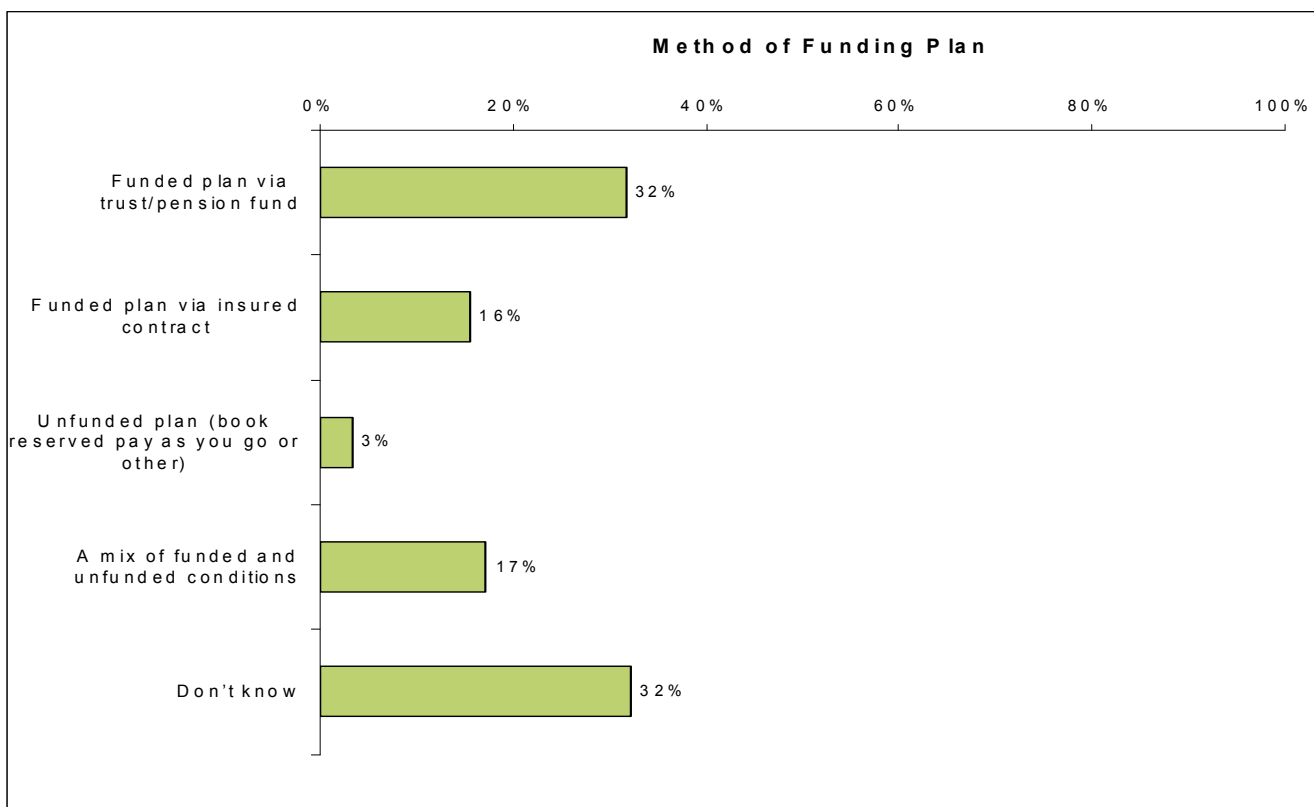


Reasons that would plead in favor of cross-border pension arrangements*

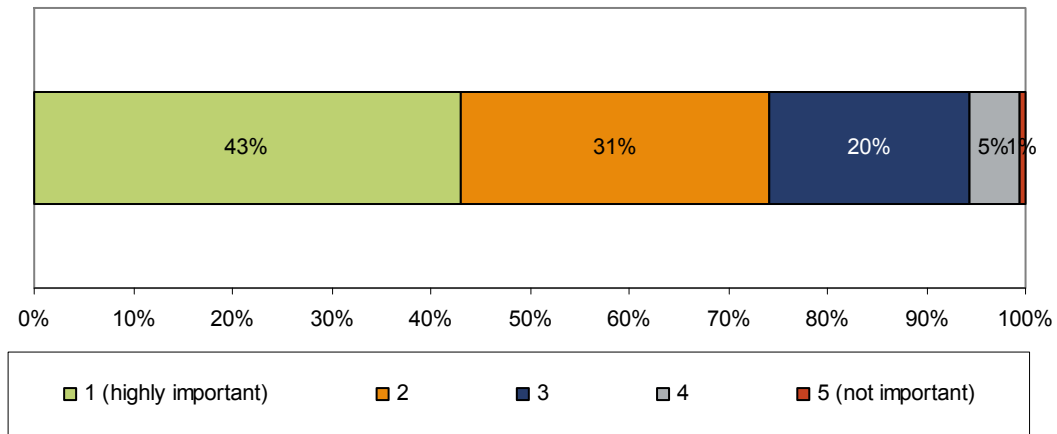


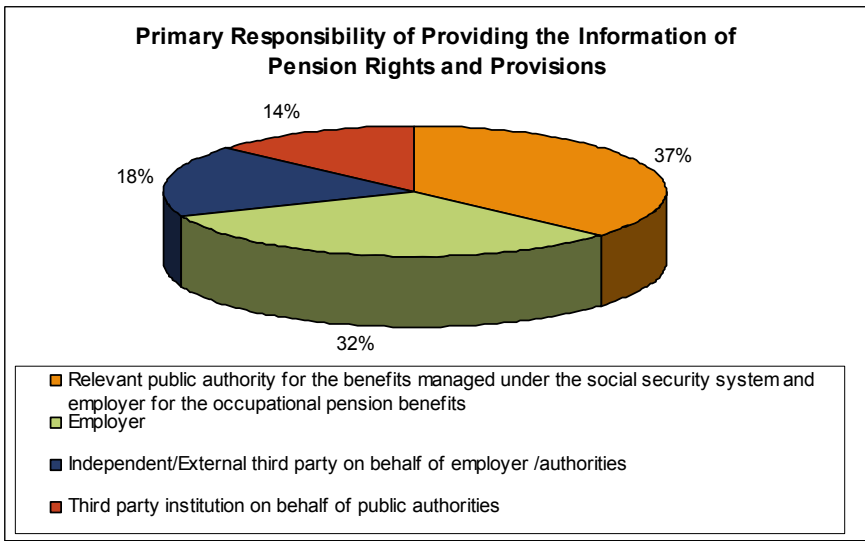
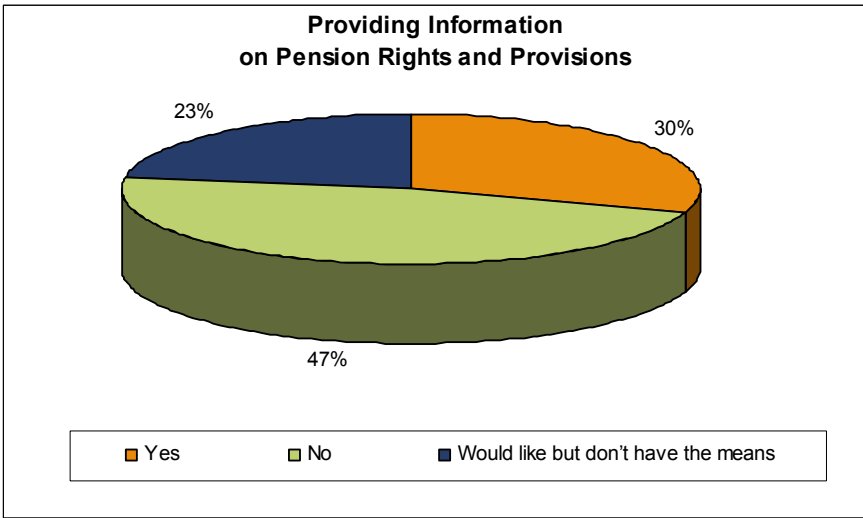
Type of pension plan design favored by respondents*





Importance of Availability of Information on Pension Rights and Provisions





Participating Companies *

Actelion Pharmaceuticals

APEResearch srl

Aspadec

BioAnalytica-GenoType SA

Biovitrum AB

Borealis AG

CNE Technology Ltd

Nokia Siemens Networks Ltd

Givaudan Switzerland Ltd

H. Lundbeck A/S

Missler Software

Númena - Centro de Investigação em Ciências Sociais e Humanas

Optoel

Philip Morris International

Polymeric GmbH

Progenika

Ranbaxy Laboratories Ltd.

Swisscom AG

Syngenta

Thyssenkrupp Elevator Innovation Center S.A.U.

Lilly

Solvay Pharmaceuticals

* Except organizations not wishing to disclose their name.

Participating Universities *

"Babes-Bolyai" University Cluj-Napoca

Academy of fine arts Vienna

Centro de Química da Madeira/University of Madeira, Portugal

Charles University

Ensicaen

EPFL

Friedrich-Schiller-Universität Jena

Libera Università Maria Ss. Assunta (LUMSA)

Loughborough University

Politecnico Di Torino

Tallinn University

Technical University

Università degli studi di Bari

Università degli studi del Sannio

Universita' degli studi Di Cagliari

Università degli studi di Genova

Università degli Studi di Perugia

Università di Modena e Reggio Emilia

Università di Napoli "Federico II"

Universita' Iuav Di Venezia

Università per Stranieri di Perugia

Università per Stranieri di Siena

Universität Heidelberg

Université Libre de Bruxelles

Universiteit Antwerpen

University of Applied Arts Vienna

University of Applied Sciences St. Pölten

University of Bologna

University of Crète

University of Greifswald

University of Innsbruck

University of Stavanger

University of Strasbourg

University of Tartu

University of Trieste

University of Udine

University of Verona

VSCHT Praha

* Except organizations not wishing to disclose their name.

Participating Public Research Institutes & International Organisations *

Academy of Sciences of the Czech Republic

Institute of Environmental Protection

Area Science Park

Institute of Information Technology - Bulgarian Academy of Sciences

European Centre for Minority Issues

Institute of Mechanics, Bulgarian Academy of Sciences

Fundacion Progreso y Salud

ICIA

Nuclear Physics Institute ASCR

INAF - Osservatorio Astrofisico di Catania

VIB

Institut Català De Ciències Del Clima (IC3)

European Molecular Biology Laboratory

Institute of Chemistry

Fundacion Fatronik

* Except organizations not wishing to disclose their name.

Appendix D. UK based Trust arrangements

1. Governing body

1.1 Operational core and specific functions

1.1.1 Governance structure

Consideration of the structure should include the implications of the areas of activity listed below.

- Composition of governing body (number, mix of skills, training, mix of corporate, independent and member representatives)
- Use of advisers (other than statutory e.g. legal, investment, risk insurances)
- Use of sub-committees (e.g. investment, governance, administration, etc) and terms of reference/objectives/ critical success factors for each committee.
- Management of conflicts of interest
- Decision-making process
- Engagement with sponsors
- Use of discretionary powers

1.1.2 Monitoring of delegated authorities (Administration, Investment management, advisers and other providers)

Monitoring should include the areas below.

- Policy on delegation (considered in Section 4 of this report)
- Level, depth, scope and frequency of monitoring (considered in Section 6 of this report)
- Risk management (as referenced in the Risk Register, see Section 5.1.5)
- Cost management (considered in Section 4.1.3 of this report)

2 Terms and conditions for supervisory/oversight committee

The terms and conditions of the supervisory body are as important for the efficient function of the body.

2.1 Limits to responsibilities

Individual members of the Committee typically do not bear any individual responsibility for decisions reached, subject to those decisions not being intentionally unlawful or detrimental to the interests of the members. Any individual liabilities identified at law are usually indemnified by the Sponsor.

2.2 Tenure

Members of the Committee shall be appointed for pre determined periods by the employer. Any member leaving the employer's service during the course of such period shall immediately cease to be a Committee member.

2.3 Whistle-blowing

It is recognised that, under certain circumstances, Committee members will be under an obligation to "whistle blow" (eg on late payment of contributions) to appropriate Regulator(s).

3. Accountability

The governing body will typically be accountable to the members in so much as members will have legal recourse against trustees in the case of deliberate breach of good faith. They are also accountable to a

range of different regulators – HMRC for tax purposes, the Pension Regulator for preservation of members' benefits and even security services regarding anti-money laundering restrictions.

Financial Institutions are also accountable to financial regulators (FSA, Bank of England and various EU regulators). In particular, the concept of "Treating Customers Fairly" is embedded in regulation and must be considered at all levels of operation.

4 Delegation of authority

4.1 Terms and conditions for delegation of tasks

The Trustees may delegate the following activities to sub-committees:

- Governance
- Accounting/Audit matters
- Investment decisions; and
- Exercise of discretionary powers

For example, an Investment Sub-committee may meet four times a year and be made up of a mix of Trustees and non-Trustees. Where appropriate, the Trustees' investment advisers are invited to the meetings to discuss such matters as investment strategy, asset allocation, investment manager performance etc.

The Committee's role is outlined in separate terms of reference.

The Discretionary Sub-committees may meet on an ad-hoc basis as and when there are discretionary cases to make a determination on (including death-in-service and ill-health retirement), in accordance with the Trust Deed and Rules.

Trustee boards hold formal meetings only a limited number of times each year, typically four times. Therefore, trustees are unlikely to be able to fulfil their roles properly without assistance, they need to delegate responsibilities in a number of circumstances.

4.1.1 Acquisition of expert advice

Under the requirements of the Pensions Act 1995, the Trustees will need to delegate the functions listed below to specialists.

- Actuarial/Consultancy
- Investment advice
- Investment management
- Administration including payment of benefits
- Accounting / Audit

The main principles of such delegation.

- Setting clear objectives
- Setting criteria for identifying suitable delegated authorities
- Identifying parameters within which the delegated responsibilities may be delivered and those outside, for which trustee guidance and decisions must be sought

4.1.2 Selection and appointment of providers and advisers

The main criteria and principles for appointment.

- Impartial, level playing field approach based on principles of EU Procurement Directive
- Suitable skills and qualifications
- Management/avoidance of conflicts of interest
- Governing body engagement
- Clear process and decision-making/sign-off process

There are some high level regulations in place, but the detail of the above are mostly derived from the principles of Trust Law and Common Law.

4.1.3 *Specification of service requirements and cost considerations*

These will vary considerably dependent on the nature of the scheme, its membership structure and objectives.

- Well defined service requirements
- Identified out-of-scope services
- Identification of frequencies and volumes where appropriate
- Clear critical success factors
- Performance measurement criteria
- Robust charging structures
- Value for money
- Frequency of cost/charging review

4.2 Financial institutions responsibilities

4.2.1 *Specific restrictions*

Financial Institutions are also accountable to financial regulators (FSA, Bank of England and various EU regulators). In particular, the concept of "Treating Customers Fairly" is embedded in regulation and must be considered at all levels of operation.

In addition, accounting restrictions are more onerous on such organisations than on pension trustees per se. For instance, Insurers must show capital adequacy sufficient to weather a 1 in 200 year adverse financial event and adhere to a "twin peaks" accounting convention.

4.3 Audit, actuarial services, custodian services

4.3.1 *Audit*

Audit requirements are set out in legislation and international accounting standards. In addition, consideration should be given to:

- statutory (scope beyond law, role in risk management, selection, appointment and review);
- internal audit (provided internally or externally), scope, role and review (risk management/internal controls);
- governing body engagement; and
- management of conflicts

4.3.2 *Actuarial*

Actuarial standards include definitions around the process and form of:

- statutory appointment;
- valuations;
- advisory role; and
- management of conflicts.

4.3.3 Custodial

Most UK regulation around custodianship stems from the various Pension Acts and includes consideration of:

- selection and appointment;
- scope of services (basic custody or tracking of dividends, tax reclaims, reconciliations, etc);
- appointment of sub-custodians; and
- indemnities.

5. Internal Control Procedures

5.1 Nature and scope

It is a legal requirement under the Pensions Act 2004 for Trust based occupational pension schemes – defined benefit (DB) and defined contribution (DC) – to establish and operate adequate internal controls.

Internal controls are:

- a) arrangements and procedures to be followed in the administration and management of the scheme;
- b) systems and arrangements for monitoring that administration and management; and
- c) arrangements and procedures to be followed for the safe custody and security of the assets of the scheme.

The implementation and application of internal controls will therefore help the Trustees monitor the management and administration of schemes. Internal controls will also improve the safe custody of assets and help protect schemes from adverse risks which could be detrimental to the scheme had those risks not been mitigated.

5.1.1 Investment controls

In the UK these are typically documented via the Statement of Investment Principles.

5.1.2 The decision making process

The trustees are responsible for setting the Scheme's investments. The trustees have no influence on the investment aims or on how the investment managers choose the underlying investments (other than as a customer).

The trustees will take appropriate advice from a suitably qualified and experienced adviser before fixing or changing the investment fund selection or completing the SIP, and will consult with the Employers sponsoring the Scheme before completing the SIP.

5.1.3 Reasons for the wholly-insured approach (where appropriate)

Use of technology in administering the scheme; service excellence and its commitment to the market.

5.1.4 Potential Risks of the DC investments

The main areas of risk are as follows:

- market fluctuations;
- annuity Purchase;
- inflation; and
- assets may not be readily realizable.

5.1.5 Reporting and review

The trustees will review this Statement (after consultation with advisers and the Employers

- at least every three years; and

- immediately after any significant change in investment policy.

Documentation

Documentation for reporting purposes should include:

- funding documents (for DB in particular);
- actuarial documents (for DB in particular);
- governance documents; and
- member documents

Funding documents (for DB in particular)

These will include:

- Statement of Funding Principles;
- Schedule of Contributions; and
- Statement of Investment Principles.

Actuarial documents (for DB in particular)

These will include:

- scheme factors (including commutation and early/late retirement factors);
- annual actuarial reports;
- Actuarial Valuation Report; and
- Recovery Plan (if applicable)

Governance documents

These will include:

- Trust Deed and Rules (the Trust Instrument);
- risk register;
- policy on managing conflicts of interest; and
- annual trustees' business plan

Member documents

These will include:

- scheme booklet;
- Summary Funding Statement (reporting on the valuation and actuarial reports); and
- member newsletters

6. Reporting

6.1 Sponsor reporting

Typically, trustees are required to consult with scheme sponsors. However this does not mean that the sponsor has any right of veto of decisions other than in very specific circumstances. Indeed, final salary scheme trustees have been "credited" with blocking mergers between sponsors on the basis that their powers and preparedness to seek funding made potential mergers uneconomic for one of the parties.

It is important that the Trustees have a strong relationship with the Company and maintain regular dialogue in order to monitor the Company's financial performance and corporate risk (e.g. inability of the Employer to fund the Scheme).

The Company representatives with whom the Trustees are most likely to have contact are listed below.

- Payroll / HR
- Finance
- Pensions Management
- Secretariat

6.2 Beneficiary reporting

There are specific Disclosure Requirements in the UK with which trustees and providers must conform.

6.2.1 Limits to the range of economic and demographic assumptions

These are in place to ensure consistency throughout the market and avoid overselling of potential benefits

6.2.2 Timeliness of communication

These are in place to ensure members have sufficient time to make important decisions (eg selection of annuity format and provider).

6.3 Supervisory authority reporting

Reporting requirements are specified by the various authorities in terms of timeliness and level of detail.

The Trustees have to ensure that they report breaches of the law and late payment of contributions to the Pensions Regulator. In addition, a Scheme Return is required to be submitted (on-line) each year to the Pensions Regulator.

It is also mandatory for Scheme Administrators to file, if applicable, an Events Report (electronically). This report is only required to be submitted when a certain event occurs (e.g. an unauthorised payment has been made or if there is a transfer to an overseas scheme that is not a "registered" pension scheme).

Appendix E. Example of Possible Draft Statutes: the case of a Cross-Border OFP in Belgium

Chapter I – Name, head office, objective, activities, duration

Article 1 – Name

The name of the Organisation for Financing Pensions is EU Researchers Pension Fund, hereinafter referred to as the “EUREPFUND”.

Article 2 – Head office

The head office of EUREPFUND is located in XYZ (Belgium) It may be transferred to any other address in Belgium by decision of the General Assembly (GA).

Article 3 – Objectives

EUREPFUND is an Institution for Occupational Retirement provisions set up by European based organisations with the aim of providing employment related pension benefits in compliance with applicable legislative requirements. It acts in this capacity:

- to administer pension scheme(s) for current, former and future researchers, their beneficiaries and legal successors, as defined by and employed by the EUREPFUND participating organisations;
- to administer the assets, which it has and shall have at its disposal as a *prudent person* and in that respect to perform all actions and take all decisions to fulfil its objective with regard to the provision of employment related pension benefits;
- to accept and carry out any assignment with regard to the administration of EUREPFUND pension schemes;
- to grant to or receive assistance from other organisations of pension funds or other institutions or organizations with a similar objective; within the context of the provision of employment related pension payments and insofar as objectively justified,
- to draw up all legally required as well as other relevant documents deemed necessary by the GA;
- to collect and process all information required for the fulfilment of its objective;
- all activities which result from the administration of the pension plans entrusted to it and which are aimed at the fulfilment of its objective

Article 4 – Activities

EUREPFUND can carry out all transactions, operations and activities which are directly or indirectly connected with its objective and/or directly or indirectly contribute to the fulfilment of its objective, provided that all applicable legal, regulatory and statutory provisions are complied with.

EUREPFUND enters into a financial management agreement and commits itself to prudently administer all financial resources which it has or shall have at its disposal with a view to the fulfilment of its objective, and in particular with a view to the administration of the pension scheme(s) entrusted to it and the payment of the pension benefits in accordance with these pension scheme(s), to the participants, their beneficiaries and legal successors.

EUREPFUND may entrust one or more of its activities to a third party within the conditions and in accordance with, the relevant legal requirements.

Article 5 – Duration

EUREPFUND is set up for an indefinite period, starting its activities at the date of XWZ .

Chapter II – Members – General Assembly Meeting

Article 6 – Number of Members

The number of Members is unlimited and equal to the number of contributing organisations which entrust the EUREPFUND with the administration of their pension plans and is at least equal to one ordinary Member.

Article 7 – Terms of Membership

Each contributing organisation is an ordinary Member of the EUREPFUND.

Only contributing organisations may be a Member of the EUREPFUND and take part with a voting right to the General Assembly meeting.

Article 8 – Special events linked to ordinary membership minimum quota

In the event that the EUREPFUND has less than one ordinary Member, the Board of Directors will be summoned within four weeks from the event to investigate whether within a period of six months after the withdrawal of the last or only ordinary Member, a new ordinary Member may join the EUREPFUND.

In such a case and contrary to article 9 of these statutes, the Board of Directors is authorized to decide with a simple majority of the votes of those attending, or represented at the meeting, regarding the entry of an ordinary Member. In the case of equality of votes in the Board of Directors, the vote of the Chairman of the Board of Directors will be decisive.

During the period between the moment when the EUREPFUND has less than one ordinary Member until the moment at which the EUREPFUND again has one ordinary Member, the Board of Directors can, contrary to article 13 of the statutes, exercise the powers of the General Meeting, with the exception however of those decisions which can either be legally and without prejudice postponed, or can involve a conflict of interest for the Board of Directors.

When determined on the passing of the above-mentioned period of six months that no solution has been found and that the EUREPFUND remains without an ordinary Member, the Board of Directors shall, by the absence of Members in the General Meeting, at the latest on the last working day of this

period of six months request the liquidation of the EUREPFUND to the authorized court of law. The Board of Directors will take all urgent and suitable measures for the appointment of (a) liquidator(s).

If the Board of Directors should not call in the authorized court of law, then every Director and every interested third party is free to file a claim for liquidation to the authorized court of law.

Article 9 – Entry of new Members

Candidate Members who wish to enter as a Member of the EUREPFUND should direct their application to the General Assembly backed by all the necessary information needed to assess the request for membership.

The application is decided by the General Assembly by a simple majority of the Members.

A request for entry can only be legally decided if it is explicitly stated on the agenda, which is sent with the summons (invitation) to the meeting.

The General Assembly decides whether or not a new Member is accepted. It is not required to give a reason for its decisions unless there is a legal obligation to the contrary.

The date of entry is determined by decision of the General Assembly.

The candidate Member is informed in writing by registered letter and by fax or e-mail with notification of receipt of the decision of the General Assembly.

The entry automatically implies acceptance of the statutes, the applicable administration agreement(s), the financing plans in respect of pension scheme(s), the possible internal regulations, the statement with regard to the investment principles, as well as the other policy documents, procedures and regulations concerning the administration of the EUREPFUND.

Article 10 – Resignation

Every Member has the possibility to resign from the EUREPFUND provided that a written notification to this purpose is sent to the Board of Directors by means of a registered letter.

The Board of Directors summons a(n) (extraordinary) General Assembly to discuss, decide on and determine the terms of the resignation, on the basis of a proposal by the Board of Directors who will have had prior discussions on this matter with the resigning Member. Failing an agreement about the procedures for resignation of the Member, the General Assembly decides on a unilateral proposal by the Board of Directors, taking into account the applicable pension scheme(s) of the resigning Member, the administration agreement, other possible relevant documents and the interests of the EUREPFUND and of all its Members, participants, rightful claimants and other interested parties.

The date on which the resignation has effect, will be stated precisely in the decision from the General Assembly after consultation with the resigning Member.

Failing agreement with the resigning Member about the date on which the resignation will take effect, the date will be unilaterally determined by the General Assembly.

If this date cannot be honoured by the resigning Member, the latter will indemnify the EUREPFUND for all damage, compensation and expenses which the EUREPFUND should suffer in this connection.

Furthermore, a contributing organisation which wishes to resign as a Member from the EUREPFUND must, prior to the date on which the resignation will take effect, have satisfied all its obligations resulting from its pension scheme(s), from the financing scheme(s), adjusted as required on the advice of the

appointed actuary due to the resignation, from the administration agreement as well as from the provision of other documents and from the relevant regulations.

The General Assembly can agree with the resigning Member to additional terms and conditions and/or obligations in this regard. Failing an agreement, all obligations must be fulfilled, at the latest, upon resignation, except for those which must be fulfilled at a later date.

From the date on which the resignation takes effect, the EUREPFUND will have no further obligation in respect of the resigning Member, its pension scheme(s), the participants, beneficiaries, representatives or legal successors in these pension scheme(s), nor to any other third party which is involved with or has interest in the pension scheme(s) of the resigning Member previously administered by the EUREPFUND, unless otherwise agreed at the moment of resignation.

The resigned Member indemnifies the EUREPFUND with regard to all claims and/or damage with which the EUREPFUND could be confronted.

Resigning and resigned Members remain liable in all cases to the EUREPFUND insofar as the EUREPFUND should incur costs, obligations or possible damage with regard to or as a result of the (earlier) Membership of the resigning and resigned Members.

During the period between the written notification stated in this article and the date on which the resignation takes effect, the resigning Member has the status of extraordinary Member and as such no longer has voting rights in the General Assembly.

Article 11 – Member's Exclusion

A Member can be removed from the EUREPFUND only on the decision of the General Assembly.

The General Assembly decides on removal by a two thirds majority of the valid votes of the Members attending or represented at the meeting or, if there is only one Member in attendance or represented, unilaterally by that Member.

The exclusion will take effect on the date determined in the decision of the General Assembly.

The decision of the General Assembly to exclude a Member is notified in writing by registered letter to the excluded Member.

The General Assembly has the exclusive power to remove a Member.

From the moment a decision is made to remove a Member, until the date when the exclusion takes effect, the Member in question has the status of extraordinary Member.

A removed Member remains liable in respect of all its obligations which are still not fulfilled or discharged on the date of removal.

If the Member is removed as a contributing company from the pension scheme(s) which is (are) administered by the EUREPFUND, it is obliged to do everything necessary to completely relieve the fund of the administration of its pension scheme(s) before the date on which the removal takes effect. The removed Member is liable for all costs, which are directly, or indirectly associated with this obligation and fully indemnifies the EUREPFUND for such costs, incurred before and after the date of removal. The EUREPFUND can take any legal action necessary to oblige the removed Member to execute these obligations.

Article 12 – General Assembly – Composition

The General Assembly consists of all Members of the EUREPFUND.

Article 13 – General Assembly – Powers

The General Assembly has the widest powers to decide, carry out or ratify actions related to the EUREPFUND objectives.

The following subjects are in particular reserved to the authority of the General Assembly:

- a change of the statutes;
- the appointment, removal remuneration and termination of office of the Directors;
- the appointment, removal and remuneration of the auditor(s) ;
- the appointment of the designated actuary or actuaries;
- the entry of Members;
- the removal of Members;
- the approval of the annual accounts and the Directors' report;
- the payment to the Directors as well as the payment to the appointed auditors;
- the ratification of the financing plan and of the changes to the financing plan;
- the ratification of the statement with regard to the investment principles and of the changes to them;
- the ratification of the administration agreement(s) between the EUREPFUND and the contributing organisations and of the changes to it (them);
- the ratification of collective assignments;
- the dissolution and voluntary liquidation of the EUREPFUND.

Article 14 – General Assembly – Voting

Every ordinary Member has one vote. Extraordinary Members have no voting rights.

Article 15 – General Assembly – Summons to attend and meetings

The summons to attend (with invitation) the General Assembly is delivered by letter, fax or e-mail to each of the Members.

Except in the case of urgent or exceptional circumstances, the summons are sent at least eight calendar days prior to the day of the convened General Assembly.

Members who are in attendance or represented at the General Assembly are in any case considered to be summoned in a legally valid manner.

The summons is issued by either the Board of Directors, in which case the summons is signed by the person(s) who in compliance with these statutes can act on behalf of the Board of Directors, or in exceptional circumstances and/or when the Board of Directors should fail to summon the General Assembly, from at least one fifth of the Members, in which case the summons is signed by one fifth of the Members.

The General Assembly is summoned when determined by law as well as whenever the Board of Directors decides to do so and/or when at least one fifth of the Members request it.

The summons states the day and the time as well as the venue of the meeting.

The summons states the agenda. The items on the agenda to be dealt with are stated briefly. Additional documents can be added to the agenda in order to clarify the items on the agenda.

The agenda is determined by the Board of Directors or, depending on the circumstances, by at least one fifth of the Members.

The agenda takes into account the proposals for items on the agenda which the Board of Directors, other operational bodies or Members have formulated, either to the Chairman of the Board of Directors, or to the Members.

The General Assembly is convened at least once a year. The ordinary General Assembly will take place in principle annually before XY of the year following the year for which the annual accounts are closed and are submitted for approval.

Every Member may allow itself to be represented by another Member.

A valid written power of attorney (by letter, fax or e-mail) is required for the representation. The powers of attorney are attached as appendices to the minutes of the meeting and must be delivered at the latest at the beginning of the meeting to the General Assembly.

A Member may represent at most one other Member.

Every Member has the right to attend and participate in the General Assembly.

The General Assembly is chaired by the Chairman or, in his absence, by a person appointed by the General Meeting and in attendance at the General Meeting who then performs the role of acting Chairman.

The Chairman of the General Assembly is the Chairman of the Board of Directors, or in the event that he cannot be in attendance, another Member of the Board, appointed by the Chairman of the Board of Directors to replace him as Chairman at the following General Assembly. The Chairman has no voting rights in his capacity as Chairman of the General Assembly.

The General Assembly may appoint a secretary. As required, the secretary is appointed from amongst its Members but can also be an employee or agent of one of the contributing organisations for which the EUREPFUND administers the pension scheme(s), or a representative or agent of a third party which is entrusted with the administrative management of the EUREPFUND. If the secretary is neither a Member, nor the permanent representative of a Member, the secretary does not take part in the discussions and decisions. His task is limited to drawing up draft minutes.

Article 16 – General Assembly – Decisions

The General Assembly has legal competence and can discuss and make legally binding decisions if at least X ordinary Member (s) is (are) in attendance or represented.

If the required attendance quorum is not achieved, a new meeting is summoned at the earliest two days after the first meeting. During this second meeting the items on the agenda which were also listed on the agenda of the first meeting can also be discussed and legally binding decisions made irrespective of the number of Members in attendance or represented.

The General Meeting may discuss and make legally binding decisions about all items which were listed on the agenda, as well as about any other, new or additional items which were added to the agenda during the General Meeting, insofar as all attending and represented voting Members have unanimously agreed on this procedure.

The decisions are taken by a simple majority of the valid votes cast by the attending and represented voting Members or, when only X voting Member is in attendance or represented, by Y voting Members.

Abstentions and invalid votes are not counted.

The following matters are decided upon by the General Assembly and require a special majority of two thirds of the valid votes cast by the attending and represented voting Members:

- decision on voluntary liquidation or dissolution
- decision to remove a Member
- decisions concerning the administration agreement with the contributing organisations
- decisions concerning the statement of the investment principles
- decision with regard to the financing plan
- decision with regard to a collective assignment

In the event of a voting tie, the decision is considered to be rejected.

Article 17 – General Assembly – Notification of its decisions to the Members and to third parties

Minutes are drawn up of every General Assembly meeting. They are signed by the Chairman. The minutes of the General Meeting are delivered to the Members by letter, fax or e-mail, within X days from the date of the meeting. The Members may comment on the minutes up to, or at the latest at, the time when the item on the agenda referring to the approval of the minutes is dealt with at the next General Assembly.

The minutes are held at the head office of the EUREPFUND where they are available for the Members. This right of access to the minutes is free of charge.

The final text of the minutes of the General Assembly is placed at the disposal of the Board of Directors. Where it is necessary for the correct operation of other operational bodies, the Board of Directors delivers the minutes, or as necessary, the relevant decisions or extracts there from, to the other operational bodies.

Decisions which by law, must be registered in the Members' register, will be immediately communicated to the Board of Directors after the meeting, either by the Chairman of the General Meeting or by the person(s) who were given such mandate during the General Assembly in question.

All interested parties have the right to access the Members' register at the head office of the EUREPFUND (free of charge) or at the clerk of the court of the authorized court of law.

All decisions, which, by law, must be published, will be made known in the manner prescribed by law.

The Chairman of the General Assembly or the persons(s) who were mandated for this purpose by the General Assembly will perform the necessary task.

Third parties who can prove a legitimate interest, may gain access, on payment of a fee, to extracts of the decisions of the General Assembly at the head office of the OFP, insofar as the information is not, or will not be, in the public domain.

CHAPTER III. – Administration – Operational bodies

Article 18 – Board of Directors - Composition

The majority of the Board of Directors must consist of representatives of the contributing organisations and the scheme participants or their representatives.

The Board of Directors is equally composed and consists of an even number of Members, with a minimum of X and a maximum of Y by which an equal (or majority) number of Members are representatives of the contributing organisations and the others are representatives of the employees. The General Assembly appoints the Directors and so defines the number of Directors, respecting the requirement for parity.

Candidate Directors who represent the contributing organisations are nominated and appointed by these organisations. Candidate Directors who represent the researchers are appointed on the recommendation of the employees' representatives in the consultative bodies of the contributing organisation(s), or in their absence, on the basis of national specific practices.

If Members of the other operational bodies of the EUREPFUND are also Members of the Board of Directors, it is required that they are either, in aggregate, in the minority on the Board of Directors or, in the case of parity, that the Chairman of the Board of Directors is not a Member of any other operational body and that he has at his disposal the deciding vote in the Board of Directors.

The Board of Directors can call external experts for assistance.

Article 19 – Directors' term of office

The Members of the Board of Directors must possess the required professional integrity and suitable professional qualifications and experience. Furthermore, they may not find themselves in a situation whereby they would not legally allow them to act as a Member of an operational body of an IORP.

The period of a Director's term of office is X years. The term of office is renewable.

The Directors can be dismissed at any time by the General Assembly. The General Assembly will define the specific terms, in particular the date on which the dismissal will take effect.

The Directors can themselves resign with effect from the next General Assembly at which their possible replacement can be appointed. During the dismissal process or, in the event of resignation during the period before the next General Assembly, the resigning Director continues to exercise his terms of office.

A Director may submit his resignation by registered letter notified to the Chairman of the Board of Directors, or to the General Meeting.

The term of office of a Director is legally terminated immediately in the event of one of these circumstances:

- as soon as the Director who represents a contributing organisation leaves EUREPFUND;
- as soon as the Director who represents the employees or the participants no longer as an employment contractual relation with one of the contributing organisation
- as soon as the Director
 - faces criminal charges
 - is criminally convicted for an offence or crime
 - is declared legally incompetent
 - is declared bankrupt
 - has died

In the case that

- a Director's position becomes vacant immediately; or

- a Director is dismissed with immediate effect and for as long a decision has not been made for his possible replacement, or
- a Director is dismissed with immediate effect and a decision has not yet been made by the General Assembly on the composition of a new Board of Directors, or it has not brought the composition of the Board of Directors into line with legal requirements;

the following provisions apply:

- if there are still at least two remaining Members on the Board of Directors: the vacant Director's mandate will be temporarily taken over by one of the remaining Directors until the next General Assembly, if legally or statutorily applicable, parity will be taken into consideration (the Director who temporarily fulfils the vacant mandate must be a representative of the same group as that which the withdrawn Director represented);
- if this leads to the Board of Directors having less than X Directors: an extraordinary meeting shall be immediately summoned and until this meeting the remaining Director shall only carry out acts of daily management. Furthermore, contrary to what is stated elsewhere in these statutes, he may also be the sole legal representative of the EUREPFUND during this transitional period.

The office of Director is (a remunerated) a non remunerated position.

Article 20 – Board of Directors - Powers

The Board of Directors determines the general policy of the EUREPFUND.

The Board of Directors represents EUREPFUND in accordance with applicable legal and statutory requirements.

The Board of Directors is authorized to carry out all actions which are necessary for the fulfilment of the objective of the EUREPFUND with the exception of those which the law or the statutes have reserved for the General Meeting. Furthermore, the other operational bodies, if there are any, will carry out their operational tasks and powers under the supervision of the Board of Directors.

All operational tasks determined by law are part of the powers of the Board of Directors, unless specific tasks are allocated to another operational body, which will be determined either by these statutes, by the relevant decision(s) of the Board of Directors, or by internal regulations.

The Board of Directors ratifies the policy of the EUREPFUND with regard to outsourcing and sub-contracting, if another operational body is entrusted with such tasks. If another operational body has not been appointed, the Board of Directors may determine the policy itself.

Where circumstances described in article 8 of these statutes arise, the Board of Directors have wider powers at its disposal, subject to the limits imposed by Article 8.

Article 21 – Board of Directors - Operations

The Members of the Board of Directors will operate as a team.

The General Assembly appoints the Chairman of the Board of Directors. The Chairman chairs the meeting of the Board of Directors.

The Board of Directors designates a secretary from among its Members.

The secretary draws up the minutes of the Board of Directors' meetings. The minutes are signed by the Chairman and the Secretary. Unless decided otherwise by the Board of Directors, the secretary takes care of announcements and publications required by law

Article 22 – Board of Directors - Voting

Every Director has one vote.

Article 23 – Summons to attend and meeting

The Board of Directors is convened at least once a year and following decision and notification by the Chairman of the Board. The Chairman of the Board of Directors determines the agenda.

The invitation for the meeting is sent together with the agenda by fax, letter or e-mail to all Members of the Board of Directors.

The summons states the date, the time and the venue of the meeting.

A Director may allow himself to be represented by another Director. For this a valid written power of attorney must be delivered to the Board of Directors at the latest at the beginning of the meeting. The power of attorney may be given by letter, fax or e-mail.

A Director may represent at most one other Director.

Directors who are in attendance or represented at the meeting of the Board of Directors are considered to be legally summoned.

The Board of Directors meets, discusses and legally decides if all Members were legitimately summoned, irrespective of the number of attending or represented Members.

The Board of Directors may discuss all items on the agenda, as well as any additional items on the agenda which are added unanimously during the meeting if all directors are represented.

Article 24 – Decisions

The decisions of the Board of Directors are taken by a simple majority of votes of the attending and represented Members. Abstentions and invalid votes are not counted. In case of a voting tie, the Chairman has the deciding vote.

Article 25 – Other operational bodies – General Principles

The Board of Directors can set up other operational bodies to which, within a defined domain, the execution of the general policy of the EUREPFUND can be transferred.

The Board of Directors is due to supervise the activities of all other operational bodies.

The Board of Directors decides:

- the composition of other operational body, including the conditions which must be satisfied to be a Member, the conditions for the appointment of Members, the terms of their dismissal, termination of office, their possible remuneration as well as the period of their assignment and mandates, and
- the mandate, operational tasks, powers and responsibilities, as well as the rules or procedures which must be followed to prevent and settle any conflicts or disputes about the magnitude/scope of the allotted operational tasks and/or about common ground with other operational bodies and/or about its operation, reporting and carrying out of the allotted operational tasks, and
- the procedures of each operational body, including the method of reporting to the Board of Directors.

The Members of the operational bodies must possess the required professional integrity and suitable professional qualifications and professional experience to be able to carry out their functions.

Unless there is a specific decision by the Board of Directors, every operational body may introduce its own internal rules and regulations, which must be submitted to the Board of Directors for approval.

Each operational body aims to contribute to the fulfilment of the objective of the EUREPFUND in compliance with any applicable regulatory requirement and under the supervision of the Board of Directors.

Article 26 – Other operational bodies – Daily management

The daily management of the EUREPFUND is assigned to a Fund Administration body. This body is authorized to carry out all actions and take all decisions with regard to the daily management of the EUREPFUND, under supervision of the Board of Directors.

This body consists of one or more physical persons or corporate bodies, appointed by the Board of Directors.

The Board of Directors determines the terms with regard to the composition, mandate and operation of the body entrusted with the daily management in compliance with statutory requirements.

Chapter IV – Representation

Article 27 – General Representation I

The Board of Directors is the legal representative of the EUREPFUND.

The representative powers of the Board of Directors with regard to the management of the fund are comprehensive without, however, detracting from, or being able to detract from, the actions and decisions legally or statutorily reserved for the General Assembly, unless it concerns the execution of these decisions.

To legally represent the EUREPFUND, two Directors have the power to sign jointly, for both legal and extra-legal matters.

Article 28 – Representation concerning actions and decisions of daily management

Within the context of the daily management of operations, the appointed person or body responsible for the daily management may legitimately represent the EUREPFUND.

If this is one person, he may act alone for this purpose. If a corporate body is responsible for the daily management, the permanent representative, adequately authorized by the corporate body of which he is the permanent representative, may legitimately represent the EUREPFUND with regard to the daily management and, to the extent to which his mandate allows it, act independently.

If several persons are entrusted with the daily management, they can legitimately represent the EUREPFUND with regard to actions and decisions of daily management. They may either each act alone and separately, or with two of them, jointly, in which case, the signatures of two persons are required. The decision with regard to their appointment and mandate determines whether and, if so, in which cases, they can act alone or jointly. These decisions are made known in accordance with the relevant legal provisions. Where the daily management is conducted by a corporate body, then this provision applies with respect to their permanent representative.

On the basis of its general representative powers the Board of Directors can also represent the EUREPFUND in actions and decisions of daily management.

Article 29 – Special representative powers

The EUREPFUND may, in specific cases, also be legitimately represented by special agents to whom a special and well-defined mandate and representative powers are assigned. The mandate and powers may be assigned, by the Board of Directors, or by the person(s) or the body responsible for the daily management, if there are any and if the mandate or assignment fits within the powers of daily management.

These agents or representatives may be:

- Directors or Members of the EUREPFUND;
- employees or appointees of the contributing companies;
- employees, managers or appointees of agents or (sub-)contractors of the EUREPFUND;
- other third parties and other corporate bodies.

The decision(s), contract(s) or agreement(s) by virtue of which the mandate and/or representative powers of these special agents were recorded, determine the magnitude of their mandate and/or representative powers.

If one agent is appointed, he only act, and legally represents the EUREPFUND, within the limitations of his assignment.

If several agents are appointed for one and the same mandate, at least two of them will act jointly (or if there are only two, both jointly) and two signatures are required to legitimately represent the EUREPFUND within the limitations of their assignment.

Chapter V – Dissolution and liquidation

Article 30 – Dissolution and liquidation

The EUREPFUND may be dissolved and liquidated at any time on the decision of the General Assembly.

The liquidation or dissolution of the EUREPFUND may also arise from a legal decision in accordance with the applicable legal provisions.

Article 31 – Liquidator(s)

In the case of voluntary liquidation or dissolution of the fund, the General Assembly appoints one or more liquidators in accordance with the applicable legal provisions. The General Assembly determines the mandate of the liquidator(s) as well as his/their powers, taking account of the relevant legal and regulatory provisions and, as far as possible, with the provisions of the applicable administration agreement(s) of the fund and the pension schemes involved with the liquidation or dissolution.

The liquidator(s) is due to report regularly to the General Assembly, unless otherwise decided by the General Assembly.

In the event of a legal liquidation or dissolution the authorized court of law appoints the liquidator(s) and the court of law determines his /their mandate and powers.

Article 32 – Terms of liquidation

Where the liquidation of pension liabilities, arising from the pension plan(s) which are administered by the fund, are concerned, the liquidator(s) will initially determine if it is possible to transfer them, completely or partially, to another pension institution which is authorised to administer the pension scheme(s) in question, unless otherwise decided by the General Assembly or if the liquidation is conducted by the authorised court of law.

The liquidator(s) will request the appointed actuary of the fund to determine the rights of all participants in the pension plan(s) which are affected by the liquidation.

The liquidator(s) will discharge the liabilities, paying respect to the applicable legal provisions and possible compulsory priority provision which are applicable.

The assets of the EUREPFUND will, subject to the conditions of, and in accordance with the applicable legal provisions, be applied as far as possible to the settlement of or for the cover of the rights of the participants of the pension scheme(s) in question, in accordance with the provisions of these pension scheme, and taking into account the statutes and the applicable administration agreement(s) of the EUREPFUND.

If, when discharging the liabilities, a shortfall is determined in the assets of the fund because the available assets are insufficient to cover the underlying rights from the pension scheme, the liquidator(s) will make a decision in accordance with the decision of the General Assembly or of the judge in the case of a legal liquidation. Failing any such decision, the liquidator will decide, taking into account the

legal provisions, the provision of the statutes of the fund and its administration agreement(s) and the provisions of the pension scheme(s) in question.

If, after discharging the liabilities, a positive balance is determined and the net assets from the special funds placed into liquidation, or the net assets from the fund, exceed the liabilities resulting from the liquidated pension plan(s), the liquidator will allocate the surplus, as far as possible, in accordance with the objective of the EUREPFUND.

Chapter VI – Financial year – Annual accounts

Article 33 – Financial year

The financial year of the EUREPFUND runs from 1 January to 31 December of a calendar year. Each year on 31 December the annual accounts and the financial year are closed.

Article 34 – Annual accounts

The Board of Directors draws up the annual accounts and a Directors' report.

Following approval of the annual accounts and the Directors' report, the Directors may be discharged for the previous financial year. When the discharge is granted, the Directors will be relieved of their obligation, within the limits of law.

Chapter VII – General provisions

Article 35 – Reference to applicable legislation

For anything which is not explicitly determined in the statutes, reference is made to the relevant provisions of law.

Article 36 – Divisibility of the provisions

If one or more provisions of the statutes, for whatever reason, should be or declared to be null and void, invalid or without effect, they are, subject to the provisions of law or legal decisions to the contrary, considered as unwritten, while all other remaining provisions remain applicable and maintain their complete effect.

Appendix F : "Home" Country Analysis by Target country

1. Belgium

1.1 Brief overview of local pension environment

In the early 1980s Belgium developed a clear legal framework governing supplementary pension schemes. The legislation has been regularly updated with a view to ensure greater transparency to the system. The last review at the end 2006 aimed to position Belgium as a centre of excellence for the establishment of pan-European pension funds following the implementation of the EU directive of September 2003 (Directive 2003/41/EC). All public civil servants are entitled to a Social Security pension based upon a final pay formula and no supplementary pension tends to be provided in excess of this entitlement. Employees in the private sector are entitled to a Social Security pension and in a majority of cases to a supplementary non-state pension. Whether a supplementary pension is provided depends on the employer's discretionary decision or a decision of the sector to which the employer belongs. Non-salaried independent workers can also freely adhere to and contribute to complementary pension arrangements. Other special forms of complementary pensions are in place for corporate directors with an independent labour contract and for some categories of civil servants ("fonctionnaires statutaires"). In terms of pension scheme design, different types of benefit design are allowed, including defined benefit schemes (where all the financing risks are allocated entirely to the sponsoring employer), defined contribution schemes (where most of the financing risks are allocated entirely to the scheme's member) and hybrid schemes (where the financial risks are shared in a variety of ways between the sponsoring employer and the members). It should be noted that Belgian defined contribution schemes, by law, need to provide a minimum investment return. The liability risk, when the minimum return threshold is not insured, stays with the employer. Thus, from a strict legal viewpoint, every Belgian defined contribution scheme could be catalogued as a hybrid scheme given the part of risk retained by the employer.

The Law of 28 April 2003 on Supplementary Pensions introduced a major change in the pension environment by providing a legal framework for the creation of industry-sector pension funds. Sectors with a large number of workers, like the metal or construction sector, are funding the benefits through pension funds, others are working with insurance companies. The new law also required DC schemes to guarantee a minimum level of investment return, reviewed the definition of vested rights and set minimum rules for employee representation and communication, amongst other things. These requirements are mandatory only for Belgian-based employees.

One of the fundamental principles governing pensions in Belgium is the externalization of assets. Externalization involves the payment of contributions to a legal entity, separate from the sponsor. The sponsor in this regard may choose to entrust the implementation of its pension commitments to an insurance company or an institution for occupational pensions (IRP/"Institution de Retraite Professionnelle"). Life insurance companies, operating in the context of group insurances, cover 74% of total pension assets in the sector, the remaining 26% being covered by IRPs.

At the end of 2008³⁰, there were 250 active IRPs in Belgium. 6 providing statutory pension schemes, 241 providing complementary pensions to salaried workers (including 7 sector funds) and 3 to self-employed workers. The market is composed of 23 major IRPs (assets exceeding 125 million euros), 74 mid-sized (assets between 25 million and 125 million euros) and 153 small IRPs (assets less than 25 million euros). IRPs are investing a significant portion of their assets in mutual funds (UCITS/ Undertakings for Collective Investment in Transferable Securities). These mutual funds are investing about 47% in bonds, 36% in equities, 9% in both bonds and equities, 6% in cash and 2% in real estate.

The second pillar encompasses occupational pensions rights, whether of salaried employees, directors or self-employed workers. The legal framework of the second pillar pension system is made of two

³⁰ The latest official figures available at the time of drafting the report have been published in June 2009 by Conseil Supérieur des Finances, Comité d'Etude sur le vieillissement, Rapport Annuel

components: first, the social legislation and, secondly, the prudential supervision. Both pursue the same objective, namely the protection of the pension rights of members and beneficiaries. The social framework regulates the relations between the employer, the employees and the pension institutions. It includes rules regarding the calculation of pension rights of members and rules on disclosure of information to members. The prudential framework focuses specifically on the activity of the pension institutions and the control of these institutions by the CBFA (Commission Bancaire, Financière et des Assurances). Insurance companies and IRPs are subject to specific regulations which are based on the same principles. So, each organization must first get licensed and must meet specific rules of good governance to act as an appropriate and responsible organization.

Insurance companies usually guarantee a fixed interest rate. The guaranteed interest may be supplemented by a profit sharing interest that the insurer determines annually according to its own results. The interest rate that an insurance company can guarantee is limited to 3.75%. Insurance companies also offer the possibility to invest in mutual funds. The value of these funds changes in accordance with the value of the fund, without interest guarantee.

Belgian pension schemes normally permit retiring members to take their pension as a single lump sum at retirement age and nearly all employees do this. The practice is so common that most schemes express the benefit as a lump sum.

1.2 Description of local IORP

The Law of 27 October 2006 on the supervision of institutions for occupational retirement provision introduced a new legal form, specifically created for IRPs, designated by the term "Organisme de financement de pensions" (OFP). The IRP is a non profit organization managing complementary pensions. Any IRP is required before starting its activity, to get approval by the CBFA. The approval process must be based on a detailed file, well documented and argued. The IRP must limit its activities to the provision of benefits on retirement, death or disability. The IRP must be established as an independent organization. The IRP must have an appropriate management structure, administrative and accounting organization as well as internal control procedures relevant to its activities. It should in this regard make a distinction between administrative tasks, which must be assigned to one or more operational bodies and supervising activities, which are exercised by the Board. Operational bodies should be composed of at least two persons, who must have the necessary professional integrity and appropriate qualifications to perform their role. The CBFA has clarified these requirements in a circular letter dealing with the good governance of the IRP. The main objective is that each IRP identifies the risks associated with its activities and implement an appropriate structure to ensure proper management.

The supervision of the CBFA is related to the organization of the IRP, its activities, the benefit definition, the management of assets and liabilities and how it conforms to the principle of prudence. The supervision of the IRP is exercised at different levels: by the Board of the IRP, by the appointed actuary, by the auditor and finally by the CBFA. The IRP must ensure the implementation of an appropriate organization, including internal control procedures. The organizational structure may not impede the supervision activities of the actuary, the auditor and the CBFA. The auditor verifies the accounts and reports to the General Assembly of the IRP and to the CBFA. The appointed actuary provides advice on the financing plan, the reinsurance and the technical provisions. The CBFA exercises control on the basis of documents which are submitted by the IRP. Where appropriate, it may carry audits at the headquarters of the IRP. The control exercised by the CBFA is based on an analysis of risks incurred by each IRP and relies more on qualitative principles than on quantitative rules. The CBFA may take any measures necessary to safeguard the interests of members and beneficiaries of the pension scheme.

A recovery plan may include quantitative measures, ranging from a revised financing and investment strategy for the recovery of shortfalls to a temporary prohibition on the transfer of pension rights.

In conjunction with the above, all existing local Belgian pension funds must be OFP licensed by 2012, creating a 2nd pillar market within Belgium whose funding vehicles will all be recognized as IORPs. Insurance contracts are not recognized as IORPs.

OFPs can be set up on a multi-employer basis. However, this is normally only done to cover different employers within the same corporate group, rather than covering unrelated employers, except in case of sector funds. Self-employed workers may also be covered by the OFP if desired.

The OFP is a true working pension vehicle and currently being used as a cross border vehicle. The OFP was aimed to closely mirror the IORP Directive, enabling a flexible structure, broad scope and minimum regulatory requirements balanced with strong compliance regulation, leaving room for tailor made solutions and discretionary powers.

1.3 Scope, regulatory framework and governance

Scope

OFPs can be used to finance local and foreign benefit schemes irrespective of the location of the sponsoring undertaking as well as of the nature of the pension scheme design (defined benefit, defined contribution and hybrid schemes).

OFPs are allowed to bear survival risk - benefits can take the form of cash, annuities or a combination of both. In addition, other biometric risks such as disability and mortality can be covered within the OFP (although these can be reinsured by the OFP). Financial guarantees can also be covered within the OFP. However, the sponsoring employer nearly always retains the ultimate responsibility to finance the benefits and is therefore exposed to the biometric and investment risks. It is also possible for OFPs to bear investment and biometric risks without a sponsor covenant. However, this is currently very unusual (only one pension fund currently operates in this way) and leads to additional financing requirements.

The only key activity which must be outsourced in Belgium is the appointment of an external custodian, who can be located in any EEA country. Activities which come under the umbrella of general management such as overall decision making and investment policy cannot be outsourced and must remain the responsibility of the OFP Board.

Ring-fencing of assets is optional. This allows the sponsor the ability to choose the depth of solidarity among benefit schemes covered by the fund. This is determined in the management agreement which is an agreement between the OFP and the sponsoring company.

Governance

The OFP legal entity was designed to permit a flexible governance structure. Such flexibility, while being in line with the OECD guidelines on pension fund governance, allows the establishment of a governance system that can easily match the specific needs of the sponsoring undertaking. This simplifies the process of incorporating different benefit schemes into the OFP.

The General Assembly is the highest level governance body within the OFP. It consists at least of representatives of the founders/sponsoring undertakings who have schemes within the OFP. The role is mainly supervisory and strategic decision making (e.g. approval of annual accounts, financing plan, statement of investment principles, management agreement, review byelaws, appointment/discharge of Board members, wind-up of the OFP).

The OFP vehicle identifies two other bodies for the operation of the fund: The OFP Board (which is compulsory) and the Social Committee (which is optional). A Social Committee may be established for each individual benefit scheme/country if desired. This flexible option enables benefit schemes to have similar representation that they would have had within their host country – if desired, or if required by host country social and labour law (SLL). For example, this could mirror members on the control committee in Spain or trustees from the UK and Ireland. The Board can establish other committees to cover specialist areas (for example, investment policy). There are no specific regulations covering these sub-committees.

The decision power can be allocated between the OFP Board and the Social Committees as required by the sponsoring employer, enabling a tailor-made governance structure. The IORP Board covers all

benefit schemes and the General Assembly has full flexibility as to who the representatives are. These can include employees. If deemed necessary by host country social and labour law, or if otherwise decided by the sponsoring employer, employees can be represented in the Social Committee.

Members present on the OFP Board must meet some specific requirements. These cover areas such as having the necessary professional qualifications, enough knowledge and experience to understand/judge the general policies and be free of convictions in financial matters. The CBFA requires documentation prior to appointment. There are no specific rules relating to the members of Social Committees.

In May 2007 the CBFA issued a governance administrative notice³¹ stating the provisions which an OFP must comply with. The features included management structure, the bodies of the OFP, internal control, compliance, business continuity, internal audit, outsourcing, auditor, appointed actuary, internal information and external reporting. These provisions operate on a "comply or explain" principle which permits OFPs to opt out of certain requirements if there is a justified reason for this (for example, the size of the membership or the complexity of the benefit schemes). In practice, cross-border OFPs would be expected to follow the governance principles unless there is a clear justifiable reason not to do so.

OFPs are generally founded by employer(s) whose benefit scheme(s) are to be covered by the OFP – or by related companies (for example, a corporate HQ company which will not then have employees covered by the OFP).

Other

The OFP applies the so called "prudent person" principle which means that there are no additional quantitative investment requirements apart from those stated in the IORP Directive. The OFP may appoint investment managers for the management of the portfolio. If the assets are to be invested outside of the EEA then extra documentation is required.

The IRP is also required to work out a declaration on the principles of their investment policy. This statement outlines the principles applied by the IRP to assess and manage risks and described the strategic asset allocation. These principles must be consistent with the financing plan and reflect the characteristics of the pension scheme. The basic principle is that of prudent person. Investments should be made carefully, with professional expertise, prudence and diligence. In addition, investments of an IRP must be consistent with the financing plan and in line with the statement of investment principles. The purely quantitative rules refer only to investments in the sponsoring company (maximum 5% of the portfolio and, if the company is part of a group, maximum 10% in the group). IRPs assess their assets at market value.

All formal documentation submitted to the authorities must be submitted in French, Dutch or German. Any day to day and informal communication with authorities can be also in English.

³¹ Circular CPP-2007-2-LIRP/WIBP on the governance of IORPs

1.4 IORP financing requirements

Technical provisions

The IRP must conduct a prudent and consistent financing policy. It must therefore establish a financing plan which needs be realistic and prudent, in accordance with an appropriate investment policy, to ensure financial stability in both short and long term. The actuarial method as well as the actuarial assumptions must be justified. Technical provisions must be equal to the vested pension rights of members, often supplemented by an additional financial buffer, taking into account the risks characterized by the pension scheme. Some IRPs must, in addition to the technical provisions, establish a solvency margin if death-in-service and disability benefits are not fully insured.

The legal requirements set out qualitative but not quantitative requirements for technical provisions. Therefore the OFP has the flexibility to set its own financial assumptions and calculation method subject to justification and approval by the CBFA. The OFP must set a basis which is deemed sufficient by the actuary to cover the accrued benefits of all active and deferred members as well as pensions in payment, using a prudent method. All of the above must be clearly stated in the financing plan. The financing plan also covers the contribution policy, costs, expenses and the required/optional security mechanisms. The terms and conditions of the contribution policy are not subject to specific requirements.

The technical provisions for defined contributions schemes are equal to the accrued provisions which should meet the pension rights as stated in the scheme rules.

Belgium has a relatively low technical provision requirement. This occurs mainly as OFPs are not compelled to calculate their technical provisions using market interest rates and they are not required to include allowance for future salary increases. The discount rate used can be based on expected return on assets, to be defined in line with the investment strategy. However, it is required that the technical provisions make allowance for future mortality improvements and they normally contain a "buffer" (typically between 0% and 30% of the technical provisions) above the value of the liabilities to protect against adverse events such as financial crisis.

If the OFP faces the situation where it is not fully funded then a recovery plan must be submitted to the CBFA. This plan sets out the additional contributions that the sponsors are obliged to pay. There is no legal restriction on the length of the recovery plan – but in practice the CBFA requires a period of no more than five years. If requirements are not met, the CBFA can request to reduce benefits, or ultimately, withdraw the IORP license.

Regulatory own funds

The OFP is allowed to bear financial and biometric risk. In compliance with the EU Directive, it must then hold additional reserves above the technical provision. This is not required in respect of benefits on death and disability if those benefits are re-insured with a licensed company.

Security mechanisms

If defined benefit schemes are involved then financial stress scenarios must be undertaken, together with "what if" scenarios detailed in the financing plan, to determine the level of financing buffers required.

It is possible to pay additional contributions to create solvency buffers to provide additional security for members. It is also possible to create a "stabilisation fund" at the corporate level, rather than allocating the surplus assets to any specific benefit scheme or country.

If necessary, shortfalls of assets may be financed on a temporary basis through subordinated loans issued by the employer.

In DB schemes, it is possible to refund surplus assets from the OFP to the employers – depending on the rules set out in the Social and Labour Law of the host countries (this is not permitted for Belgian benefit schemes).

Belgium has no national guarantee fund. There is no minimum founding capital required to set up an OFP (except in the unusual circumstances where the OFP has no employer covenant).

1.5 Cross-border considerations

The Belgian authorities define the activity of the fund as "cross-border" when it runs a pension scheme which is governed by the social and labour law of another EEA state. The locations of the scheme sponsor or of the individual members of the scheme are less important in this context.

Belgian social and labour law contains rules about the minimum vesting pension rights for Belgian benefit schemes, as well as the approach to be used when members of Belgian schemes request to transfer their vested rights out of their current scheme. These requirements do not apply to members of overseas benefit schemes. Similarly, in the strict sense Belgian age-discrimination legislation only applies to Belgian benefit schemes. However, it should be noted that such legislation reflect the implementation of EU legislation on non-discriminatory practices at work that is broadly applicable through-out the EU member states.

1.6 Overview of home-country tax issues

Taxation of IORP	The OFP is subject to corporate tax – although it is not defined as an ordinary corporation. It is taxed in line with open-ended investment funds of UCITS-type. It is theoretically possible that an OFP would be required to pay tax in certain unusual circumstances such as disallowed expenses or non-disclosed trade commissions.
Taxation of investment roll-up	The OFP is not liable for capital gains tax. Any dividend income or interest income will not be subject to Belgian tax. Where tax is usually withheld at source on overseas investment income, double tax treaties can make it possible for such income to be paid without withholding tax. Belgium has extensive double tax treaty networks including one with the USA which specifically avoids US taxes on dividends payable to Belgian pension funds.
Taxation of benefit payments (cross-border) from home country	No Belgian taxes are withheld on benefit payments that are made to individuals resident outside Belgium.
Taxation of transfer values paid to other IORPs	There are no Belgian taxes due when transferring from a Belgian scheme to foreign arrangements which are formal, qualified, schemes in their own country.
Taxation of transfer values received from other IORPs	There are no tax implications on transfers between Belgian pension funds (including OFPs). Transfers in from overseas pension schemes are generally accepted free of Belgian taxes.
VAT charges on pension services	OFPs have had the same VAT exemption applied as that associated to UCITS. No Belgian VAT is chargeable on services provided to OFPs.

1.7 Relative strengths/weaknesses

Scope

OFPs provide sponsors with great flexibility about the type of benefit plans and the form of benefit payment. Multi-employer OFPs are possible – although these normally only cover employers within the same corporate group or industry sector. Assets and liabilities can be ring-fenced if desired.

It is normal for the sponsoring employer to retain ultimate responsibility for payment of the benefits – rather than being able to fully pass these to the OFP (although the OFP can re-insure the risks).

Governance

OFPs have a flexible governance structure, permitting (but not requiring) member representation on the Board which can facilitate any local member representation required under particular social and labour law. Reporting and compliance is not especially burdensome.

Financing

The minimum funding requirements are lower than those applied in some other countries. This has the merit of providing flexibility for the employers, but provides a lower level of benefit security than members would receive in some other countries. The lack of any national guarantee fund also reduces the cost of operating an IORP in Belgium – but increases the ultimate responsibility of the sponsoring undertaking, particularly where Defined benefit schemes are provided.

Other

Investment policy is also flexible, following the "prudent person" principle.

2. Germany

2.1 Brief overview of local pension environment

The 2nd pillar group occupational pension market in Germany is (still) of minor importance compared to the 1st pillar state system (circa 85% of pension payouts, including public sector pensions) and 3rd pillar individual provisions (circa 10% percent of benefit payouts)³². Nevertheless, in terms of the number of people covered, the German 2nd pillar pension market is one of the most sizeable markets in Europe and is showing a steady growth rate.

The German 2nd pillar pension market is characterized by its wide range of 2nd pillar pension "vehicles" ("Durchführungswege"). Five different "vehicles" are available and are being actively used, of which only Pensionsfonds and Pensionskasse, are categorized as IORPs. The vehicles are (together with the total assets under management (AUM) in 2007³³) :

- Direktzusage (book reserves) - no statistics available - liabilities of € 239 billion
- Unterstützungskasse - € 36 billion
- Direktversicherung - € 48 billion
- Pensionskasse (IORP vehicle) - € 102 billion
- Pensionsfonds (IORP vehicle) - € 14 billion

Among these five alternatives, the book reserves (still) are the most popular vehicle. Pensionsfonds are the least widespread, but this reflects the fact that they were only established in 2002.

Book reserves are, legally, unfunded. However, there is an ongoing shift to finance them via Contractual Trust Arrangements (CTAs). These are in most cases funding vehicles that are not covered by German pensions legislation but which can, nonetheless, be treated as a pension fund asset for international accounting purposes.

In international comparison, the German pension market is with respect to external funding characterized by the relative dominant position of insurance vehicles. This results in, for instance, a market where pension vehicles are allowed to be founded by any party (and not only by employers) e.g. numerous Pensionskassen are owned by insurers. Moreover, the pension regulation is biased towards the insurance regulation i.e. very much rules-based (for instance discount rate setting, mandatory solvency buffers) and regulated by the financial market authorities (not by a separate pension regulator and supervisor).

Defined contribution schemes may be implemented in any of the five vehicles. Where the members are subject to German labour law a defined contribution scheme must have a guarantee linked to it, amounting to at least the sum of all nominal contributions – this would not apply to foreign schemes in an IORP setting. There are limited statistics on the distribution between defined benefit and defined contribution promises, but the German Institute of Pension Actuaries (IVS) estimated it to be 70:30. However, it should be noted that, in a strictly legal sense, there are no defined contribution promises at all in Germany since the employer always carries the final liability with all five pension vehicles.

³² "Alterssicherungsbericht 2008", published by the German federal ministry of labour and social affairs ("Bundesministerium für Arbeit und Soziales") in November 2008

³³ "J. Schwind: Die Deckungsmittel der betrieblichen Altersversorgung 2007", published in 2009 in "Betriebliche Altersversorgung", issue 4

2.2 Description of local IORP

In Germany there exist two different IORP vehicles. These are the Pensionskasse and Pensionsfonds. The Pensionskasse has been in existence for more than 100 years, whilst the Pensionsfonds was introduced only in 2002 as an attempt to create something similar to pension funds in other countries.

Both vehicles are regulated by the insurance supervisory law (VAG). The Bafin (Bundesanstalt für Finanzdienstleistungsaufsicht) acts as the supervisor for both vehicles.

Some German IORPs are "open", multi-employer funds. Schemes from various employers and industries are allowed to join the same IORP, which are mostly owned by an insurance company. Next to the open, multi-employer, IORPs, there exist "closed", single employer IORPs. German IORPs are therefore able to cover a wide range of different schemes and employers. No restrictions with regard to affiliated scheme sponsors or industries do exist by law. It is possible for self-employed workers who are working for one of the employers (for example, as consultants) to join either IORP, if desired – although this is very unusual. Workers with no relation to any sponsor employer usually cannot be admitted.

The major distinction between the Pensionskasse and the Pensionsfonds is flexibility. The Pensionsfonds is more flexible, due to there being fewer investment restrictions, less strict supervisory reporting and more flexible financial requirements (longer recovery periods, stress testing requirements not pre-set, etc.). This greater flexibility of the Pensionsfonds is possible, since they are by law not allowed to guarantee contributions and benefits for all insured events. Instead additional employer contributions may be required or benefits may not be fixed in advance. If alternatively the Pensionsfonds grants insurance-like guarantees regulation is closer to the Pensionskasse or any other life insurance company.

2.3 Scope, regulatory framework and governance

Scope

Both the Pensionskasse and Pensionsfonds have a broad scope and are allowed to manage all types of schemes: defined benefit, defined contribution and hybrid. Risk bearing is allowed within both vehicles, enabling the German IORPs to provide cover for death, disability risk as part of a pension solution and to provide annuities in the pay-out phase with longevity risk being born by the IORP. However, Pensionsfonds are only allowed to pay 30% of the benefit as a lump sum when the employee retires – the remaining benefit must either be paid as a lifelong annuity or through a payout plan with subsequent annuitisation of the remaining capital at age 85 at the latest. They must therefore bear some longevity risk (which is done by one of the following approaches: issuing a promise containing insurance-like guarantees from the very start, annuitisation of the individual account at retirement date using conservative insurance-like assumptions or retaining the right to request additional employer contributions during the payout-phase).

The sponsoring employer must retain ultimate responsibility for the liabilities of German benefit schemes – but there is no German requirement for an employer covenant for overseas benefit schemes. In practice, the financing requirements of the Pensionskasse and Pensionsfonds are intended to securely cover the accrued benefits. However, it is possible to create a Pensionsfonds with a stronger employer covenant - where the sponsoring employer has agreed to provide a more regular support for any deficit – including for benefits that are in payment – in return for a lower security level in regular funding contributions.

Ring-fencing is normally required by the supervisor for the various schemes being managed within the IORP as far as the schemes differ in their major defining features (such as contribution or benefit structure, interest, inherent biometric assumptions). This ring-fencing of liabilities does not necessarily require a physical separation of assets.

Apart from ordinary re-insurance the Pensionskasse is forbidden to outsource risks to an insurance company and the vehicle itself must take responsibility for these risks.

However, outsourcing requirements are generally flexible. The general management of the Pensionskasse must remain within the Pensionskasse. Nevertheless, administrative tasks (including investment management) may be outsourced.

It is compulsory that the IORP's head office is located in Germany. The head office is deemed to be the location where the decision taking and business leading takes place, although it is not necessarily where the administrative tasks are dealt with. In practice this would mean that the Board should regularly meet at some place within Germany

Governance

With regards to governance, both German IORP vehicles are characterized by flexible governance.

The nature of founders of a German IORP is not limited, it can be founded not only by the employers, but also by groups of employees and trade unions provided a sufficient initial fund ("Garantiefonds") is at hand (typically € 3 million – see section 4.4 for more detail), an actuarial plan (covering, for example, financing issues) and business plans (covering, for example, projected revenue and costs) are supplied and the management bodies named. This has led to an open, transparent and competitive German market for institutions managing occupational group pension schemes consisting of company and insurance owned Pensionskassen and Pensionsfonds.

Flexibility in governance also stems from the legal forms that the IORPs could opt for. The legal form could be: a joint stock company including the European Company (SE), with either a profit or non-profit focus, or have a mutual / cooperative nature

Normal ongoing business is run by the management board. The German IORPs have a flexible Board composition, with no need to have a representation of employers and employees at all, though this is allowed. The Supervisory Board has a controlling and advising function, but its agreement is only required with special decisions of major economic relevance for the IORP. It is required to have some mandatory representation from employees of the IORP, if the IORP itself has more than 500 employees (this requirement does not relate to scheme member representation). Otherwise the members of the Supervisory Board are elected by the general assembly (that is composed of the shareholders of a joint stock company or the scheme members of a mutual fund or representatives' committee or may be nominated by the scheme sponsor.

However, with regard to governance and from an international perspective, the German IORPs do not foresee social committees at scheme level, which would limit flexibility and opportunity to accommodate various stakeholders via a tailor-made governance structure.

Other

Germany applies very strict investment restrictions. Many quantitative investment restrictions apply, rather than applying the "prudent person" principle. The investment restrictions for a Pensionskasse are even stricter than for a Pensionsfonds.

Investment restrictions refer to the asset categories allowed, asset allocation and asset concentration. Permitted asset categories are receivables, government and corporate bonds, loans, subordinated loans, asset backed securities, credit linked notes, shares, and real estate (with specific additional requirements for each class), but the supervisor may also allow investment in other assets.

Pensionskassen must also comply with quantitative restrictions on the asset allocation: for example, asset backed securities and credit linked notes must not exceed 7.5% of the total assets, investments in hedge funds are limited to 5%, investments in subordinated loans, profit participation rights, shares, hedge funds and direct shareholdings are altogether capped at 35%, real estate limited to 25%. The rules for Pensionsfonds are less strict - the only requirement is that no more than 10% of the total assets may be in other assets not contained in the main list of asset classes.

Regarding concentration, for a Pensionskasse all investments in a single debtor must basically not exceed 5% of the total assets, except for government bodies or banks that belong to some deposit protection system where 30% are allowed. Subordinated loans, profit participation rights, shares and direct shareholdings are not allowed to exceed 10% of a single company's equity, investments in a single property is only allowed up to 10% of the total assets. The rules for Pensionsfonds are similar (but with some differences).

Reporting requirements are also very strict. German IORPs have to report in very much detail, on an extensive list of topics and very frequently. This comprises detailed formal annual reports on the IORP's accounts, assets and liabilities (including an actuarial analysis of surpluses or deficits) as well as shorter quarterly reports on benefit payouts, contributions, (administrative) costs, gains and losses on assets. Stress-testing is also required on an annually basis.

The German supervisor has extensive scrutiny powers to avoid any funding or management problems and rigorously applies the regulations. By law, it may for example require thorough information, perform audits, force minimum accruals to surplus funds, remove members from the Board, close the IORP or withdraw its permission for the IORPs business, though most of this is not commonly used.

In day-to-day contacts the English language may be used. However, all formal documents to regulators have to be submitted in German.

2.4 IORP financing requirements

The financing requirements for both German vehicles are well-developed in view of the traditional DB background of the local pension market. From an international comparative perspective, the technical provisions are relatively high, own regulatory capital has to be maintained as most IORPs are risk-bearing and there are a number of security mechanisms including: topping up solvency buffers, sponsor covenant and a national guarantee fund. As a result, pension schemes managed by German IORPs are very well secured, but also more "expensive" if compared to other EU IORP vehicles.

Technical provisions

German discount rates are set by law and based on the discount rates being used by the insurance industry (currently 2.25% for newly introduced schemes). As a result, German discount rates are usually lower (i.e. more conservative) than discount rates applied by other EU member states, leading to relatively sizeable technical provisions for DB schemes. The only exception arises for Pensionsfonds where additional employer contributions can be raised during the payout-phase. In this case interest rates have to be set based on a prudent estimate of the expected rate of return on actual assets.

The use of the latest mortality table and future trend must be taken into consideration. However, technical provisions do not take into account inflation indexation of benefits before or after retirement and do not include future salary increases and this can offset the impact of using a low discount rate.

The technical provision for defined contribution schemes is determined exactly the same way since German regulations for Pensionskasse and Pensionsfonds do not distinguish between DB and DC schemes. In practice the technical provision is normally set equal to the accrued benefit (including the impact of any investment guarantee).

With regard to underfunding and recovery plans, the German regulations are very strict. A German cross-border Pensionskasse has to be fully funded at all times, no recovery period is granted. In this respect, the Pensionsfonds is a bit more flexible than the Pensionskasse.

Here a temporary underfunding up to 5% is tolerated with a recovery period of 3 years. If the Pensionsfonds is set up to allow for additional employer contributions during the payout-phase, instead of issuing insurance-like guarantees, the temporary deficit may amount up to 10% with a recovery period of 10 years.

Contributions required are calculated based on the actuarial plan with only little flexibility. There are no legal requirements on this except that German tax law limits tax-efficient contribution levels for German employees.

It is normal practice in Germany that a surplus in a scheme will not be returned to the employer, but only used for a reduction of the contributions or distributed to the employees by increasing the benefits. However, this is only accepted Germany practice and there are no legal restrictions preventing full surplus distribution to the employer, regardless if this refers to a purely German or a cross-border scheme. The surplus distribution mechanisms have to be laid down in the IORP's statutes.

Regulatory own funds

Both vehicles have to maintain a reserve fund (Verlustrücklage) on their balance sheet in case of unforeseen developments. Its size is not prescribed by law, but normally ranges between 4-5 % of the technical provisions, since this is the legally required amount of the solvency buffer and the reserve fund is in most cases used to completely cover that. The required solvency buffer is considerably smaller when the Pensionsfonds is set up to allow for additional employer contributions during the payout-phase.

The Garantiefonds of a Pensionskasse or a Pensionsfonds amounts to 1/3 of the legally required solvency buffer, but has to be at least € 3 million (or € 2.25 million if the legal form is a mutual). If the contributions to a Pensionskasse of the mutual nature do not exceed € 5 million per year during a 3 year period then there is no minimal amount of the Garantiefonds at all. The Garantiefonds forms a special part of the overall required solvency buffer which has to be covered by a more restricted range of capital resources than are allowed for the solvency buffer in total. Like the solvency buffer as a whole, the Garantiefonds is not an explicit reserve but may be covered by the normal reserve fund of the vehicle.

Security mechanisms

Both German IORPs have to meet strict security mechanism requirements i.e. the German system applies solvency buffers, sponsor covenant and a national guarantee fund.

Germany has a national guarantee fund (German insolvency protection institution, "PSV") in place. The system also applies for DC schemes. The German PSV system is characterized by the use of the scheme sponsor as the starting point. In Germany the scheme sponsor has to pay the levy and is covered under the system. As such, only employers with German schemes have to pay a levy into PSV; foreign schemes and foreign scheme sponsors, using a German IORP vehicle are not covered by the system.

The German PSV system covers four out of five "Durchführungswege". The Pensionsfonds is covered by this. The Pensionsfonds does not provide a guaranteed pension in every case and the scheme sponsor bears the risk to a large extent. Therefore employers using the Pensionsfonds vehicle have to be backed up by PSV. Note: if the employer uses the Pensionsfonds vehicle only 20% of the levy has to be paid compared to employers using the book reserve route for an identical scheme.

The Pensionskasse is not covered by the PSV. The Pensionskasse offers a guaranteed pension promise i.e. the Pensionskasse bears the risk. As such, there is no need for the employer (i.e. scheme sponsor) to be backed up by PSV. No PSV levy payments are required. However, Pensionskassen can opt to join the German insurance protection scheme called "Protector".

Formal sponsor covenants are in place for both German IORP vehicles only on behalf of the German labour law, but they are not related to the regulatory environment.

The exception is when a Pensionsfonds is set up to allow for additional employer contributions during the payout-phase – in that case all benefits are covered by employer covenant.

Finally, the funding requirements framework for German IORPs takes account of subordinated loans. German IORPs are allowed to make use of subordinated loans to temporarily fulfil solvency needs.

2.5 Cross-border considerations

In most matters, Germany focuses primarily on the scheme sponsor (the employer) and less on the IORP itself. Therefore in determining whether a cross-border situation applies, the supervisor concentrates on the location of the scheme sponsor (and not on the origin of the scheme and location of the scheme member). A German IORP is considered to be a cross-border IORP if the IORP receives contributions from a scheme sponsor based outside Germany, regardless of the location of the scheme members. This means that a German IORP that manages a German pension scheme which is being regulated by German social and labour law, but for which the contributions happen to be paid out of a foreign entity, would be treated as a cross-border IORP.

Although German discrimination rules (age, sex etc.) do not strictly apply to overseas benefit schemes, in practice we would expect German IORPs to apply the rules to all schemes. Most of the requirements are not onerous but it is worth noting that:

- same-sex partnerships must also be incorporated into normal spouses' benefits in case of death
- contribution levels cannot be dependent only on age

2.6 Overview of home-country tax issues

Taxation of IORP	No corporate taxes are levied on the Pensionskasse of the mutual kind itself if it meets certain requirements of a "social" institution and is not overfunded. Otherwise it is treated like a Pensionsfonds which is, in principle, charged with corporate taxes and trade tax, but may be set up to effectively generate no taxable income.
Taxation of investment roll-up	Pensionskasse and Pensionsfonds are explicitly exempt from German withholding tax on investment returns. No specific investment taxes are applied – investment income falls within taxable income (see "Taxation of IORP"). Where tax is usually withheld at source on overseas investment income, double tax treaties can make it possible for such income to be paid without withholding tax.
Taxation of benefit payments (cross-border) from home country	No German taxes are charged on benefit payments that are made to individuals resident outside Germany
Taxation of transfer values paid to other IORPs	There are generally no tax implications on transfers between Pensionskassen and Pensionsfonds in Germany in case of a job change. No German tax would be charged where a transfer value is paid to an overseas IORP, provided that the overseas IORP is considered to be equivalent to a German IORP.
Taxation of transfer values received from other IORPs	There are generally no tax implications on transfers between Pensionskassen and Pensionsfonds in Germany in case of a job change. No German tax would be expected on a transfer value received from an overseas IORP.
VAT charges on pension services	VAT is charged for most pension services: administration, investment management, legal, audit, actuarial, consultancy, communication. The current VAT rate is 19%. The IORP itself does not have to charge VAT on administrative services offered to other institutions for retirement provisions.

2.7 Relative strengths/weaknesses

Scope

Both German IORPs can be used to provide any type of retirement plan. Pensionskassen can pay benefits in any form; however, Pensionsfonds may only pay a maximum of 30% of the benefit as a lump sum and this will limit their attractiveness for some sponsors. Multi-employer IORPs are permitted, in which case assets and liabilities must be ring-fenced – this might not always be desirable.

It is possible for the sponsoring employer to retain ultimate responsibility for payment of the benefits – rather than being able to fully pass these to the IORP (although this is a requirement for German members' benefits).

Governance

Both German IORPs have a flexible governance structure, permitting (but not requiring) member representation on the Board, although they are not structured to have separate social committees at a scheme level.

Reporting and compliance are relatively burdensome.

Financing

The minimum funding requirements are high (although they can be weakened for Pensionsfonds where the sponsor retains the responsibility to finance any shortfalls for benefits once in payment) and there are material minimum capital requirements. In addition, benefits can be backed by a national guarantee fund (mandatory for the Pensionsfonds, optional for Pensionskassen). Taken together, this results in a high level of security for plan members, but at additional cost to the sponsors.

Other

Germany applies very strict investment restrictions. Many quantitative investment restrictions apply, rather than applying the “prudent person” principle. The investment restrictions for Pensionskassen are even stricter than for a Pensionsfonds.

3. Ireland

3.1 Brief overview of local pension environment

The 1st pillar Social Welfare pension is payable (to those who have paid or been credited with sufficient contributions) from age 65 to those who are not working at that age, and from age 66 regardless of employment status. The current level of the pension payable to a single person is € 11,976 p.a. and there are additional amounts for adult dependants.

The Irish 2nd pillar market is well-developed and sizeable, -with independent pension trusts playing a key role. At 31 December 2008, the number of pension schemes registered with the Pensions Board (the regulatory authority) was as follows:³⁴

	Number of schemes	Number of members
Defined benefit / hybrid	1,271	579,922
– <i>subject to funding standard</i>	1,108	257,303
– <i>not subject to funding standard</i>	93	322,619
Defined contribution	90,424	272,197

The vast majority of schemes have relatively few members – only 38 of the defined benefit schemes subject to the funding standard have more than 1,000 members. The total assets of Irish pension schemes at end 2008 are estimated by the Irish Association of Pension Funds to be € 66.7 billion.³⁵

In addition to the schemes detailed above, there is a very small number of "Trust RACs" (Retirement Annuity Contracts). A Trust RAC is a group of individual personal pensions that is set up under trust. The existing Trust RACs have been set up by professional associations (for example the Law Society of Ireland) to provide pensions for their self-employed members. A Trust RAC could be used as a vehicle for cross border pension provision.

In addition to trust-based pension schemes, Personal Retirement Savings Accounts may be used to make 2nd pillar provision on a defined contribution basis. At end 2008, there were 155,632 individual PRSAs with assets under management of approximately € 1.2 billion.³⁶

The pension market experience and knowledge is broad, with extensive local expertise such as pension consultants and actuaries, pension administrators, lawyers, accountants and fund managers.

In the local Irish market (not the cross-border market) there has been a trend to close or terminate defined benefit schemes and replace them with defined contribution or hybrid arrangements. A recent IAPF survey showed that the number of defined benefit schemes closed to new entrants was likely to increase to 70% over the next 2 years. The vast majority of defined benefit schemes do not currently meet the statutory funding standard and must agree a recovery plan with the Pensions Board.

The Pensions Board has extended the deadline for submission of proposals and is prepared to consider extended recovery periods and to authorise reduction in accrued benefits in cases where this is the only solution to the funding shortfall.

³⁴ Pensions Board Annual Report and Accounts 2008 (<http://www.pensionsboard.ie/index.asp?locID=69&docID=-1>)

³⁵ IAPF press release 31 March 2009 (<http://www.iapf.ie/NewsPress/IAPFPRESSReleases/2009/default.aspx?iid=167>)

³⁶ Pensions Board Annual Report and Accounts 2008

3.2 Description of local IORP

On 23 September 2005, Ireland implemented the IORP Directive under the Social Welfare and Pensions Act, 2005 and underlying Regulations. The main Irish IORP vehicle is called "The Pension Trust" and is regulated and supervised by the Irish Pension Board. Complimentary tax regulations were written in the Finance law in the same year. Trust RACs are also classed as IORPs and are, in most material situations, subject to the same regulations as DC Pension Trusts. However, they are very rare and are not covered in further detail in this report.

Trust law requires that a trust be established by an employer, and it is usual for only one employer (perhaps along with other subsidiary or associated companies) to participate in each scheme. There are a small number of multi-employer "open" IORPs covering certain sectors (e.g. the construction industry) although these schemes have proved problematical in the current funding environment, as the Pensions Act requires the resources of a scheme to be available for all members on wind-up, rather than ring-fenced for the employees of a particular employer.

Self-employed workers normally finance their retirement benefits through PRSAs and RACs - Pension Trusts are not traditionally used. The legislation recognises trust-based RACs as IORPS under the Directive and it may be possible to structure a Pension Trust to be able to cover the self-employed, although we are not aware of any cases or potential cases.

It is important to note the difference between asset pooling and pension pooling vehicles. Whereas the Pension Trust is an IORP vehicle, regulated by the IORP Directive, a CCF ("Common Contractual Fund") is an asset pooling vehicle without a bundling of pension liabilities and regulated by amongst others, the UCITS Directive.

3.3 Scope, regulatory framework and governance

Scope

The Pension Trust is allowed to manage defined benefit, defined contribution and hybrid schemes. Until recently, it was market practice that a Trust mainly covered defined benefits, but due to the shift towards defined contribution this is gradually changing.

An Irish IORP will usually include benefits payable on death (lump sum or dependants' pensions) and will provide pensions in retirement payable for life i.e. will be subject to longevity risk. They may also provide disability pensions. As the IORP itself does not guarantee the benefits, but relies on the sponsoring employer to make contributions to fund for them, Irish IORPS do not directly cover biometric risks and are not subject to Article 17 of the Directive i.e. no regulatory own funds have to be established. In practice most IORPs do reinsure the risk benefits with an insurance company, but it is quite common for the pensions to be paid monthly from the scheme assets rather than purchasing an annuity at the point of retirement. Any financial guarantees, e.g. minimum investment returns in a defined contribution scheme, would normally be provided for by insurance.

Ring-fencing of different schemes within a Pension Trust is permitted for funding purposes (see below) but not in the event of the Pension Trust winding up (at which point all assets must be available to all members).

There exist some restrictions regarding outsourcing. The valuation of liabilities and assets must be undertaken by an actuary with a Scheme Actuary Certificate, and custodian services must be outsourced.

It is also usual to appoint external investment managers. Outsourcing of all other activities is optional. Outsourcing can only be to supervised entities. Certain pension administration services (preparation of annual report and accounts, issue of member benefit statements) must be undertaken by a Registered Administrator (since 2008) which can be an in-house pensions department.

In Ireland there is a clear distinction between 2nd and 3rd pillar pensions. The Pension Trust is allowed to only cover 2nd pillar group pensions.

Governance

The Pension Trust has strict governance requirements, stipulated by law. Two parties are involved; the company and the Trustees. The Trustees are responsible for the Pension Trust. Trustees have strong decision making powers and in addition influential powers including numerous discretionary powers. Some of the responsibilities of the Trustees are investment policy, contribution amounts for both employer and employee and discretionary powers such as authorising early retirement.

Many powers are frequently delegated by the Trustees to a sub-committee of the Trustees. Within a cross-border IORP it is possible to set up sub-committees that take responsibility for various aspects of each separate scheme (for example, to meet host country Social and Labour Law requirements or, simply, to exercise discretionary powers in respect of that scheme).

Except for smaller schemes, active and pensioner members are entitled to nominate 50% of the trustees (although they may agree to an alternative proposal put forward by the company e.g. independent professional trustee). Subject to the agreement of the members, it would be possible to have separate nomination procedures for each benefit scheme or country (in order to comply with local SLL). This means that it is a requirement to have member nominated trustees for non-Irish sections of an Irish cross-border IORP.

There are a few inconsistencies in Irish legislation. For example, the Irish Revenue requires a majority of trustees to be resident in Ireland. We expect these will be resolved in favour of facilitating cross-border IORPs.

In practice the overall decisions are made by the company in negotiation/discussions with the Trustees, who may take advice from different actuaries and lawyers. There is no need for a members/shareholders annual meeting or body and no need for a Supervisory Board, as is applicable for several other IORP vehicles in other member states.

The legal form of a Trust is set by law: a Trust with a contractual agreement. By nature the Trust is a mutual / cooperative and has a non-profit focus.

Other

Ireland implemented the "prudent person" formula with regards to investment management. This establishes a principle-based harmonized framework with an absolute minimum of quantitative investment requirements. There are some (limited) qualitative restrictions with regard to concentration and diversification. IORPs are permitted to hold investments in the sponsoring companies, but these must be disregarded when assessing the minimum funding position (see below).

Reporting requirements are not numerous and many are required only upon request from the Pensions Board.

Ireland has strict language requirement and all formal documents must be submitted in English. Working language tends to be English as well, with only minor available knowledge to handle documents in other main European languages.

3.4 IORP financing requirements

The Irish IORP funding requirements are fairly rigid for IORPs that fail to meet the minimum funding requirements. However, for IORPs that exceed that minimum level, subsequent funding requirements are more flexible.

The minimum funding requirements are strong for current pensioners but weaker for non-pensioners.

Technical provisions

The minimum technical provision is based upon the wind-up basis which is stated under the Pensions Act. The calculation is split between actives/deferred pensioners and pensioners. The pensioners' liability is the cost to purchase market annuities for the current pensioners, normally based on the rates of the insurers. The basis for the actives and deferred liability is the standard transfer value determined on a basis recommended by the Society of Actuaries in Ireland (actuarial standard of practice ASP PEN 2) and approved by the Government.

The most recent change to the funding rules took effect from 1 September 2009 and provides for a discount rate pre-retirement of 7.75% and post retirement 4.50%. The mortality rates are to be the most up-to-date published taking into account future trends. Allowance is made for indexation if this is provided under the Rules - on the basis of a long term rate of inflation of 2%.

It is also mandatory to include a reserve for expenses of winding-up.

The statutory minimum funding standard test must be undertaken each year. However, where the IORP is well funded this can be carried out on an approximate basis in 2 out of every 3 years.

In addition to the minimum funding standard test, the actuary carries out a valuation every 3 years (or more frequently if desired) on the basis of an ongoing scheme to determine the rates of contribution payable by the employer to enable the schemes to pay benefits in future. The method and assumptions for this valuation are not prescribed but are determined by the actuary in discussion with the Trustees and employer if appropriate, and the report is prepared in accordance with actuarial standard of practice ASP PEN 1.

Regulatory own funds

The Pension Trust does not need regulatory own funds as it does not bear any risks itself. All risks are, ultimately, borne by the sponsoring employers.

Security mechanisms

Security in Ireland is primarily provided for by the sponsor covenant. The Pension Trust is very closely related to the employer and this scheme sponsor underwrites the pension promise.

There is no requirement to have any form of a solvency buffer and stress tests are not common.

If a scheme is 100% funded on the technical reserve then the sponsor must pay the contributions determined in the actuarial valuation. If the scheme is under-funded then a recovery plan ("funding proposal") is established which states the additional contributions required by the sponsor over a specified period of years. This is prepared in accordance with the requirements of the Pensions Board and with actuarial standard of practice ASP PEN 4.

Contingent assets may be used for the purpose of a funding proposal. Subordinated loans by the employer cannot be used to meet the minimum funding standard test as they count as self-invested assets (which must be disregarded).

No national guarantee fund exists.

3.5 Cross-border considerations

An Irish IORP is considered to conduct cross-border activities if it has members employed by a European employer who:

- Are working in another member state;
- Are subject to the social and labour laws of that country, and
- Are not seconded employees.

The Pensions Act provides that those parts of the Act which form Irish SLL for the purpose of Irish members of non-Irish IORPS do not apply in respect of non-Irish members of an IORP. The include vesting, preservation, revaluation and transferability conditions (Part III of the Act) and disclosure requirements (Part V).

Irish age-discrimination legislation does apply to all benefit schemes included in a Pension Trust. However, this legislation is unlikely to prove onerous for EEA-based employees.

3.6 Overview of home-country tax issues

Taxation of IORP	No corporate taxes are levied on the IORP
Taxation of investment roll-up	No income taxes, capital gains tax or deposit income retention tax are payable. Where tax is usually withheld at source on overseas investment income, double tax treaties can make it possible for such income to be paid without withholding tax.
Taxation of benefit payments (cross-border) from home country	No Irish taxes are charged on benefit payments that are made to individuals who were resident outside Ireland during the last 10 years of their service. In addition, no Irish tax is charged where more than 50% of the total service has been outside Ireland <u>and</u> at least 10 of the last 20 years have been spent outside Ireland. Even if neither of these two situations apply, it can be possible to obtain an exemption from any Irish tax.
Taxation of transfer values paid to other IORPs	There are no tax implications on transfers between Irish schemes. Transfer to a non-Irish pension arrangement is a "benefit crystallisation event" for the purpose of the application of the limits on tax relieved pension funds introduced in 2006 and the individual in respect of whom the transfer is made will be liable for tax on the excess of the transfer payment over the Standard Fund Threshold (currently € 5,418,085). In practice, this will only apply if the individual is subject to Irish tax.
Taxation of transfer values received from other IORPs	There are no Irish tax implications on transfers received from non-Irish schemes.
VAT charges on pension services	VAT is charged for most pension services: administration, investment management, legal, audit, actuarial, consultancy, communication. The current VAT rate is 21%.

3.7 Relative strengths/weaknesses

Scope

Pension Trusts provide sponsors with great flexibility about the type of benefit plans and the form of benefit payment. Some of the features of the existing IORP vehicle are not well suited to cross-border arrangements. For example, assets cannot be totally ring-fenced (for the purposes of wind-up) and open "multi-employer" trusts are not common practice.

The sponsoring employer must retain ultimate responsibility for payment of the benefits – rather than being able to fully pass these to the Pension Trust (although the Pension Trust can re-insure the risks).

Governance

Pension Trusts are subject to strict governance rules. Members are entitled to nominate 50% of the trustees (although they may agree to an alternative proposal put forward by the company). This can be done such that local sub-committees responsible for each benefit plan can contain representatives from their own membership. Reporting and compliance are not especially burdensome.

Financing

The minimum funding requirements are lower than those applied in some other countries (except in the case where there are a high proportion of pensioners). This has the merit of providing flexibility for the employers, but provides a lower level of benefit security than members would receive in some other countries. The lack of any national guarantee fund also reduces the cost of operating an IORP in Ireland – but increases the ultimate responsibility of the sponsoring undertaking, particularly where Defined benefit schemes are provided.

Other

Investment policy is also flexible, following the "prudent person" principle.

4. Luxembourg

4.1 Brief overview of local pension environment

There are three types of occupational pension instruments available in Luxembourg, namely pension funds, group insurance and book reserve schemes. Pension funds can be established mainly under the form of SEPCAV ("Société d'épargne-pension à capital variable") or ASSEP ("Association d'épargne-pension"), which both resemble investment vehicles. Both are recognized as IORPs and supervised by the CSSF ("Commission de Surveillance du Secteur Financier") that is the body that also supervises banks, asset managers, securities markets and investment funds. The Luxembourg IORPs leverage the country's strong position and healthy reputation in the asset management industry, and its regulatory framework is influenced by the asset management industry practices (e.g. mandatory outsourcing to custodians).

The Luxembourg 2nd pillar pension market is also underpinned by the availability of insurance based products. Traditionally, Luxembourg has been used as an international hub by insurance companies offering cross-border insurance products under the 3rd Life Directive. As such, Luxembourg has introduced a third IORP vehicle which is regulated by the insurance supervisor CAA ("Commissariat aux Assurances"). The nature of the CAA pension fund regulatory regime mirrors the insurance framework (e.g. low and fixed discount rates, strict ring-fencing requirements). Several financial institutions, namely insurers and banks, have been leveraging their Luxembourg based local operation and take advantage of the availability of the new CAA IORP vehicle.

A single employer or a group of employers can establish on a voluntary basis an occupational pension scheme for their employees. Civil servants are covered by separate public-sector pension schemes, while the self-employed may also set up their own occupation pension scheme.

The domestic pensions market in Luxembourg is small - reflecting the relative size of the country economy. Most pension schemes were traditionally defined benefit schemes financed through book reserves, although there has been a trend towards financing via insurance contracts. The number of pension funds in Luxembourg is therefore very limited. At December 2007 there were 13 occupational pension funds, of which four were SEPCAVs, nine were ASSEPs and one used the CAA vehicle). At the same date there were 8,354 participants in SEPCAVs and ASSEPs with total assets worth € 242.1 million. Approximately half of privately managed schemes are DB and other half of DC type. DB type schemes cover a larger majority of members. All pension schemes operated by SEPCAVs are of defined contribution type.

4.2 Description of local IORP

Luxembourg offers three different IORP vehicles: SEPCAV, ASSEP and CAA vehicle.

As early as 1999, the Luxembourg Parliament introduced a law regulating international pension vehicles in anticipation of the IORP Directive introducing two vehicles: the SEPCAV and the ASSEP, under the supervision of the CSSF.

The CAA ("Commissariat aux Assurances") vehicle was first introduced in 2000 and was made IORP compatible in 2006. The CAA vehicle is very close to an insurance company model and is supervised by the insurance supervisor, but is not an insurance company as such (i.e. Luxembourg did not apply Art 4 of the IORP Directive). The CAA vehicle is regulated by the IORP Directive and not by the 3rd Life Directive.

Broadly speaking, the two CSSF IORP vehicles offer flexibility and room for tailor-made solutions while the CAA vehicles is more strictly regulated but takes advantage from the unique situation of being "an insurance company" regulated by the IORP Directive.

4.3 Scope, regulatory framework and governance

Scope

SEPCAV

The SEPCAV is an IORP vehicle with a limited scope regarding type of benefit provisions. However, as a result of these restrictions, the SEPCAV benefits from a simplified, easy to use and flexible, governance and funding structure. The vehicle comes most close to an investment fund, a mutual fund.

The SEPCAV permits only defined contribution schemes. Moreover, no biometric risk bearing is permitted. As such, the vehicle is forbidden to offer death or disability pension or life long annuities. Lump sum payments and temporary annuities (without longevity risk) are the only form of payment permitted. If the pension scheme wants to offer these kinds of benefits then a special arrangement with an insurance company who bears the biometric risks must be established.

In addition, financial guarantees cannot be provided directly through the SEPCAV. The sponsoring company will have to cover any minimum guarantees on DC schemes (which are required in a number of countries).

As a result of the non-risk bearing nature of the SEPCAV, other characteristics of the SEPCAV have been left very flexible by the regulators. For instance, the SEPCAV can cover both group 2nd and individual 3rd pillar occupational schemes.

ASSEP

In contrast to the SEPCAV, the ASSEP vehicle is an IORP with a very broad scope and an extensive, well-developed though flexible funding and governance structure. Defined contribution, defined benefit and hybrid schemes can be managed by an ASSEP.

Biometric risk-bearing by the ASSEP itself is permitted. The ASSEP can cover supplemental benefits in case of death and disability and mortality risks. Due to this feature, the benefits can take the form of annuities and/or cash lump sum. The vehicle also allows financial guarantees. Outsourcing of any of the biometric risk is currently common practice, but is not mandatory by law. The sponsoring employer is able to provide a guarantee to back any shortfalls in the ASSEP – but this is not mandatory.

SEPCAV & ASSEP

In addition to the above described differences in scope, the SEPCAV and ASSEP have the following characteristics in common:

There are key activities which must be outsourced: these are custodianship and actuarial/accounting approval. Activities that cannot be outsourced include: the general management of the vehicle, the investment policy, ALM studies, collection of contributions, transfer of rights and payment of benefits. Outsourced activities must be carried out by supervised entities. Outsourcing of permitted activities is up to now common practice, but not mandatory.

In Luxembourg, the custodianship activity is part of the risk mitigation and plays a key role in ensuring compliance and supervision of activities. The custodian is responsible for the supervision of investment policy and administration of assets. It plays also a role in assessing the payment of contributions verifying that they are paid in a timely manner.

This means that the custodian must establish a transparent communication link with the central administration. The custodian must be located in the EU (N.B. not EEA) and the CSSF must authorize approval

Both single employer (“closed”) and multi-employer (“open”) IORPs are possible, although multi-employer funds normally cover schemes relating to the same corporate group. Ring-fencing is optional.

If a multi-employer option is chosen then there exist additional rules with regards to ring-fencing. In this latter case there are specific requirements in accordance with civil law on the methodology. The methodology is to arrange the funds through umbrella funds and compartments known as "multi-compartments" or "sub-funds". This allows the sponsor the ability to choose the depth of solidarity between each scheme.

It is not mandatory for a scheme or for the sponsoring undertaking to be based in Luxembourg in order to found and run a Luxembourg SEPCAV or ASSEP. Moreover, there is no need for Luxembourg-based scheme sponsor to be contributing to the ASSEP or SEPCAV. Finally, both vehicles allow schemes from beyond the EEA region to join in.

The participation of self-employed workers that is not currently permitted, may be allowed as a result of an on-going regulatory review.

CAA vehicle

The CAA vehicle has a completely different nature than the two above mentioned vehicles. This vehicle originates in the insurance industry and the regulatory regime contains several insurance industry elements, e.g. funding requirements, Board structure, legal form, etc. In summary, the vehicle has a broad scope and is tightly regulated.

The CAA vehicle can accommodate defined contribution, defined benefit and hybrid schemes. It can bear all types of biometric risks relating to pensions, such as death, disability and longevity. The benefits can be paid as lump sums payments, annuities or a combination of both. Financial guarantees can also be held within this vehicle. The sponsoring employer must provide a guarantee to back any shortfalls in the CAA, and the strength of this employer covenant is kept under review by the Commissariat.

The CAA vehicle is a full-fledged financial institution similar to an insurance company. Outsourcing for this vehicle is more strictly regulated, e.g. risk bearing is forbidden to be outsourced.

Ring-fencing is mandatory and set by law, as the CAA vehicle is mainly used as a multi-employer vehicle.

Like the CSSF vehicles, the CAA IORP vehicle allows schemes from outside the EEA and a Luxembourg-based sponsor or scheme does not need to be present for the CAA to be authorized.

Governance

SEPCAV

The SEPCAV governance structure is framed around the very nature of this IORP as being a kind of investment fund. The beneficiaries are the owners of the SEPCAV (whereas in an ASSEP the beneficiaries are creditors). The SEPCAV is its own legal personality. It is a cooperative company which has limited liability. Due to the nature of the vehicle, the value of the benefits must equal the number of shares multiplied by the value of the shares. This means for beneficiaries who pay (or for whom the sponsor pays) contributions into the vehicle are credited with a certain number of shares (according to the net asset per value per share). These shares must be registered up until retirement or transfer. Members of the Board are generally representatives of the sponsoring companies. There is no employee representation requirement.

ASSEP

In view of the broad scope of the ASSEP a full-fledged governance structure is needed. The ASSEP allows the set up of country-specific committees. The IORP Board steers the overall IORP vehicle and is the decision making body, The governance requirements of the IORP Board are flexible, leaving ample room for stakeholders to develop the most appropriate and tailor-made IORP governance

structure. There is one caveat; local presence of the IORP Board is mandatory. This means that the central administration must be located in Luxembourg.

Formally, the main body of an ASSEP is the General Assembly of associated members. The associated members can be a combination of representatives from the employer, beneficiaries, staff and the sponsor of the fund. There is no minimum level of employee representation.

The legal form of an ASSEP is set by law. It is an associative structure and is a mutual, non-profit making organization.

SEPCAV & ASSEP

As well as the above described differences in governance structure, the SEPCAV and ASSEP have the following characteristics in common.

The founders/owners of SEPCAVs and ASSEPs can be anybody. The ownership is not restricted to employers, employees/trade unions. As such, financial services companies tend to create and own SEPCAV and ASSEP subsidiaries in order to better serve the 2nd pillar occupational cross-border pension market in Europe.

Due to the large degree of freedom in the governance structure of both the SEPCAV and ASSEP, the compliance and supervisory activities are subject to rigorous scrutiny. There are distinct compliance requirements for several of the key features. The CSSF emphasizes the importance of the quality of the board members. All Board members are required to go through a rigorous screening and authorization procedure which is overseen by the CSSF. Moreover, a high level of reporting is notably evident. The IORPs established must comply with frequent reporting into the supervisor. An external auditor has to approve the accounts.

CAA vehicle

The CAA vehicle has the option of four different legal entity formats, all with a mutual / cooperative and non-profit nature. The governance structure of the CAA funding vehicle is in accordance with the format of the chosen legal entity.

Other

Luxembourg has adopted the "prudent person" principle for the CSSF vehicles which means that there are no additional quantitative investment requirements apart from those stated in the IORP Directive. The CSSF reviews the investment portfolio as a whole to ensure it is reasonable in relation to quality, liquidity, profitability and security based on diversification and the maturity of the pension liabilities. However, the CAA vehicle is regulated in a different way: several quantitative investment restrictions apply which cover no more than 10% in real estate, 15/25% in investment funds, restricted to 20% in bank deposits.

Both the SEPCAV and the ASSEP have minimum size requirements. The SEPCAV has a minimum capital requirement of € 1 million capital within the first two years of authorization. For the ASSEP, the technical provisions should always be greater than € 5 million within ten years of being founded. For the CAA vehicle no minimum size requirements apply.

Formal documentation can be submitted in English, French or German. Any day to day and informal communication with authorities can be in a broader range of languages.

4.4 IORP financing requirements

SEPCAV

As the SEPCAV covers only defined contribution schemes and bears no biometric and financial risks, the financing requirement is that the value of the benefits must always equal the value of the number of shares multiplied by the price of the shares. There is no need to calculate technical provisions and

neither regulatory own capital nor solvency buffers have to be maintained. The SEPCAV is not covered by a national guarantee fund.

ASSEP

The funding requirements of the ASSEP vehicle are not strictly defined, but very much set in close cooperation between the IORP and the supervisor CSSF.

Technical provisions

The legal requirements set out qualitative but not quantitative requirements for technical provision.

The assumptions used to value the benefits are set by the actuaries with the CSSF approval. The ASSEP is not required to take into consideration future salary and price increases. The minimum funding requirements use a discount rate that can either be fixed or variable, however it should reflect the expected return on assets.

Regulatory own funds

If the vehicle bears biometric or financial risk, and if this is not covered by a guarantee from the sponsoring employer, the regulatory own fund requirement directly stemming from the IORP Directive is applicable. The calculation method is also set by the Directive.

Security mechanisms

The security mechanisms are not fixed by legislation and combinations of various security mechanisms are allowed. A sponsor can elect to have (an unlimited) sponsor covenant in which case additional solvency buffers are not required. If however there is no or limited sponsor covenant then a solvency buffer may need to be established. The solvency buffer requirements are not defined in law and are flexible but must be agreed to by the CSSF. There are no strict requirements regarding stress testing

Temporary under-funding is allowed, however a recovery plan must be implemented immediately and agreed with the CSSF. Regulations do not prohibit subordinated loans, but need to be agreed with the CSSF.

The ASSEP is not covered by a national guarantee fund.

CAA vehicle

Technical provisions

Technical provisions of the CAA funding vehicle can be defined like an ASSEP.

Regulatory own funds

CAA vehicles are exempt from the solvency margin rules of the insurance law, but they always require a sponsor guarantee and the Commissariat reserves the right to assess this guarantee as part of the authorization process and on an ongoing basis.

Security mechanisms

Under the insurance laws, it is mandatory for the sponsor to have unlimited liability for any shortfall in the CAA vehicle. This is the key feature for funding requirements under the CAA law and rather different from other IORP vehicles and insurance vehicles, putting the CAA pension fund somewhat at a disadvantage.

No minimum capital has been defined for the CAA fund, but the law refers to adequate provisions and an adequate diversification of investments – which are partly a question of size, and determined on a case-by-case basis.

The Commissariat may accept subordinated bonds, but their repayment would be subject to explicit prior approval by the Commissariat.

4.5 Cross-border considerations

The "Cross-border activity" definition used by Luxembourg is based on the standard methodology i.e. the IORP is acting cross-border if it runs a pension scheme which is governed by the social and labour law of another EEA state. There is no need to consider the location of the scheme sponsor or of the individual members.

Age discrimination or other home country issues do not affect overseas benefit schemes financed in Luxembourg.

4.6 Overview of home-country tax issues

Taxation of IORP	CAA funding vehicle is subject to corporate tax. SEPCAVs/ASSEPs are taxed in line with open-ended investment funds of UCITS-type. In practice no tax is normally payable.
Taxation of investment roll-up	IORPs are not liable for capital gains tax. Where tax is usually withheld at source on overseas investment income, double tax treaties can make it possible for such income to be paid without withholding tax. Luxembourg has extensive double tax treaty networks.
Taxation of benefit payments (cross-border) from home country	No Luxembourg taxes are withheld on benefit payments that are made to individuals resident outside Luxembourg
Taxation of transfer values paid to other IORPs	There are no Luxembourg tax issues when transferring from a Luxembourg scheme to foreign arrangements which are formal, qualified, schemes in their own country.
Taxation of transfer values received from other IORPs	There are no tax implications on transfers between Luxembourg pension funds. Transfers in from overseas pension schemes are generally accepted free of Luxembourg taxes.
VAT charges on pension services	No Luxembourg VAT is chargeable on management services provided to IORPs

4.7 Relative strengths/weaknesses

Scope

SEPCAVs are only able to cover DC schemes and to pay benefits as a cash lump sum (which can be used to purchase an annuity). Benefits on death or disability must be provided outside the SEPCAV as must any financial guarantees. They can be set up on a multi-employer basis.

ASSEPs are able to cover a wide range of benefit types and can pay benefits in any form. They can be set up on a multi-employer basis – in which case it is possible to ring-fence assets and liabilities (if desired). It is possible for the sponsoring employer to retain ultimate responsibility for payment of the benefits

CAAs are also able to cover a wide range of benefit types and can pay benefits in any form. They can be set up on a multi-employer basis – in which case assets and liabilities must be ring-fenced. The sponsoring employers must retain ultimate responsibility for payment of the benefits.

Governance

All three IORPs have a flexible governance structure, permitting (but not requiring) member representation on the Board.

Reporting and compliance are relatively burdensome for CAAs.

Financing

The minimum funding requirements are relatively low (especially for the ASSEP). The IORPs are not covered by a national guarantee fund. These issues have the merit of providing flexibility for the employers, but provide a lower level of benefit security than members would receive in some other countries.

ASSEPs and SEPCAVs both have minimum capital requirements, which could prove burdensome – especially when the funds are first set up.

Other

The CAA is subject to strict investment restrictions. Many quantitative investment restrictions apply, rather than applying the “prudent person” principle. The investment restrictions for SEPCAVs and ASSEPs are, however, much more flexible, based on the “prudent person” principle.

5. The Netherlands

5.1 Brief overview of local pension environment

Dutch Social Security provides a 1st pillar mandatory, collective retirement pension for individuals after the age of 65. The amount of net retirement pension is fifty percent of the net minimum wage per person (gross € 8,750 per annum) for couples and seventy percent for singles (gross € 12,700). This provision is not salary-related but it does depend on the years an individual has lived in the Netherlands and did not work in other countries.

The Dutch 2nd pillar occupational pension market has a long tradition, is well-developed and sizeable. The regulatory environment is rules-based, extensive and over the years has evolved with many detailed rulings. The market is dominated by pension funds; a kind of “closed” IORP, with a cooperative /mutual legal form and non-profit strategy. The pension funds are owned and governed by the “social partners”: the employers and employees and their respective representative bodies.

Insurance companies are also active in the 2nd pillar pension market, but primarily as service providers, providing investment management, administration, insurance and reporting services to pension funds. Insurers also provide 2nd pillar group pension products themselves; a growing market segment.

Only the pension fund vehicle has been categorized as an IORP. The Netherlands has not opted for the application of Article 4 of the Directive so the insurers providing 2nd pillar pension products are not considered IORPs and are not regulated by the IORP Directive. Pension funds can only be founded and owned by employers/employee and their respective bodies (and not by financial institutions or private persons).

Around 5.7 million private sector employees are covered by pension funds. There are around 650 pension funds, with total assets at 31 December 2008 of € 736 billion. Around 70% of the schemes (covering 90% of the members) managed by pension funds are DB schemes.³⁷

The Netherlands has a long tradition of industry-wide pension funds. Approximately 85% of pension fund members are covered by these funds.³⁸

In the local market two main trends are visible. First, the strict pension fund governance rules have led to a large number of liquidations of pension funds as employers prefer to use fully-bundled insurance contracts in order to minimize governance time and compliance liabilities. Second, the recent financial crisis and resulting pension accounting and cash-flow needs is pushing employers towards a change from DB to hybrid (DB/DC) or DC pension schemes. Many of these hybrid schemes provide benefits based on average pay with indexation conditional on the funding level of the IORP.

5.2 Description of local IORP

Currently, the Netherlands offers one IORP vehicle: the pension fund (“Stichting pensioenfondsen”). The pension fund vehicle has a longstanding tradition. The pension fund vehicle is set up under the Pension Law (“PensioenWet - PW” and related secondary legislation) and is regulated by the Ministry of Social Affairs. De Nederlandsche Bank (DNB) acts as the supervisor, alongside the AFM (market conduct) and NMA (competition) supervisor.

The existing pension fund vehicle is not well suited to being a cross-border IORP as it is a very strictly regulated vehicle with a local scope, inflexible funding requirements and strict governance. As a fundamental change of the pension fund vehicle is not feasible from a local perspective, the introduction of a completely new, separate IORP vehicle is currently subject to parliamentary drafting and may

³⁷ De Nederlandsche Bank

³⁸ De Nederlandsche Bank

become available in early 2010, under the name of PPI ("Premiepensioeninstelling"). The PPI vehicle is a completely new vehicle, regulated by the Ministry of Finance and the Law on the Financial markets (not Pension Law). The PPI is a special purpose vehicle that aims to mirror more closely the IORP Directive.

It is only possible for self-employed workers to join a pension fund under specific strict conditions. In practice, they provide their retirement income through an insurance contract. However, PPIs will permit self-employed workers to join.

5.3 Scope and governance

Scope

Pension Fund

Three different types of pension funds exist: the company pension fund, the industry-wide pension fund and occupational pension fund. In practice, in a cross-border context only the company pension fund is likely to be of interest – although the other forms might, in theory, be possible.

The scope of the pension fund is restricted in order to clearly separate the pension fund market from the insurance market. Employee membership is compulsory for a large part of the market and the tax position of pension funds is advantageous compared to other financial institutions. In order to maintain a level playing field in the local market, the scope of the pension fund vehicle has been limited.

Pension funds are only allowed to serve a single employer (and its group subsidiaries) or a single industry. All Dutch pension funds have a "closed fund" profile. They are not allowed to freely serve broader groups. Moreover, within Dutch pension funds, all participating schemes, scheme sponsors and members have to subsidize each other. Ring-fencing is strictly forbidden by law. Finally, the scope of the pension fund is limited to 2nd pillar pension offerings. A Dutch pension fund is not allowed to offer 3rd pillar pension products.

On the other hand, Dutch pension funds are allowed to manage all kind of pension schemes i.e. DB, DC and hybrids. Pension funds are allowed to bear biometric risks and to provide financial guarantees themselves. This is common practice, but not set by law. Dutch pension funds act as insurers themselves, providing various risk covers and life long annuities. The employer effectively asks a pension fund to administer a given set of benefits, and the pension fund asks for the required contributions. An employer covenant is not required by law, i.e. the employer is not required to "guarantee" the benefits in the event of a shortfall in assets, but could do so voluntary (which often happens).

There are no restrictions on outsourcing, except for the end responsibility which should always remain with the IORP Board. It is common practice to outsource most activities related to the functioning of the fund, but exceptions still exist.

PPI

In early 2010 a new, second, IORP vehicle is expected to become available: the PPI. The following analysis is based on the current draft of the law under examination at the level of the national parliament. The PPI is a special purpose vehicle, specially introduced to serve the new needs of the cross-border IORP market.

The PPI has a limited scope. The PPI is not allowed to bear biometric or investment risks or pay out lifelong annuities.

Moreover, the PPI is also not allowed to manage Dutch DB schemes, the most common pension provision in the local Dutch market (and as such will leave this part of the Dutch market to the pension funds). It will, however, be permitted to manage overseas DB schemes. The restricted scope follows

from the strategy of the Dutch policymakers to not disturb the local pension market structure and level playing field.

As such, the PPI will need to find an insurance company that will bear the risks. The PPI can arrange the insurance contracts but they will need to be in the name of the employer and not the PPI (to avoid counter-party risk). This is a cumbersome system and the PPI is therefore mainly suited to run DC schemes – for which, the PPI is very flexible.

The strict scope leads to a flexible and simple financing and governance structure, if compared to the Dutch pension fund vehicle and IORP vehicles in other countries. Moreover, the PPI can accommodate all kind of clients and can either be a closed or an open fund. Benefit schemes from outside the EEA region can be accommodated but where investment guarantees are provided these will need to be outsourced or covered by employer covenant.

Ring-fencing is optional.

There are no restrictions on outsourcing, except that the Board of the PPI must not be outsourced.

Governance

Pension Fund

From a governance perspective, the Dutch pension funds are very tightly regulated (on the one hand by national law, on the other hand via binding guidance issued by the pension trade bodies).

A pension fund can only be founded and owned by employers. It is not allowed for other parties e.g. financial services companies to create a Dutch IORP. The legal form of a pension fund is formally flexible, but 99% of the pension funds are mutuals ("Stichting").

The Board structure of an IORP is complicated and involves several statutory bodies. Leading is the IORP Board, which has to at least evenly represent employees ("paritair samengesteld"). In addition, a supervisory body of independent experts has to be in place, together with a "members' council" and a multi-disciplinary internal body to which the Board is accountable.

It is not possible to set up Boards, with different national employee members, for different benefit schemes within the Pension Fund. However, the Board could delegate its decision making responsibilities in respect of certain country-specific decisions to sub-groups of the Board representing those countries.

PPI

The PPI governance structure is very flexible and simple since it is a non risk bearing entity. The Board composition is not restricted. There is no need to have employee or trade union representatives on the Board.

The legal form can also be freely chosen with range of alternatives, varying from a mutual / cooperative structure to a joint stock company.

The founders and owners of a PPI can be anybody i.e. an employers, a representative organization, a financial institution, etc.

Other

The Netherlands applies the "prudent person principle" to the investment strategy of IORPs. IORPs do not have to apply any quantitative investment restrictions other than those set out in the IORP Directive (but have to maintain risk-based solvency buffers to counterbalance excess risk taking – see later).

From a language point of view, the Netherlands is well-positioned, being able to handle various documents in various languages. English is the main working language in international projects. The language requirements are not strict. Formal documentation can be submitted in English instead of Dutch.

The PPI vehicle has a minimum initial capital requirement of € 125,000.

5.4 IORP financing requirements

Pension fund

The funding requirements of the pension vehicle are very rigid and rules-based compared to other EEA member states. The rules are stipulated in the FTK rules ("Financieel Toetsingskader") and the Dutch Pensions Act. The Netherlands uses a financing system that is based on actual market values and risk-based techniques. It is using the same basic principles as applied in the Basel2 and Solvency2 framework for respectively the banking and the insurance sector.

Technical provisions

The valuation of the liabilities is based on realistic value principles. The realistic value of the pension liabilities should be based on current mortality rates and foreseeable trend in life expectancy should be taken into account. Only the accrued pension rights are taken into account. Future salary increases and price indexation is not taken into account in the technical provisions. In order to calculate the present value DNB publishes every month a nominal interest rate term structure (based on government bond yields). The pension liabilities are valued by discounting the expected cash flows using this mandatory term structure.

Where benefit indexation is unconditional, additional technical provisions should be made. This is not required for conditional indexation. Indexation is only conditional if a declaration of conditionality (so-called disclaimer) has been included in the pension agreement, the administration agreement, the pension scheme regulations and all other information supplied by the employer and the pension fund.

Regulatory own funds

If the pension fund bears biometric and financial risks, the regulatory own fund requirement directly stemming from the IORP Directive is applicable. The calculation method is also set by the Directive. Most Dutch pension funds do bear risks (though not mandatory) and they then have to apply the 3-5% buffer. (A pure DC fund that bears no risks does not need a buffer.) When the pension fund assets are insufficient to meet the required buffer, the pension fund has to bring the reserve at the minimum level within a period of three years.

This requirement is unaffected by the strength of backing promised by the sponsoring employer.

Security mechanisms

The Dutch security mechanism system is well-developed and very much rules-based. The system requires substantial solvency buffers to be maintained on the balance sheet of the IORP. As such, there is no need for a mandatory sponsor covenant, or for a national guarantee system. Subordinated loans are allowed to temporarily finance the solvency buffers.

A pension fund's capital requirement should be such that - with a chance of at least 97.5% - after one year it still has enough means to meet its obligations. The solvency buffers have to be calculated according a stress test with pre-set parameters.

For a standard pension fund, this condition (with an investment of 50% in shares and (indirect) property) results in a solvency buffer of approximately 25% of the technical provisions, which brings the average funding rate of Dutch pension funds at circa 130% (own regulatory capital + solvency buffer). Pension funds have to bring their reserves in line with the requirements within no more than 15 years.

No national guarantee fund exists.

Minimum pension premium

The contribution paid by the employer to finance the pension obligations and their accrual should in principle be defined at a self-funding level. The self-funding premium should include at least the following elements:

- • premium required in connection with pension obligations,
- • loading required in connection with capital requirement (solvency buffer),
- • loading for administration costs,
- • possible loading for financing conditional indexation.

Premium discount and refunding surplus assets

Under strict conditions it is allowed to give a discount on the minimum pension premium or to refund surplus assets. The Dutch Pensions Act stipulates that premium discounts and refunding surplus assets is only allowed if pension funds have met the minimum requirements for funding and solvency ratios and they can guarantee that in the future conditional indexations will be granted. Furthermore to refund it is necessary that all reductions in the pension rights and in the conditional indexations in the previous ten years are compensated.

PPI

As the PPI is not allowed to bear biometric and financial risks, there is no need for a funding requirements regime.

5.5 Cross-border considerations

The Dutch definition of "Cross-border activity" is based on the standard methodology i.e. the IORP is acting cross-border if it runs a pension scheme which is governed by the social and labour law of another EEA state. The locations of the scheme sponsor and of the individual members are not the determining factors.

Dutch age-discrimination legislation applies only to members of a Dutch benefit scheme. It does not apply to members of overseas benefit schemes financed through a Dutch IORP.

5.6 Overview of home-country tax issues

The Dutch tax regime is the same for pension funds and PPI

Taxation of IORP	No corporate taxes are levied on the IORP.
Taxation of investment income	IORPs are not subject to Dutch capital gains tax. Dividend income is not subject to Dutch tax. Extensive number of bilateral tax treaties in place.
Taxation of benefit payments (cross border) from home country	No Dutch taxes are charged on benefit payments that are made to individuals resident outside the Netherlands.
Taxation of transfer values paid to other IORPs	There are no Dutch tax implications on transfers between Dutch pension funds (and PPIs). Transfers to overseas pension schemes are also not subject to tax but need to be approved by the Dutch tax authorities.
Taxation of transfer values received from other IORPs	There are no Dutch tax implications on transfers between Dutch pension funds (and PPIs). Transfers from overseas pension schemes are also not subject to Dutch tax.
VAT charges on pension services	No Dutch VAT needs to be charged for any services supplied to a Dutch IORP.

5.7 Relative strengths/weaknesses

The legislation creating the new PPI vehicle has not yet been passed and the precise details of the vehicle are, therefore, not yet finalised.

Scope

Pension Funds are able to cover a wide range of benefit types and can pay benefits in any form. However, they may not be set up on a multi-employer basis (except where the employers are part of the same group or where the Fund covers a single industry). Where more than one employer is covered, ring-fencing is forbidden. It is possible for the sponsoring employer to retain ultimate responsibility for payment of the benefits - but this is very unusual and risks are normally borne within the Pension Fund.

PPIs will also be able to cover a wide range of benefits (with the exception that they may not provide DB benefits for Dutch schemes). However, they can only pay benefits as a cash lump sum (which can be used to purchase an annuity). Benefits on death or disability must be provided outside the PPI as must any financial guarantees. They can be set up on a multi-employer basis, in which case ring-fencing is permitted.

Governance

PPIs have a more flexible governance structure than Pension Funds. PPIs are allowed (but not required) to have member representation on the Board. However, at least 50% of the Board of Pension Funds must be employee representatives - this can be done such that local sub-committees responsible for each benefit plan can contain representatives from their own membership.

Pension Funds are subject to heavy reporting and compliance requirements; for PPIs these are not especially burdensome.

Financing

The minimum funding requirements are very strict for Pension Funds. (PPIs are not permitted to bear any risk and therefore have no funding rules.) There is no national guarantee fund in place in the Netherlands.

PPIs have a minimum capital requirement, but this is relatively low.

Other

The investment restrictions for both IORPs are flexible, based on the “prudent person” principle.

6. United Kingdom

6.1 Brief overview of local pension environment

In recent years the landscape of pensions within the UK market has changed and continues to do so. Historically, defined benefit schemes have been, by far, the most common pension scheme in the UK. The theme over recent years has been the closure of defined benefit arrangements to new entrants and, more recently, the ceasing of defined benefit accrual altogether, generally replacing defined benefits with defined contribution arrangements. Defined contribution schemes have typically been set up with lower contribution levels than projected to be required to replicate the defined benefits they replace. Most schemes require employee contributions. Members are generally given a choice of funds in which to invest their DC contributions.

Larger employers tend to set up trust-based occupational pension schemes (OPSs) that may be defined benefit, defined contribution or both. OPSs can relate to more than one employer but they tend to relate to employers within the same group, where this is the case. Industry-wide schemes are relatively rare, although there are some very large examples for certain specific industries.

Some employers make use of Group Personal Pensions instead of an employer-sponsored OPS. Group Personal Pensions are a cluster of individual pension policies under a contract of insurance arranged by an employer for a group of employees. Stakeholder pension schemes are a particular type of personal pension with a cap on the permitted annual charges.

Self-employed persons have not generally been permitted by scheme sponsors to become members of an occupational pension scheme and generally use an individual personal policy with an insurer for their pension provision. However, it appears that UK legislation could allow a self-employed person to join an OPS established by an employer for its employees, if the sponsoring employer permitted.

In 2008 around 22% of private sector employees were covered by OPSs³⁹. A further 8% were saving for retirement through employer sponsored group personal pension schemes¹. Of all OPSs:

- Around 60% of the active members were earning DB benefits, 40% were in DC schemes¹. It is likely that the percentage in DB schemes is now even lower.
- Of the DB schemes, only around 25% are still open to new employees⁴⁰ – and this percentage is shrinking rapidly
- Of the 75% of DB schemes that are closed to new employees, around 50%² (generally the smaller schemes) are either in the process of being wound up, or have stopped all future benefit accrual

The most common retirement age is age 65, although early retirement is often available at age 60 or earlier. OPSs generally provide a lump sum and a pension at retirement, with post retirement increases and a contingent spouse's pension, and death before retirement benefits consisting of a lump sum and dependant's pension.

The State provides a relatively low level of basic state pension plus a state second pension, from which schemes can “contract-out” - effectively paying benefits in lieu of the state second pension. Defined benefit schemes (especially those of mid-sized and larger companies) are typically contracted out.

It is quite common for UK OPSs to have separate sections with some members contracted out and others contracted in. Contracting-out on a defined contribution basis is expected to be abolished from 2012 or shortly after.

³⁹ http://www.statistics.gov.uk/downloads/theme_labour/ashe_2008/tabP2.1a.xls

⁴⁰ The Pensions Regulator – Annual Report and Accounts 2008-2009 table 2
(<http://www.thepensionsregulator.co.uk/pdf/AnnualReportAccounts20082009.pdf>)

6.2 Description of local IORP

In the UK, the IORP vehicle is an OPS established by an employer. The legislation covering OPSs would, in theory, appear to permit a fund to be established without a sponsoring employer. However, separate tax legislation enforced by Her Majesty's Revenue and Customs appears to allow only OPSs which have an employer sponsor to become registered schemes and therefore benefit from the tax reliefs available for pension schemes. This employer is not required to be a UK-based employer.

There are several relevant authorities in the UK that monitor or otherwise control pension schemes:

- **The Pensions Regulator (TPR)** monitors the operation of OPSs. Its statutory objectives include protecting the benefits of members in work-based pension schemes and reducing the risks of calls on the Pension Protection Fund. OPSs must be registered with the Pensions Regulator and returns submitted on an annual basis. The regulator also issues Codes of Practice and guidance on a wide number of issues to supplement legislation. The Pensions Regulator is the "competent authority" for the purposes of Article 20 of the EU Pensions Directive. All schemes pay an annual levy to the Pensions Regulator.
- **The Pension Protection Fund (PPF)** partially protects members' benefits in the event of employer insolvency. It is funded by a levy on most defined benefit OPSs in the UK.
- **Her Majesty's Revenue and Customs (HMRC)** is responsible for the taxation of pension schemes (including OPSs). OPSs must become registered schemes with HMRC to obtain the available tax reliefs.
- **The Financial Services Authority (FSA)** is the responsible authority for control of contract-based schemes. These are almost exclusively insurance-based schemes. Whilst the majority of such schemes are individual policies, the FSA remit also extends to Group Personal Pensions and Stakeholder schemes.

The tax legislation restricts the types of benefits which are "authorised" payments to members. Payments which are not authorised (referred to as "unauthorised payments") are subject to penal taxes, although HMRC's current policy is not to apply the penal taxes to overseas members who have not benefited from UK tax relief (discussed later under taxation). The following are the main restrictions which apply to benefit payments that can be regarded as authorised:

- The earliest allowable retirement age for employees in good health increases to 55⁴¹;
- Generally, no more than a quarter of a member's benefits can be paid as a lump sum;
- Pension benefits must commence between age 55 and age 75:
 - From age 55 must be a guaranteed lifetime income meeting specific conditions.
 - Before age 75, OPSs also have the option of providing "unsecured" income through an income drawdown or one or more limited period annuities, taken out for fixed terms of up to five years.

6.3 Scope, regulatory framework and governance

Scope

In most defined benefit OPSs, the employer sponsor bears the biometric and financial risks. The OPS itself does not bear any risks – the employer is ultimately responsible for any risks that are not borne by the employees.

Trustees can outsource most of the activities of the running of the OPS, but must retain activities which come under the umbrella of general management such as overall decision making and investment and funding policy. Death and disability benefits can be reinsured. Retirement benefits may also be reinsured – typically only at the time of retirement but it is also permitted to re-insure these benefits for deferred members once they have left service.

⁴¹ Age 55 from 6 April 2010. It is age 50 prior to April 2010.

Ring-fencing is optional. The OPS can be set up to pool assets and liabilities between all covered schemes, or can operate as, in effect, a series of independent pension funds. This is determined by the Trust Deed.

Governance

An OPS is a separate legal identity, distinct from the sponsoring companies. In order to benefit from tax relief, an OPS will need to be registered HMRC. The OPS will also need to be registered with the Pensions Regulator.

A funded OPS must have trust documentation and trustees to administer the trust in line with this documentation and Trust Law. Legislation requires at least one-third of the trustees to be nominated by members of the scheme (this is expected to increase to one-half at a future date). Member-nominated trustees are trustees of an OPS who are nominated through a process in which all the active members and pensioner members of the scheme (or organisations which represent each of these groups respectively) are eligible to participate, and are then selected as a result of a process which involves some or all of the members of the OPS. This would also apply if the OPS operated on a cross-border basis. It is not possible to set up separate trustee bodies, with different national employee trustees, for different benefit schemes within the OPS. However, the trustee board could delegate their decision making responsibilities in respect of certain country-specific decisions to sub-groups of the trustee board representing those countries. (The trustee board would retain overall accountability for the decisions taken.)

Internal control mechanisms appropriate to the activities that the OPS conducts must be in put in place. The trustees must appoint:

- A scheme auditor to produce accounts, generally every 12 months;
- A scheme actuary, if there are defined benefits, to carry out funding valuations ;
- A fund manager, where, as is usually the case, investments are covered by the Financial Services and Markets Act 2000;
- A custodian, where necessary; and
- A legal adviser, where necessary.

Formal requirements for trustee knowledge and understanding apply to the trustees of the OPS.

Other

The trustees are responsible for the OPS's investment strategy. The trustees must prepare a written statement of investment principles (SIP) and undertake a detailed review at least every three years. They must consult the employer sponsor, but there is no requirement for the employer sponsor to agree it. The assets must be invested in a manner appropriate with the duration and nature of the expected retirement benefits with justified diversification. Trustees must take written advice before making investment decisions. The assets are taken at market value for valuation purposes. Investments in employer-related assets and loans are restricted to a maximum of 5% of the market value of the assets of the scheme. There are no other quantitative investment restrictions.

All formal documentation must be submitted to the authorities in English. Day-to-day documentation required to be disclosed to members can be in a different language, so long as an English translation accompanies it.

6.4 IORP financing requirements

Technical provisions

The trustees of a defined benefit OPS are responsible for negotiating appropriate levels of contributions with the employer. The scheme funding legislation requires trustees to set prudent technical provisions, taking into account the covenant of the employer. The assumptions must usually be agreed with the

employer. Actuarial valuations must be carried out at least every three years. As part of the valuation process, the trustees and sponsoring employers must agree a schedule of contributions to meet the cost of future benefit accrual and any shortfall. Where scheme assets are less than technical provisions a recovery plan must be put in place. This should ensure that the deficit is removed as quickly as the employer can reasonably afford. However cross-border OPSs are required to undertake a full valuation annually, with any deficit being removed within 24 months of the effective date of the valuation, meaning that the more flexible pace of funding UK domestic schemes can take advantage of is not available. New cross-border OPSs have two years to undertake the first scheme funding valuation from the date they apply for authorisation.

Surplus assets can be used to reduce future employer contributions. In certain circumstances (and only if permitted by the Trust Deed) surplus assets may be returned to the employer. If a refund is payable to an employer, it is subject to tax, currently at the rate of 35%). UK legislation states that "*The scheme administrator is liable to the authorised surplus payments charge whether or not (a) the scheme administrator, and (b) the sponsoring employer, are resident, ordinarily resident or domiciled in the United Kingdom*" and so this tax would be payable if surplus assets relating to an overseas benefit scheme were refunded to an overseas employer.

If an OPS winds up, or an employer ceases to participate, there is a debt on the employer based on the cost of securing benefits (annuities) with an insurance company, unless a formal withdrawal arrangement or apportionment arrangement is agreed with the trustees. The valuation of liability for debt purposes is typically significantly higher than the technical provisions adopted for funding purposes, which reflects the employer covenant. The employer debt legislation also applies to cross-border OPSs based in the UK.

Regulatory own funds

Regulations exist for "regulatory own funds", in order to implement Article 17 of the EU's IORP directive, although the UK government believes that there are no institutions in the UK where this applies as OPSs do not bear any risks themselves. All risks are, ultimately, borne by the sponsoring employers.

Security mechanisms

The Pensions Regulator monitors the strength of OPSs' technical provisions and can take action where it feels that the technical provisions or the recovery plan set are inappropriate. It can take formal actions to require financial support to be provided to the OPS by an employer or parties associated with the employer.

If a scheme sponsor becomes insolvent and the OPS's assets are insufficient to secure the benefits in full, then the OPS may be admitted to the Pension Protection Fund. For members of OPSs that are admitted to the PPF who are over their normal retirement age, the PPF will continue to pay their full pension⁴². Other members will be entitled to a 90% of their pension, subject to a maximum payment by the PPF of £28,742 (in 2009/10 terms). The PPF is funded by an annual premium paid by defined benefit OPSs. The premium consists of a flat per member amount and a risk-based amount which depends on a number of factors including the scheme's level of funding. The Pension Protection Fund and Pensions Regulator levies are both payable by UK OPSs in respect of overseas members. Whether an OPS sponsor which is not UK based becoming insolvent would trigger the members becoming entitled to receive PPF compensation is ambiguous and untested under the legislation, despite the OPS being required to pay the PPF levy.

6.5 Cross-border considerations

A UK OPS is considered to conduct cross-border activities if it has members employed by a European employer who:

- Are working in another member state;

⁴² Although future increases to pensions in payment will generally be at a lower rate than the member's scheme may have provided for.

- Are subject to the social and labour laws of that country, and
- Are not seconded employees.

Many UK social and labour laws and the UK disclosure requirements remain applicable to all OPSs established in the UK. However for European (non-UK) members of cross-border OPSs, much of the legislation is disappplied, including that in relation to members' statutory rights to pension increases and revaluation in deferment, transfer values and early leavers' benefits.

UK anti-discrimination legislation, including age discrimination legislation, also applies to occupational pension provision by overseas employers and benefit schemes. However, this legislation is unlikely to prove onerous for EEA-based employees.

Both PPF and Regulatory levies are payable in respect of overseas members and the PPF levy in particular can be significant where a defined benefit OPS is poorly funded and/or the employer covenant is poor.

The employer debt legislation, outlined in the IORP Financing section of this report, also applies to overseas sections of cross-border OPSs based in the UK. This legislation can lead to significant debts falling on relevant employers.

6.6 Overview of home-country tax issues

Taxation of IORP	No corporate taxes are levied on the IORP itself (but Pension Protection Fund and Pension Regulator levies are payable.)
Taxation of investment roll-up	Dividends from UK companies include a 10% tax credit, but this cannot be repaid by OPSs. Occupational pension schemes are not subject to Capital Gains Tax. Where dividends paid to an occupational pension scheme are taxed, for example in respect of investments in overseas companies, this tax may be reclaimable if there are appropriate double taxation agreements in place.
Taxation of contributions	Contributions paid by UK employers and employees are relieved from, respectively, UK corporation tax and UK income tax. However, contributions and/or benefit accruals by or in respect of a member exceeding the annual allowance of £255,000⁴³ are subject to a 40% <i>annual allowance charge</i> on the member. A further <i>special annual allowance charge</i> has applied since 22 April 2009 to high income earners (£150,000 pa or more). It is levied on contributions and/or benefit accruals in excess of £20,000 by or on behalf of a member and which are at increased rate over previous year⁴⁴. These charges are theoretically applicable to all members of UK based cross-border schemes, but see "Application of taxation regime to overseas members of a cross-border OPS" below.

⁴³ Value from April 2010

⁴⁴ The application of the special annual allowance charge is expected to be extended from 2011 to all contributions and benefit accrual for high income earners, not just to increased annual amounts in excess of £20,000, but the new legislation has not yet been put in place.

Taxation of benefit payments	Income payments to members from a registered pension scheme are subject to income tax, although: Up to 25% of the value of the benefits at retirement can generally be taken as a tax free lump sum; and <i>A lifetime allowance charge</i> of up to 55% applies to a member's benefits in excess of the lifetime allowance of £1.8 million⁴⁵ In addition, penal taxes (at 40% or higher) could be levied on any payments that would not be "authorised payments" - for example, retirement lump sums in excess of 25% of the value of the total benefits being paid out or payments below age 55. These charges are theoretically applicable to all members of UK based cross-border schemes, but see "Application of taxation regime to overseas members of a cross-border OPS" below.
Application of taxation regime to overseas members of a cross-border OPS	The UK tax legislation relating to contributions, benefit accrual and benefit payments is theoretically applicable to all members of UK based cross-border schemes. Whilst the UK tax legislation permits this to be so, tax legislation is enforced by HMRC who can set policy as to how it applies the law. HMRC have currently stated that <i>"[such charges] will normally only apply to overseas resident individuals if they were active members of the scheme whilst being a relevant UK individual. So, effectively, members of registered pension schemes will normally not be chargeable if they have never been UK resident and have never benefited from UK tax relief on contributions to the scheme."</i> This means that there would be no UK taxation of benefits earned by overseas employees working for overseas employers. However, HMRC have the power to change the guidance given in this manual and have been known to amend such guidance without notification. This policy has not been subject to any test cases, the legislation having only been in force since 2006.
Taxation of transfer values paid to other IORPs	There are generally no UK tax implications on transfers between UK "registered" schemes or to other non-UK pension arrangements provided such non-UK pension arrangements are registered with the UK tax authorities as "Qualified Recognised Overseas Pension Schemes (QROPS)", and the transfer is less than the Lifetime Allowance. For other transfers an "unauthorised payment" charge of 55% would theoretically apply (or higher in some cases) but see above in relation to application to a cross-border scheme.
Taxation of transfer values received from other IORPs	There are generally no tax implications on transfers between UK "registered" schemes. Transfers in from overseas pension schemes are generally accepted tax-free. Transfers count towards the Lifetime Allowance. However, it may be possible to obtain an enhancement to the standard Lifetime Allowance in respect of contributions and/or benefit accruals that relate to post 6 April 2006 service where UK tax relief has not been available, subject to certain conditions.

⁴⁵ Value from April 2010

Impact of double tax treaties	Where tax is usually withheld at source on overseas investment income, double tax treaties can make it possible for such income to be paid without withholding tax. No further tax is payable by a UK scheme.
VAT charges on pension services	Many of the expenses incurred by pension schemes are subject to VAT at the standard rate (17.5%). In practice, many employers pay scheme charges directly in order to offset VAT. If services are charged to an entity that is not registered for VAT it is not possible to reclaim VAT on these charges.

6.7 Relative strengths/weaknesses

Scope

OPSS provide sponsors with great flexibility about the type of benefit plans and the form of benefit payment. OPSS can be set up on a "multi-employer" basis and assets can be ring-fenced if desired.

The sponsoring employer must retain ultimate responsibility for payment of the benefits – rather than being able to fully pass these to the OPS (although the OPS can re-insure the risks).

Governance

OPSS are subject to strict governance rules. Members are entitled to nominate one third (likely to increase to 50% in future) of the trustees. The trustees can delegate decision making for each benefit plan to local sub-committees, containing representatives from their own membership, whilst retaining overall responsibility. Reporting and compliance are not especially burdensome.

Financing

The minimum funding requirements are higher than those applied in some other countries. This could be seen as a strength (improving security) but also as a weakness (as employers will have relatively little time to finance any shortfalls).

OPSS are also covered by the national guarantee fund – although it is not clear from the legislation whether this protection extends to overseas employers becoming insolvent.

UK employer debt legislation (placing a formal debt on the sponsoring employers when an OPS winds up or when an employer ceases to participate) is an additional complication for defined benefit OPSS.

Other

Investment policy is also flexible, following the "prudent person" principle.

The tax position for overseas employees is also not completely clear. There is a possibility that benefits for high-earners, or benefits paid in a form that is not permitted in the UK, could be subject to UK tax, as could high levels of contributions and/or benefit accruals. Although HMRC have stated that this would not be done for non-UK employees, this is not set out in legislation and could, in theory, change at any time.

Appendix G: DC Pension Plan Administration Requirements

In this Appendix we have set out in further detail the likely key administrative functionality required of the Delivery Model provider to run a pan-European DC pension plan efficiently. The details here **are not intended to be exhaustive** and further work will be required at a later stage to produce a fully functional specification for the proposed Delivery Model. In particular, we have not looked in detail at local Host state regulations which will require modification to the administrative functionality. We have, however, used some UK illustrations to demonstrate how Host state regulation will be likely to force variations in the administrative processes of the Delivery Model.

1. Member Record Keeping and Data Maintenance

- **Record Keeping**
 - Creation and maintenance of records for current active and deferred members, pre-joiners and dependants.
 - Creation and maintenance of individual records for non-active or "life cover only" members of the scheme, if appropriate.
- **Active Member Data**
 - Maintenance of member records.
 - Periodic update of member records.
 - Application of agreed validation routines to electronic data files when updating member records.
 - Recording the existence of death benefit nomination forms, if appropriate.
 - Secure retention of death benefit nomination forms (subject to Host state data protection requirements) as imaged files.
 - Investment of DC contributions and allocation to member accounts according to instructions. (Contribution cycle information must be received in standard electronic format.)
- **Primary or Enhanced Protected Member** (UK only but *illustrative of likely Host state variations*)
 - Record protection type, LTA factor registered at A-Day, date verification received and registration number.
 - Record protected Lump Sum information.
 - Record benefits "fixed" at A-Day for enhanced protected members.
 - Facility to hold breaks in service and recommence benefit/contribution accrual if member chooses to cease enhanced protection at some point in the future.
- **Flexible Retirement** (UK only but *illustrative of likely Host state variations*)
 - Provide a solution for Flexible Retirement.
 - Hold separate records for each tranche of benefit taken as part of flexible retirement.
 - Record any Lump Sum taken from each tranche of flexible retirement benefit.
- **Deferred Member Data**
 - Maintenance of member records.

- Updating data relating to members in response to correspondence / member self-service / call to Member Service Centre.

- **Details of Court Awards on Divorce Settlement**

Maintenance of records as required in each Host state.

- **Other Benefit Information**

Establishment of necessary retained benefit information at retirement or leaving service and the maintenance of relevant details on the database.

2. Member Event Processing

- **Events**

- Agreed calculations.
- Discrete events affecting individual members.
- Batch events affecting no more than 25 members at one time. (Periodic benefit statement production is not a batch event and is described elsewhere.)

- **Joining**

- Manage collection of contribution decisions and pass contribution data to sponsoring employer(s) via agreed electronic file.
- Manage collection of DC investment decisions.
- Confirm enrolment to members.

- **Fund Election Requests**

- Acceptance and processing of requests received from members.
- Fund elections must be specified as percentage of future contribution.
- Confirm changes to member.

- **Switch Requests**

- Acceptance and processing requests received from members.
- Switch requests must be specified as percentages of funds or units held in particular funds.
- Confirm changes to member.
- Issuing investment instructions (to Fund Administrator.)

- **Lifestyle**

Make changes to investment elections and investment holdings in accordance with the lifestyle matrix (or could be via varying holdings in a suite of "target maturity" funds.)

- **Deferred Pension (vested leaver including opting out)**

- Calculation of deferred fund values.
- Provision of deferred pension statement and explanatory notes.

- **Transfers from other Pension Plans**

- Processing and recording of transfers into the plan in accordance with the plan rules and subject to local Host state legislation.
- Chasing previous plan for outstanding information.
- Bulk transfer exercises due to mergers, acquisitions, etc.
- **Individual Transfers to a New Pension Provider**
 - Calculation of DC transfer value based on current value of units.
 - Issuing of transfer value statement and discharge form (or as appropriate for Host state regulations.)
 - Sell units.
 - Settle transfer-out upon receipt of funds from investment manager.
 - Responding to transfer queries from members, the receiving scheme or member's financial adviser.
- **Deaths**
 - Calculation of death benefits .
 - Settlement of death benefits.
 - Requesting necessary certification.
 - Liaison with 3rd party risk insurers, if applicable.
 - Communication with legal personal representatives, if applicable.
 - Adherence to local Host state legislation regarding payment of benefits.
 - Preparation of evidence to allow Governance Body to exercise discretion, if applicable.
 - Applying Governance Body discretion in accordance with agreed policies, if applicable.
- **Retirements for Active and Deferred Members**
 - Identify members approaching normal retirement date, in accordance with local Host state legislation and/or practice.
 - Other retirements will be notified in accordance with agreed policy.
 - Quote benefits, as appropriate.
 - Calculation of prospective retirement benefits for members.
 - Settle benefits.
 - Respond to member queries with regard to retirement benefits and options.
 - Liaison with selected annuity provider, if appropriate.
- **Flexible Retirement**

Subject to local legislation and client-specific requirements.
- **Pension earmarking / sharing orders**
 - Provision of information, as required by local Host state legislation.
 - Enacting splitting / earmarking order, if appropriate.
 - Confirmation to member and spouse.
 - Notice of implementation.

3. Internet Services

- **Languages**

Web communications will be required in the official language(s) of the Host states.

- **Branding**

The website might support the ability to use branding whether "EU Researchers" or sponsoring employer brands.

- **Host-country specific Configuration**

Pages and views available to each member will be configured based on the following criteria:

- Plan status – text will be specific to member status.
- Benefit eligibility – a member will only be able to view the benefit structure to which he has an entitlement.
- Location – differences in Host state legislation may restrict certain actions/functions (e.g. investment fund switching.)

- **Web Pages**

The site should provide the following minimum requirements, accessible from the main page:

- Investment summary – members can check fund performance, their personal details, investment and account summaries, and transaction summaries.
- Total pension summary – this page displays the total pension position for the member, including accrued pension, estimated pension at retirement date, spouse's pension and death in service benefits.
- Account management – through this section, members can change their contribution rates and future fund allocation (active members only and subject to Host state legislation), switch their existing holdings and request/download forms (e.g. Expression of Wish, etc). Deferred members will also have the ability to amend their personal details.
- Retirement management – members can run projections to normal retirement date, as well as obtain generic information on how to take benefits and any state benefit provision.
- Online Annuity Calculator - allows the members to calculate both the amount of annuity they will receive based on their current rates of contributions and years to retirement, and what their current rate of contributions should be based on a desired annuity at retirement.
- Learn More – links to scheme information, benefits manuals, reference material and external websites

- **Reference Material**

Any online reference material should be configured to the requirements of the plan according to a standard specification and can be accessed throughout the site by clicking on a hyperlink. Typical categories for this might be; membership, contributions, state benefits, investments, retirement benefits, death benefits, leaving benefits and general information.

- **General Reference Pages**

- Members will be able to access standard pages which may:
 - Give legal information (terms of use, copyright, trademark and privacy policy.)
 - Give information regarding security.
 - Give tips for using the site.

- Give access to a selection of most frequently asked questions.
- Provide users with a format for providing anonymous feedback.
- **Site Availability**

The website should be made available for a minimum of 6.5 days a week, 24 hours a day.

- **Personalisation**

Website should be capable of presentational customisation, e.g. sponsoring employer's logo.

- **Access**

- Members will be required to input a unique Employee Identification name/number and a password.
- Passwords will be issued by the Delivery Model provider.
- Functionality to change a password will be available through the website.
- Members can request a new password in the event they forget their password. Online password generation should be required.

- **"E" Customer Services**

Administrators should be able to access simultaneously with the member to assist with member queries and transactions.

- **E Mail**

The website must provide email facilities.

4. Member Service Centre

- **Telephone Helpline**

- A minimum requirement for 07:30 – 17.30 GMT, in order to provide a 08:30-17:30 service across both time zones. Additional support may be required outside these hours for special events.
- Provision of helpline support for receiving information and member-specific enquiries.
- Referring members to the website for information and transactions, as appropriate.
- Responding to and assisting members with website queries and navigation.
- Provision of dedicated free phone numbers.
- Standard message for office and out-of-office hours.
- Automatic call routing service within Tier 3 administration team.

- **Languages**

The default language should be the local language of the Host state in which the member is employed, followed by the first language of the member him/herself.

5. Benefit Statements

- Production and issue of periodic benefit statement for active and deferred members, reflecting local practice and legislation.
- Production and issue of SMPI (or Host state equivalent).

6. Deferred Member Services

Provision of information as prescribed by the Host state legislation.

7. Accounts and Banking Services (General)

- Operation of banking arrangements.
- Recording and processing receipts and payments.
- Maintenance of accounting records.
- Management of cash requirements.
- Bank account reconciliations.
- Investigation of rejected, stopped, out of date or cancelled payments.
- Preparation of periodic accounts in standard format.
- Provision of relevant information to assist in preparation of periodic reports, including financial statement and Governance Entity report.
- Monitoring of receipt of contributions, in accordance with Host State legislation.
- Completion and submission of Host state tax requirements.
- Provision of asset information for Governance Entity reporting requirements.

8. Communication Services and Reporting

- **Communication**
 - Preparation of all correspondence in compliant format.
 - Distribution of all correspondence.
 - Responding to enquiries.
 - Maintenance of an email address for member requests.
 - Provision of reports in accordance with local Host state legislation.
- **Reporting**
 - Provision of periodic administration reports, as specified.
 - Attendance at periodic meetings with Governance Entity to discuss operational issues.
- **Liaison with Members and Participating Companies**

Production of an up-to-date administration manual.

9. Provision of Information to Third Parties

Statutory reporting in line with Host state regulatory requirements

10. Retention of Paper Records

- Retention of files as required by the supplier in designated area of records department or off-site.
- Once accurately imaged, paper files may be destroyed (subject to Host state regulatory requirements.)
- All new correspondence will be imaged on receipt.
- Imaged and paper files will be retained in accordance with the standard retention schedule and Host state legislation.

- Retention of files for a period of time in line with local regulation/practice.

11. Performance

Governance Entity should reserve the right to review and change Delivery Model provider outside the timescales of any contract if performance slips below agreed levels, or if material breaches of the contract occurs.

12. Audit

The Governance Entity should expect to be able to audit the provider at all reasonable times and with reasonable notice to confirm compliance with the Delivery Model.

13. Continuous Improvement and Change Control Processes

The Governance Entity will work with the provider to ensure continuous improvement of the product and any systems and processes that support it. This will involve the establishment of defined change control processes.

Appendix H: DC Investment Fund Administration Requirements

In this Appendix we concentrate on explaining the high level operational requirements for a "Fund Platform". There are a number in existence within the EU in both the institutional and retail markets: in the retail market they are sometimes called "fund supermarkets". Fund platform providers are usually multinational life assurance companies or global investment managers. The operation of such platforms, particularly those in the institutional market, is highly complex and the technical assessment of one platform against another requires a detailed understanding not only of investment fund pricing but also of the technology underlying the platform and its reliability: in the platform market an apparently trivial fund pricing error of only a fraction of a cent, if undetected, can very easily disadvantage platform clients (often the members of pension plans) to the extent of many hundreds of thousands if not millions of Euros.

Fund Platforms are used extensively in several DC markets in the EEA, such as the UK, Ireland and Sweden, and in other parts of the World, such as the USA and Canada, South Africa and Australia. The Governance Entities of DC plans in these countries use Fund Platforms to access investment markets for a variety of reasons, for example some or all of the following:

- Platforms provide access to a large number of investment managers and their funds through a single contract for services.
- Efficient operational (buy/sell) processes can be established by the plan administrator with just one provider rather than with a multitude of investment managers.
- The "out of market risk" (the exposure an investor has to being out of the market between waiting for a sale to be settled and a purchase to be transacted) can be minimised or even eliminated by an efficiently run platform.
- Blended / private fund options are available on some platforms, which permit a pension plan (or more probably their adviser) to create a bespoke fund by blending together units from a number of different managers' funds.

Reporting is an important part of the platform provider's service. Service level agreements will vary from platform to platform and some pension plans have their own reporting requirements (usually driven by the requirements of their governance entity), but we would expect to see reporting along the following lines:

Daily

The provider will transmit all unit prices for each unit series in all available investment funds electronically (securely and in an agreed format) to the plan administrator on a daily basis.

Monthly

The provider will automatically issue a monthly investment statement (in protected format).

Quarterly

The provider will issue the following reports/information, electronically, in protected format:

- Quarterly member fact sheets for each available investment fund
- The names, benchmark and objectives of all the funds used by the plan
- AMC and total expense ratio for each fund
- Any other plan level charges
- Value of each fund used by the plan at the end of the previous quarter and the end of the current quarter
- Net contributions per fund (purchases less sales)
- The asset allocation of each fund

- Gross performance of all funds (and their benchmarks) over each discrete month in the quarter and for the quarter, year and previous four 12 month periods to the current quarter end (i.e. 5 discrete years returns on a rolling basis plus the current quarter) - where the fund has not been in existence long enough to generate performance history then the performance of the underlying fund manager's fund in which the fund invests will be used
- Any other detailed fund data for each fund (as agreed between the selected provider and the plan)

Ad-hoc

A statement is available at any time upon the request of the plan. It will be issued directly to the plan governance entity / administrator (as appropriate), electronically, in protected format.

Appendix I. Country specific "Host" country conditions

1. Belgium

1.1 Social and Labour Law implications

Benefits and Contributions

Belgian legislation contains some restrictions on the benefit structure of a plan.

SLL imposes the following requirements for the private sector:

- Normal retirement age must be 65 (for new plans). If provided by the plan rules, withdrawal of benefits is permitted from age 60 – with no requirement for the employee to have ceased work (although plan rules can require this). For a DB plan the maximum actuarial reduction for early payment is determined based on a specified method and assumptions (for example using a 6% discount rate). However this is not relevant for Defined Contribution plan structures.
- Minimum vesting period of benefits is one year.
- Access to benefits prior to retirement is only permitted to buy, build or refurbish a home and only if this is stated in the pension rules. Depending on the pension rules it is possible either to withdraw the funds or to assign the future benefit as security for a loan. Any outstanding amount due at retirement age is deducted from the retirement benefit.
- Age related contributions are allowed, but with a restriction on the extent to which they may be increased by age. (The contribution rate at any age cannot exceed 104% of the rate of the previous age. It is permitted to set contribution rates for larger age bands so long as they on average meet the previous requirement.)
- There are no contribution limits in the SLL but there are for tax reasons which are described later
- Voluntary/variable employee contributions are forbidden to be made into occupational pension funds.
- There is a minimum investment return on the contributions paid; 3.75% on employee contributions and 3.25% on employer contributions. This minimum return is assessed at the time the benefit is paid, based on the full period of membership and not as an annual minimum return.
- Former members have the right to transfer out their benefits to a qualified insurance provider or a pension plan of an employer. The minimum transfer payment from a DC plan must take account of the minimum investment return. From a DB plan a minimum value is also specified (based on 6% discount rate).

In order to receive tax relief on the pension and contributions, the following rules also apply:

- The total benefit (including the social security pension) must not exceed 80% of salary.
- Benefits may not be taken before the minimum early retirement age of 60 except on death or disability retirement.

Access

There is no requirement for employers to offer a pension plan. However, if a pension plan exists, membership is compulsory for all eligible employees and there is no option to opt out (except when a new plan is introduced). The plan must cover an objectively defined group of employees. If the membership definition means that an employee is eligible to join two pension plans, then he/she can have the option to remain in the original plan or, if the plan rules permit, to move to the new plan.

It is possible to restrict membership of a pension plan to those aged 25 and over. No other restriction based on age or service is permitted for employees older than age 25.

Investments

Funding must be externalised to an insurance company or pension fund.

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. Due to the minimum guaranteed return on contributions in a DC fund, the investment options which are offered to the employees are normally restricted by the sponsoring company.

Ring-fencing of assets is not required – but can be done.

Management of IORP

If employees contribute to the plan, there is a requirement for at least 50% employee representation at some level of the management. This can be satisfied by setting up a committee in Belgium (possibly for each separate employer) that has responsibility for supervising the pension fund – and then including the employee representatives on this committee.

If there are any changes in the benefit structure then the works council must be informed and consulted, and if applicable the collective labour agreement amended (if employees contribute).. The same is true in the case of a change of providers.

Information Requirements

Belgian pension funds are required to provide a variety of items of information to members. These include:

- Annual benefit statements which includes, for DB members, the funding status
- The cost structure and fees must be annually reported
- Members have the right to request a copy of the annual report of the IORP, the Statement of Investment Principles and pension rules.
- Members have the right to receive plan documentation in French or Dutch. However, in practice English is sometimes used, where employees agree to this.

These requirements also apply to Belgian members of an overseas IORP.

1.2 Taxation and social charge comparison

This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross border arrangement

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	No specific requirements other than registration with tax authorities
Taxation of employer contributions to an IORP	Contributions to a tax-approved IORP are deductible as a business expense to the extent that the corresponding accrued benefit is less than 80% of employee's salary. For a DC plan this is assessed based on a projection of the expected benefits. They do not generate a tax charge for the employees. Employer and employee contributions are subject to a tax of 4.4% (payable by the IORP). Employers normally pay an additional contribution to the fund to cover the entire tax liability (although it is possible to require the employees to meet their share of this).
Taxation of employee contributions to an IORP	Contributions to a tax-approved IORP are tax-deductible (at a rate between 30% and 40%, depending on the average tax rate of the employee) to the extent that the total accrued benefit does not exceed 80% of employee's salary. Employees may be liable (depending on the plan rules) to pay an additional contribution (4.4% of the basic employee contribution) to meet the IORP's tax liability (see employer contributions above).
Social security or payroll charges on contributions to an IORP	Employer contributions for retirement and death benefits are subject to social security charges at the rate of 8.86%. There are no payroll taxes. Employee contributions are subject to social security charges at the standard rate.
Taxation to the employee of investment returns credited within an IORP	None
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	Pensions and lump sum payments paid to Belgian residents are subject to a social security charge of 3.55%, increased with a solidarity contribution of 0% to 2% (depending on the gross amount of the benefit). Unless exempted by a double tax treaty, pensions paid to Belgian residents are taxed as income, regardless of where the pension was earned. Benefits paid as a lump sum are taxed at the rate of 16.5% (reduced to 10% in case of continued employment until age 65). A communal tax is raised on the tax amount equal to an average of 7%. There is a possibility to purchase an annuity with the net lump sum amount in order to avoid the higher income tax charged on pensions.

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement.

1.3 Portability of retirement assets

No difference between domestic and non-domestic cross-border IORP. A transfer of retirement assets of a Belgian resident to another country belonging to the European Economic Area is not subject to social security charges. The asset value will usually not be taxed (depending on Double Taxation treaties).

1.4 Employment status of researchers

Public sector employees (except for those employees who have employment contracts rather than being civil servants) are covered by a separate social security retirement plan which is more generous than that covering private-sector employees (providing up to 75% of pay after a full career). This is financed on a pay-as-you-go basis. Membership is compulsory. Complementary pension plans for public-sector employees do not exist in Belgium.

Most, but not all, university employees are also covered by the public sector pension system.

1.5 Implications for design of Researchers IORP

There are a number of issues which need to be addressed when establishing an IORP to ensure access to Belgian researchers:

- There is a guaranteed minimum investment return of 3.25% on employer contributions and 3.75% on employee contributions. This will normally lead to a much more restricted (and cautious) range of investment options for Belgian members, compared to those from other countries.
- The employer and employee contribution rates can be age- and/or service-related, but must be fixed for every member in a given category. They are normally stepped, with a low contribution up to the pension ceiling (€47,000 p.a.)⁴⁶ and a higher benefit above the ceiling. Voluntary employee contributions are not permitted
- If employees contribute to the fund then a Belgian committee will need to be set up to supervise the fund. Given the likely number of different employers involved, this could be a complex process.
- Membership of a pension plan must be open to all employees within a well-defined employment category. In order for Belgian researchers to be admitted to a pan-euro fund it would be necessary for each employer (separately) to create an objective definition of a researcher. All eligible employees of that employer would then have to join the pan-euro fund. However, if the researchers are already covered by an existing pension plan then their employers will need to decide whether researchers will automatically join the newly established plan. In this case the works council will need to be informed and consulted. The exception is where the existing plan covers all employees and also has employee contributions – in this case the plan will be included in the CLA and that will need to be amended.
- Most public sector employees (including employees of some universities) are not "contractual" employees and are covered by different SLL. The public and private sector employees are eligible for different first pillar pensions, and due to the public sector being more generous it is not market practice that public sector employees have access to a second pillar pension.
- The IORP will be liable to pay a tax of 4.4% of contributions to the Belgian tax authorities.

⁴⁶ This ceiling refers to 2009. It is annually revised by the "Office National des Pensions"

2. France

2.1 Social and Labour Law implications

Benefits and Contributions

French legislation contains some restrictions on the benefit structure of a pension plan. There are two forms of locally funded complementary pension plans upon which SSL conditions are based:

- Article 83 plans – employer sponsored. Typically defined contribution in structure, but could also be defined benefit. (These are named after the article in the French tax code which sets out the conditions that must apply for the tax advantages to be given.)
- PERP – Defined contribution plans with employee contributions only

A cross-border IORP can be treated as either type.

SLL imposes the following requirements:

- Normal retirement age must be between 60 and 65. Early retirement (before receipt of the social security pension) is not permitted. However, retirement can be delayed.
- DC contributions are always fully vested once they have been paid. However, there is no requirement for contributions to be paid into the fund immediately – companies can choose to set up a plan where the contributions are not invested in the fund during an initial period of service (rather, they are deferred until the end of that period). In effect, this is equivalent to a vesting period. There is currently no vesting requirement for DB benefits.
- Benefits cannot be received before retirement age (except due to death or severe disability). Benefits may not be assigned to third parties.
- If a member has been divorced, and the former spouse has not re-married, the member must purchase a pension for the former spouse (in respect of the period of marriage).
- There are no contribution limits in the SLL but there are for tax reasons which are described later. However, pensions in a private sector plan must not exceed those in the public sector (75% of final pay after a full career – including social security, AGIRC and ARRCO)
- Former members have the right to transfer out their benefits to a qualified insurance provider or a pension plan of an employer.

In order to receive tax relief, the following rules also apply:

- Benefits from both Article 83 plans and PERPs must be paid as an annuity (either a lifetime annuity or for a fixed period of at least 15 years).
- In an Article 83 plan, the employer and employee contributions must be at fixed rates for all employees. Contributions may not vary by age but it is permitted to pay different levels of contributions on different tranches of salary (based on social security limits). Employees are not permitted to pay AVCs to an Article 83 plan.

Access

Membership of a plan must be open to all employees within a specified category. The permitted categories are broad (for example, white collar employees) and cannot be narrowly defined by job title. For example, it would not be possible to restrict membership to only researchers.

Membership of Article 83 plans is then compulsory for all eligible employees, but individual employees can choose whether to join a PERP.

Membership can be restricted to employees with at least 12 months' service. No other restrictions are possible.

Investments

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. Lifestyle investment options are permitted and employees can choose their own investment funds (from the list offered by the fund).

Ring-fencing of assets is not required – but can be done.

Management of IORP

There is a requirement pensioner representation on the “comité de surveillance” of the management board of a PERP (known as a “GERP”) when there are more than 100 members in the PERP. In addition, this comité must have a majority of members that are independent of the PERP provider (so, made up of employee and employer representatives, for example). These representatives do not need to be French employees. It is not clear how this requirement would apply to an overseas IORP and we do not believe that it has ever been tested in practice.

There is no such requirement for member representation in an Article 83 plan.

The employer has the power to change the benefits provided by an Article 83 plan (so long as accrued benefits are not reduced). For a PERP, the managing body (known as a GERP) can change the plan (although there is no fixed contribution rate, members choose their own contribution rates).

Works councils have to be informed and consulted on any changes of a benefit plan but have no veto power. The provider for pensions already in payment can only be changed with the consent of each individual pensioner.

Information Requirements

Collective company retirement schemes (including Article 83 plans) are required to provide employees with an annual statement, in French, about their retirement savings. This must show the amount invested (net of expenses) and the “revaluation” applied (i.e. the change in value of accrued benefit), although in practice much more information is provided.

PERPs must also provide an annual statement, together with information about the investment funds (whether they are risky or not).

These requirements also apply to French members of an overseas IORP.

2.2 Taxation and social charge comparison

This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross border arrangement

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	Once every three years, the IORP must supply information to the French Social Security authority (URSSAF) about the contributions paid
Taxation of employer contributions to an IORP	Employer's contributions to Article 83 plans are corporate tax deductible. They do not generate social charges unless they exceed € 8,655 (in 2010) = 5 % of salary limited to 5 times the Social Security ceiling (€ 34,620 for year 2010). They generate a benefit in kind tax charge for the employee if the total contribution (employer and employee) exceeds the limit on employee contributions (see below).
Taxation of employee contributions to an IORP	Employee's contributions are tax-deductible if they do not exceed € 22,157 (in 2010) = 8% of the net individual taxable income limited to 8 times the Social Security ceiling. The same limit applies to Article 83 plans and PERPs. Employee contributions are not deductible for social charges.
Social security or payroll charges on contributions to an IORP	Employer contributions are subject to social security charges at about 12%.
Taxation to the employee of investment returns credited within an IORP	None
Social security charges to the employee based on investment returns credited within an IORP	No charges on Article 83 plans and PERPs
Taxation of benefit payments from an IORPs	Pensions paid to France residents are taxed as income. Income Tax rate can be equal to 40% at most.

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement.

2.3 Portability of retirement assets

An individual who leaves France may transfer the retirement funds to the new country of residence. However, this can only be done to a pension fund that pays the benefit as an annuity and prohibits early retirement. No French tax is payable on the transfer.

2.4 Employment status of researchers

Public sector employees are covered by a separate social security retirement plan which is more generous than that covering private-sector employees (providing up to 75% of pay after a full career). This is financed on a pay-as-you-go basis. Membership is compulsory.

Most, but not all, university employees are also covered by the public sector pension system.

Public sector employees are also permitted to pay additional personal contributions to "Prefon" (a supplementary pension plan for public servants) and to receive tax relief on these. They may also

contribute to a non-domestic cross-border IORP but, based on information that we have received informally from Prefon, French law does not allow them to receive a tax deduction for this.

2.5 Implications for design of Researchers IORP

There are a significant number of difficulties with including French researchers in the Researchers IORP:

- The IORP must be treated as an Article 83 plan if there are employer contributions. However, this means all employees in a wide group must become members. Except for pure research companies it does not seem possible for only researchers to be granted access. Further, contributions must be at fixed rates for all employees in this case.
- For an Article 83 plan, an objective category is either as defined in the labour code (employés, ouvriers, agents de maitrise, cadres or cadres dirigeants) or any social category existing in the collective bargaining agreement. Researchers cannot be defined as an objective group.
- If the IORP is classed as a PERP then only employee contributions are permitted and access must be offered to all employees in a wide group (for example, white collar). However, employees can choose not to join. Employees can choose their own rate of contribution.
- Public sector employees are unable to opt out of their mandatory pension plan, and this provides a relatively high level of benefit. Public sector employees are permitted to pay additional personal contributions to a supplementary pension plan for public servants and to receive tax relief on these contributions. However, we understand that additional contributions to a non-domestic cross-border IORP but would not receive any tax relief.
- If it is possible for any particular employer to join the IORP, then the IORP should be able to provide French pension benefits without much difficulty. However, it will need to be able to provide retirement benefits in pension form.

3. Germany

3.1 Social and Labour Law implications

Benefits and Contributions

German SLL contains the following rules:

- There are two local types of pension vehicles which could form an IORP covered by the SLL. The Pensionskasse (PK) and the Pensionsfonds (PF). Different requirements are placed on each vehicle. In assessing SLL applicable to IORPs with a home-country other than Germany, we understand the BaFin will decide which SLL is most applicable depending on the structure and benefits provided, combined with the definitions available in the law. Ultimately it is BaFin's interpretation which leads to the final decision. One of the key criteria is whether the IORP is an insurance company, in which case it is more likely to be treated as a PK, or similar to an insurance company, in which case it will be treated as a PF.
- There is no restriction on the form of benefit (pension or lump sum) from a PK. Benefits from a PF may, in principle only be paid in annuity form, ie lump sum benefits are not permitted. However, the business plan of a PF may provide that benefit payments are to be made in accordance with a so-called payment plan under which a part of the existing technical reserve for a member (the cash balance in the member account) is paid in defined annual instalments and only the remainder as a life annuity. The first payment under a PF payment plan on retirement or other event that triggers benefit payments may not exceed 30 % of the existing reserve (otherwise the tax exemption of contributions would not apply).
- For DC plans there is a minimum benefit equal to the sum of the total contributions, ie there is a minimum interest guarantee of 0%. This is assessed when the benefits are paid, so the total minimum benefit is the sum of the total contributions excluding any interest credited.
- There are no restrictions on the type of contributions allowed; age, service and flat rate are all permitted.
- There exists no limit of contributions payable within the social labour law, but see tax implications later.
- Voluntary individually determined employee contributions into a PK are permitted but employer consent is required. For an employee to make additional voluntary contributions into a PF, then it must be in the form of salary sacrifice, i.e. employees exchange parts of their salaries for additional employer contributions.
- PKs and PFs do not offer investment options, i.e., members cannot individually choose between investment options for their contributions. All employees fall under the same investment strategy as set by the PK or PF.
- Cost-of-living adjustment reviews for pensions in payment are required at least every three years. Rather than adjusting pensions in line with the cost-of-living index, employers can guarantee a fixed increase of not less than 1% per year. This is the typical approach for PFs. PF DC plans with a minimum benefit guarantee are not required to adjust pensions at all. PKs increase pensions by the investment return in excess of the guaranteed interest (currently 2.25 % guaranteed interest).
- Risk benefits cannot be provided in the form of a lump sum from a PF, i.e., they have to be paid in accordance with a payment plan or as life annuities.
- Accrued benefits are not allowed to be reduced. Should existing assets not be sufficient to pay a benefit when due, the employer has to cover the shortfall by lump sum asset injections or in accordance with an amortization plan. A PK in severe financial hardship may also reduce benefits under a financial recovery plan. A clause to that effect is normally in the statutes of a PK.

- SLL does not place any restrictions on when a PF or PK can pay a retirement benefit. However, age 60 is the earliest age for old-age retirement under tax law, i.e. retirement benefits paid before that age will not receive tax relief. The early retirement age for a Social Security pension is 63 (with an exception for employees with a bodily handicap). Normal retirement age from Social Security is 65 but is currently increased in steps and by age groups to age 67. It is normal practice for a PK or PF to apply the normal retirement ages in accordance with Social Security, and not to permit earlier payment. However, if state pensions are paid, employees can require IORP pensions to be paid as well regardless of the plan provisions of the IORP.
- Minimum vesting for employer benefits is the latter of 5 years of pension plan membership or reaching the age of 30. Benefits from employee contributions vest immediately.
- If the transfer amount is not higher than the Social Security Contribution Ceiling, then employees who change employers can require a transfer-out to a PK, PF or Direct Insurance Plan of their new employer. Any amount above this ceiling requires authorisation via an individual agreement with the pension provider, employee and employer(s).
- Transfers from one PK or PF plan to another of the same employer are just a change of the vehicle used for the operation of the pension plan and should be possible – at least by agreement between the parties involved. However, it is possible (subject to negotiation with the tax authorities) that this would generate an immediate tax charge.
- Mandatory German insolvency cover through the PSVaG applies to an employer with a PF when German-based employees participate in a cross-border IORP. The PSVaG covers the insolvency of the employer – not the PF. It does not apply where the cross-border IORP is classified as a PK.

Access

If an employer operates a pension plan then it must be open to all employees under SLL, i.e., general non-discrimination rules apply. However individual agreements are permitted which will allow different pension arrangements for individuals in managerial or leadership positions. It is possible to have waiting periods during which employees or their dependants will not get a benefit while already a member of a plan.

Membership of a plan is established automatically unless the employee is required to make contributions or sacrifice parts of the salary. In this case, employees can choose on an individual basis not to participate (unless participation is a requirement under union agreements).

Investments

SLL does not place any restrictions on investment strategy of an overseas IORP in addition to those in the IORP Directive.

Management of IORP

No direct employee representation in the IORP management board is required. In mutual forms of domestic PKs, members have to be represented in the highest body of the entity, although this does not apply to cross-border IORPs. General labour law requires co-determination of employee representatives (normally Works Councils) but includes no requirements as to how this is established.

Any changes to the benefit structure will need approval from the works council, except for closure of the plan this can be done at discretion of the company.

There are ringfencing requirements required for German sections of cross-border IORPs, i.e. it is not permissible from the German perspective for a German section to subsidise another country section of an cross-border IORP.

Information Requirements

A PK or PF based in Germany or a cross-border IORP has to meet the same mandatory information requirements towards plan members that apply to life insurance companies under German supervision law towards policy holders, i.e. the so-called consumer information requirements. Compliance with the requirements is monitored by BaFin. The information requirements are very detailed but include:

- Annual benefit statements
- The cost structure and fees must be annually reported
- Annual statement of the ethical, social and ecological aspects of the investment strategy
- Members have the right to request a copy of the annual report of the IORP, and quotations of retirement or termination benefits (including terms and conditions of transfers to another provider)

Information must be supplied in German.

Cross-border IORPs need BaFin approval in accordance with the relevant EU requirements to operate in Germany but they are not subject to German supervision requirements in addition to those in the IORP Directive.

3.2 Taxation and social charge comparison

This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross border arrangement.

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	None other than meeting the requirements under SLL. The only official evidence for this purpose is the BaFin registration and approval. However, BaFin is not required to send this information to any tax office and employers should, therefore, obtain the relevant evidence from the IORP to file it with the relevant revenue office.
Taxation of employer contributions to an IORP	From the 5 German financing vehicles, a tax-approved IORP can only be a so-called "Pensionskasse" or a "Pensionsfonds". Contributions to a tax-approved IORP are deductible as a business expense (no ceiling). They do not generate a tax charge for the employees unless they exceed an annual limit of 4 % of the Social Security Contribution Ceiling (BBG; € 66,000 p.a. in 2010 with 4% being €2,640 p.a.). Depending on the individual employee's situation, there is a further fixed tax-free amount of €1,800. Any excess contribution is subject to individual taxation.
Taxation of employee contributions to an IORP	Same conditions as for employer contributions apply. The tax-free limits mentioned under "Taxation of employer contributions to a domestic IORP" apply to the sum of all employer and employee contributions. Thus, if the tax-free limits are already completely used for employer contributions, any employee contribution would not receive tax relief.
Social security or payroll charges on contributions to an IORP	Employer and employee contributions are not subject to social security charges up to the annual limit of 4 % of the Social Security Contribution Ceiling. Any contribution in excess of this limit is subject to social security charges for the employer and employee, provided that the employee's salary does not yet exceed the ceiling. There are no payroll taxes.
Taxation to the employee of investment returns credited within an IORP	None
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	Pension benefits funded with tax-free contributions are fully taxable as deferred income. The taxation of pension benefits funded with taxed contributions depends on their payment form as follows: Annuities are taxed on their interest portion only (depending on the employee's age at the pension commencement date). Lump sums are tax free if certain minimum conditions are met. We understand that benefits paid by non-German IORPs that are registered as cross-border IORPs and relate to service when members were German resident are taxed in the same way as those paid by German IORPs. Any tax withheld at source can be offset against the German tax charge for that benefit in accordance with the relevant double taxation agreement.

Retirement benefits for German retirees are subject to retiree health care charges. If a benefit (or parts of it) is paid in the form of a lump sum future health care charges that would have been payable had the benefit been paid as annuities have to be anticipated (using an approximation method) and deducted from the lump sum payment.

There are no key differences in taxation and social charges between membership of a domestic IORP and non-domestic cross-border IORP (assuming it is considered equivalent to a "Pensionskasse" or a German "Pensionsfonds").

3.3 Portability of retirement assets

If the transfer amount is not higher than the Social Security Contribution Ceiling, then employees who change employers can require a transfer-out to a PK, PF or Direct Insurance Plan of their new employer. Any amount above this ceiling requires authorisation via an individual agreement with the pension provider, employee and employer(s).

German pension insolvency fund (PSV) covers the event of bankruptcy of an employer that grants pension rights through a PF and guarantees the solvency of the PF. The PSVaG covers benefits that a PF cannot pay because of the insolvency of the employer. Employers using a PK as pension plan vehicle are exempted from the mandatory PSVaG coverage. If vested PF-pension obligations are to be transferred to a new foreign IORP (the PF-like pension plan vehicle used by the new employer) this PSVaG protection of vested accrued benefits cannot be eliminated. The PSVaG should be asked for an opinion before a transaction takes place. This may hinder the portability of retirement assets from an IORP that covers German employees (on a PF basis) to a foreign pension provider. Furthermore, German income tax may be levied on the transfer payment unless the German tax office confirms otherwise.

There are no restrictions (other than potential tax issues as set out) on the portability of retirement assets from a non-domestic cross-border IORP into a German IORP in respect of German based members. However the transfer payment may be subject to German income tax unless this can be negotiated with the German tax office. Transfers-in require the consent of the IORP (PK or PF) that assumes the assets (and liabilities).

3.4 Employment status of researchers

Researchers are often employed as private employees. However, in some cases researchers can be public sector employees.

There is a pension plan for public-sector employees to which they are assigned if their employer (e.g., a university) participates in this plan (*VBL – Versorgungswerk des Bundes und der Laender*) where benefits are based on contributions of 4% and the benefit is determined according to a formula based on such contributions. Once in the VBL it is not possible to opt out. When joining a public sector employer the first time and if the employment contract is concluded for a temporary period of not more than 60 months an individual may opt for not joining the VBL. Many other public sector bodies operate their own similar pension funds.

3.5 Implications for design of Researchers IORP

An IORP should be able to provide German approved pension benefits. The main implications of German legislation are:

- Design requirements include that payments must generally be made in annuity form and with minimum indexation requirements. Risk benefits cannot be paid in lump sum form
- If the IORP wishes to pay benefits as a lump sum of more than 30% of existing reserves to German members, it will need to be classed as a PK.
- No investment choice is permitted and a minimum 0% investment guarantee must be provided for DC-type plans.
- Access to an employer sponsored pension arrangement must be open to all employees. Care will need to be taken in defining researchers as an objective group so membership of the cross-border pension fund can be restricted to just those people.
- If a researcher works for the public sector they may be covered by the VBL (which they are not allowed to opt out of). Alternatively they may be covered by other public sector plans which they also cannot opt out of or may not wish to leave.

- There are detailed member information requirements
- Works council approval is needed for changes to the benefit structure
- Mandatory insolvency insurance applies where the IORP is classified as a Pensionskasse
- A transfer of assets from a non-domestic IORP to a German IORP may cause tax issues

4 Ireland

4.1 Social and Labour Law implications

Benefits and Contributions

Irish legislation contains a number of restrictions on the form and level of retirement benefits that may be provided to employees whose employment contractual relations are governed by Irish law. Some of these are features of the taxation system – and only apply to retirement plans that receive the benefits of tax relief. These are summarised below and detailed in section 7.2 below.

SLL imposes the following requirements:

- Benefits must vest within a maximum of 2 years. On leaving service after 2 years the benefits must be retained in the pension fund, unless the members opts to transfer them to a new employer's pension fund (or a personal pension plan).
- Vested benefits must be indexed until retirement – in a DC plan in line with investment returns; in a DB plan at the lesser of Irish CPI and 4% per annum.
- There is no requirement for pensions in payment to be increased,
- There is no requirement to have terminated employment with the sponsoring employer, or to be in receipt of a Social Security pension, before receiving a retirement pension at the plan's Normal Pension Age. However, early retirement benefits are not available until the member has left the service of the sponsoring employer.
- SLL does not place any restrictions on how employer contributions to a DC plan can be determined. However, equality legislation requires that this only be done to the extent that it can be objectively justified (in general only on ground of age).
- Benefits may not be assigned to a third party other than assignment to a dependant by surrender of own pension (dependant's resulting pension must not be greater than the member's reduced pension). On employee's bankruptcy, where there is a pension in payment, the trustee in bankruptcy is able to request a court to issue an attachment of earnings or income payments order against the pension.

In order to receive tax relief on the pension and contributions, the following rules also apply:

- Only part of the pension may be taken as a cash lump sum – but this cash sum is limited to 150% of the member's final remuneration (further restriction for large benefits – see table below)
- Benefits may not be taken before the minimum early retirement age (normally 50) except on death or disability retirement.
- There are limits (see §7.2) on the total benefits payable from a tax-approved pension fund, and the annual accrual and contributions permitted.
- Pensions in payment may not normally be reduced

Access

There is no requirement for membership of plans to be open to all employees, nor for benefits to be the same for different groups of members. However, employment law requires that access to the plan must not discriminate on grounds of gender and there are limits on how access can be restricted by age.

Employers may choose to make membership of the pension fund a condition of employment.

Investments

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. DC funds may offer a default lifestyle investment option.

Ring-fencing of assets is not required – but can be done.

Management of IORP

Irish SLL imposes no restrictions on the management of an overseas IORP. There is no requirement for member-nominated representatives to be on the IORP Board.

Information Requirements

Irish pension funds are required to provide a variety of items of information to members. These include:

- Prescribed basic information about the plan must be provided to members on joining (usually an explanatory booklet)
- Costs and charges must be disclosed to members in DC plans who have an investment choice.
- Statements of fund value and contributions to DC plans, together with a Statement of Reasonable Projection showing estimated benefits at retirement must be provided annually. Statements of DB benefits must be provided annually.
- Statements of benefits and options must be provided on retiring or withdrawing from the plan
- A copy of the latest annual report and accounts must be provided on request
- Trust Deed and Rules, actuarial valuation reports and Statements of Investment Principles must be available

These requirements also apply to Irish members of overseas IORPs who must receive "similar information". The information must be available in English.

4.2 Taxation and social charge comparison

This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross border arrangement.

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	Once the IORP is registered with the Pensions Board there is no further requirement in order to receive tax relief.
Taxation of employer contributions to an IORP	Contributions to a tax-approved IORP are deductible as a business expense, so long as, when combined with employee contributions, they fall within a limit that is determined annually for each person based on the funding required to provide a maximum level of benefit (a pension of 2/3 of final pay after a full career). They do not generate a tax charge for the employees.

Taxation of employee contributions to an IORP	Contributions to a tax-approved IORP are tax-deductible with relief being granted at the employee's marginal rate of income tax. Relief is also granted in respect of pay related social insurance (PRSI) charges but not in respect of the income levy introduced in 2009. Tax relief is restricted in any year of assessment to a percentage of the member's remuneration from the employment being pensioned. The percentage relief limits are age related: <table> <tr> <td>Under 30</td><td>15%</td></tr> <tr> <td>30-39</td><td>20%</td></tr> <tr> <td>40-49</td><td>25%</td></tr> <tr> <td>50-54</td><td>30%</td></tr> <tr> <td>55-59</td><td>35%</td></tr> <tr> <td>60 or over</td><td>40%</td></tr> </table> For the purposes of calculating relief, there is an overall aggregate earnings limit on an individual's tax relieved contributions in a tax year. A limit of €150,000 applies to earnings for the tax years 2009 and 2010. In addition, the employee contribution forms part of the limit set out above for the total contribution and tax relief is only available up to that limit.	Under 30	15%	30-39	20%	40-49	25%	50-54	30%	55-59	35%	60 or over	40%
Under 30	15%												
30-39	20%												
40-49	25%												
50-54	30%												
55-59	35%												
60 or over	40%												
Social security or payroll charges on contributions to an IORP	Employer contributions do not generate PRSI charges for the employer or the employee. There are no payroll taxes. Employee contributions are deductible as an expense in the calculation of PRSI charges for employee and employer.												
Taxation to the employee of investment returns credited within an IORP	None												
Social security charges to the employee based on investment returns credited within an IORP	None												
Taxation of benefit payments from an IORPs	Pensions are taxed as income and are also subject to the "health levy" element of the PRSI charge. Part of the benefit (up to 1.5 times final remuneration, subject to a maximum of 25% of the standard fund threshold – see below) may be taken as a lump sum that is currently free of tax. There is a maximum fund of €5,418,085 (the "standard fund threshold") above which tax will be levied at the rate of 41% on the happening of a Benefit Crystallisation Event e.g. payment of pension or transfer to an overseas arrangement. There is an exemption from income tax for pensioners who live outside Ireland if the last 10 years' service was abroad, or if at least half of the total service and at least 10 of the last 20 years were abroad. There may also be exemptions under the provisions of bilateral Double Taxation Agreements.												

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement.

4.3 Portability of retirement assets

There are no legal, tax (other than the triggering of a charge where the amount transferred exceeds the standard fund threshold) or practical/economic implications for the portability of retirement assets when an individual leaves Ireland and wishes to transfer his or her pension assets to an IORP in another

member state, or moves to Ireland and wishes to transfer his or her pension assets to an IORP in Ireland.

However, there is no statutory right to a transfer value from an Irish IORP if the individual does not have vested rights i.e. has not completed at least 2 years' qualifying service. In such cases, unless the plan rules state otherwise, the individual will receive a refund of the value of his or her contributions, less a tax charge for which the scheme trustees are liable.

4.4 Employment status of researchers

Public sector employees in Ireland have traditionally been included on a compulsory basis in the relevant public sector defined benefit scheme, which provides retirement pensions and lump sums related to final salary and service within the broad public sector. These arrangements also cover university employees. This means that researchers in these sectors are unlikely to join an overseas IORP.

The Minister for Finance has recently announced the Government's intention to introduce in 2010 a new scheme for all future entrants to the public service, which will be designed on a career-average basis. The full details of this arrangement are likely to be published in the next 3 months.

4.5 Implications for design of Researchers IORP

An IORP should be able to provide Irish approved pension benefits without much difficulty.

- It will need to be able to provide retirement benefits mainly in pension form.
- There is a full range of DC pension design possibilities permitting flexible contribution structures, possibility for employees to make voluntary contributions on a tax-effective basis (within limits), and a wide range of potential investment options.
- Public sector researchers have been covered on a compulsory basis in public sector DB arrangements. We expect researchers would be unlikely to opt out

5. Italy

5.1 Social and Labour Law implications

Benefits and Contributions

SLL imposes the following requirements:

- A benefit plan must be in the form of a defined contribution plan. Prior to 1993 defined benefit plans were allowed and therefore there still exist some DB plans from this period, but they are closed to new members.
- A statutory requirement is a compulsory termination indemnity payable (TFR) upon termination of employment. This is now generally financed on a DC basis (at least for current benefit accrual).
- Benefits can be paid in the form of lump sum and/or annuity. The maximum lump sum payment (except for pre-1993 benefits) is 50% of the total benefit value.
- Risk benefits can be provided within the pension plan – although this is not normal practice as many collective bargaining agreements already require separate insurance cover. The benefit from the pension plan is normally a lump sum or annuity, equivalent to the residual member account.
- Access to pre-retirement benefits must be allowed in certain circumstances; unemployment, medical expenses for critical illness, purchasing a first house (only 75% withdrawal) and disability
- The minimum contributions to be paid by an employee are set out in either the collective bargaining or company agreement (and must be agreed by the unions and employee representatives). If an employee pays this amount then the employer is required to pay contributions at the agreed rate. The employer can agree to pay higher contributions than required by the collective bargaining agreement and these can vary between different groups of employees (including by age and by service).
- If an employer wishes they are allowed to set a maximum limit for employer contributions (so long as the collective bargaining agreement requirements are met)
- Additional contributions are allowed by the employee both pre and post retirement.
- Pension fund benefits cannot be paid before the employee's social security pension has started. Late retirement is permitted- there is no maximum age.
- Employer contributions must vest within 5 years for retirement benefits. Employee contributions are always vested.
- Any member (including current employees) may transfer to another pension fund the accrued account under the pension fund provided that they have at least 2 years of membership of the current pension fund. Any former member is permitted to transfer their accrued fund to a new employer's plan.
- Benefits may not be assigned to a third party

Access

Many collective bargaining agreements in Italy require employers to contribute to a specific pension fund for that industry – for those employees who choose to join and to contribute. Membership to a plan must be voluntary and employees are free to contribute to a different fund if they prefer. However, there is no requirement for the employer to contribute to a different fund (although they may do so if they agree with the employee).

Employers are permitted to set up their own pension funds (in addition to the industry fund, or where no industry fund exists) in which case they can define the membership as they wish subject to complying with discrimination legislation (sex, race etc). Employees can then choose whether to join.

Investments

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund with one exception. Italian members of an IORP must be given access to an investment option which is expected, with a high probability, to produce a return at least equal to that which has to be guaranteed by Law in Italy for TFR benefits (1.5% plus 75% of the inflation rate). In addition, this investment option (only) must return at least the contributions paid (net of administrative expenses).

DC funds may offer a default lifestyle investment option and individuals are free to choose their own investment strategy (there is no requirement to invest in the "TFR" fund option).

Ring-fencing of assets is not done automatically and only at the request of the national supervisory pension authorities (Covip).

Management of IORP

Italian SLL imposes no restrictions for the management of an overseas IORP. There is a requirement for 50% of the Board to be represented by an audited body representing the members – but this does not apply to overseas IORPs.

Information Requirements

Italian pension funds are required to provide a variety of items of information to members. These include:

- Informative leaflet covering contribution rates, administration costs, management fees and portfolio characteristics.
- Individual annual statements about accrued benefits, projected benefits at retirement and fund performance

They are also required to provide Covip with annual information about, for example, membership numbers, financial statements.

These requirements are all also applied to overseas IORPs, in respect of Italian members only.

There are no official language restrictions however in practice the Covip will only accept official documentation in Italian,

5.2 Taxation and social charge comparison

This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross border arrangement

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	The Cross-border IORP has to be authorized by Covip to cross-border activities. It must then offer the "TFR" investment fund option and provide Covip with the required annual information.
Taxation of employer contributions to an IORP	Contributions are deductible as a business expense (without any ceiling). Contributions are not taxable income for the employee up to € 5.164,57 per fiscal year. This limit includes both employer and employee contributions.
Taxation of employee contributions to an IORP	Contributions are tax-deductible to the extent that the total contribution (employer and employee) does not exceed the limit of € 5.164,57 per fiscal year.
Social security or payroll charges on contributions to an IORP	Employer contributions are subject to a solidarity security charge of 10% Employee contributions are subject to the full social security charges.
Taxation to the employee of investment returns credited within an IORP	Domestic IORP: 11% - paid by the pension fund Non-domestic IORP: On the basis of the fiscal rules of the non domestic country.
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	If the relevant contributions have been taxed, benefits at retirement are not subject to income tax. Otherwise benefits paid by the pension funds are taxed at a flat rate of 15%. After 15 years of membership in a pension fund this rate is reduced by 0.3% for every additional year of membership with a minimum rate of 9% after 35 years of membership. The component of the benefits payment corresponding to the return on investments is not taxable, to the extent that they have been taxed (either in Italy or elsewhere) prior to retirement. There are no social security charges on benefit payments from IORPs.

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement. The taxation of benefits from a non-domestic IORP will be higher if the investment returns have not previously been taxed.

5.3 Portability of retirement assets

An employee who leaves Italy may transfer the individual account abroad. Transfers to an EU IORP or a USA pension fund are totally tax exempted. Otherwise: the transfer payment is taxed at rate of 23% (only on the part corresponding to not taxed contributions)

An individual who moves to Italy may transfer an individual account from an EU IORP or USA pension fund with no Italian tax charge. To set up tax treatment of benefit, the Italian IORP has to know the tax treatment of contributions in the country of origin. Transfers from elsewhere are tax exempted only up to € 5.164,57 (it is considered like an annual contribution).

5.4 Employment status of researchers

Researchers in the private sector will be covered by the collective bargaining agreement that covers their employer. This may, or may not, require the right to join a pension fund (and to receive employer contributions). As stated above, the employer's responsibility to contribute is limited to the official industry pension fund – although they may voluntarily contribute to other funds.

In addition, all private sector employees must receive the TFR (*Trattamento di Fine Rapporto*). Employers with more than 50 employees must fund this on a DC basis through a pension fund (chosen by each employee) or through a central state fund. Employers with fewer than 50 employees can choose to provide this on a DB pay-as-you-go basis covered by a balance sheet provision although employees have the option to request a contribution to a DC pension fund instead.

Public sector employees do not receive the TFR. Most do not have access to a pension fund (although a fund exists for teachers and primary and secondary schools).

Employees of universities may be either public or private sector (depending on the university). They do not have any pension provision in addition to social security.

5.5 Implications for design of Researchers IORP

There are a number of issues which need to be addressed when establishing an IORP to ensure access to Italian researchers:

- The cross-border IORP can be used to receive the minimum TFR contributions
- The contributions required for each member will need to at least meet the minimum required for that member's collective bargaining agreement.
- At least 50% of the benefits must be paid as a lifetime annuity
- Employees have the right to withdraw some or all of their funds before retirement in certain circumstances.
- The IORP must offer at least one investment option which complies with the minimum expected return requirement of 1.5% plus 75% of inflation. This option must also have a minimum guarantee of 0% net of expenses.
- A record must be kept of which contributions have been taxed and which have not, and whether the investment return has been taxed. This will lead to more complicated administration requirements.
- There is a requirement to send information to Italian regulator about the Italian section on an annual basis
- CLAs often require that membership of a specific domestic pension arrangement is offered. Employers are required to contribute unless members choose voluntarily to opt out.

6. Netherlands

6.1 Social and Labour Law implications – The Netherlands

DC Benefits and Contributions

Dutch legislation for DC schemes contains a number of restrictions on the form and level of retirement benefits that may be provided to employees. Most of these are features stem from the pension taxation system. These tax requirements are detailed in section 9.2 below.

SLL imposes the following requirements:

- Specific requirements for Dutch DC schemes are limited since the Dutch pension market and legal framework traditionally has been dominated by – and shaped around- DB schemes.
- Pension benefits and risk benefits (if any) may only be paid-out in the form of life long annuities. Lump sum payments are not allowed. Some exceptions for small pension benefits do exist.
- Benefits must vest immediately. There is no minimum vesting period or minimum vesting age. On leaving service benefits must be retained in the pension fund, unless the members opt to transfer them to a new employer's pension fund (see below – portability).
- Indexation of vested pension rights and/or benefits in payments is not regulated by law. This is a scheme design issue which is agreed between the employer and employees (or respective trade bodies) and is covered in the scheme rules.
- "Conditional indexation" is also permitted – where pension increases are not guaranteed but instead are dependent on the financial performance of the pension fund. This is covered in the scheme rules. For DC schemes, (conditional) indexation is usually not applicable (a few exemptions exist).
- Reduction of pension benefits in payment or vested pension rights (for instance due to shortfalls in the IORP) is allowed if a Dutch pension scheme is managed by a Dutch pension fund. However, this feature is not part of Dutch host country SLL (but part of Dutch home country IORP funding requirements). This means that Dutch SLL would not prohibit the reduction of accrued benefits.
- Benefits may not be assigned to a third party.
- No minimum retirement age exists in law, although benefits cannot be taken until the employee has left service with the employer. Benefits must commence by age 70 at max.
- No requirements regarding minimum or maximum DC contributions do exist. Additional voluntary contributions by individual members are allowed by law, given the scheme rules do accommodate this feature. Dutch anti-discrimination rules are strict. Contributions may not be varied by sex. However, they can vary by age with a fiscal limit for age groups.
- No mandatory minimum return on investments applies. Financial guarantees are not required in Dutch DC schemes.
- There are no legal requirements regarding Dutch first pillar state pensions that affect Dutch second pillar pension arrangement.
- Dutch SLL contains several explicit rules regarding divorce and pension rights. The same goes for the basic right of singles to replace survivors benefits by old-age benefits
- Dutch SLL contains a requirement that disputes regarding a Dutch pension scheme managed by a foreign IORP must be solved before a Dutch court.
- The benefit pay-out, the vested rights and the contributions must be set in euro.

Access

In The Netherlands, there is no overall requirement for employers to provide for a pension arrangement for their employees. Nevertheless, around 98% of Dutch employees receive a second pillar pension.

Companies belonging to certain industries (e.g. health and well-being, construction) are obliged to provide a pension arrangement and have to join the respective industry-wide pension fund and the associated pension scheme (it is, however, possible for companies to opt out under certain strict conditions). The industry itself will ask the regulator to appoint its industry-wide pension fund and pension scheme as a mandatory arrangement. Around 60% of the Dutch pension market is organized along the lines of mandatory industry-wide pension arrangements. Individual employees cannot opt out of an industry-wide scheme.

It is not clear yet, to what extent the mandatory nature of industry-wide pension funds and schemes is part of Dutch SLL. For instance, it has not been tested yet, to what extent mandatory industry-wide pension schemes can be managed by non-Dutch IORPs. Similarly, it has not been tested yet to what extent an individual company can opt-out of the mandatory industry-wide pension fund and have its pension scheme managed by a foreign IORP.

Companies and employers that do not belong to a specific industry, may voluntarily create an own company pension fund and design a pension scheme.

If an employer has a pension arrangement in place, all employees of 21 years and up must be able to participate in this arrangement and employer contributions are mandatory (opting out by individual employees is feasible). However, it is possible for an employer to operate more than one pension scheme for different groups of employees so long as each pension arrangement is for a well defined group of employees within the company. There is no compulsory law to ensure all employees are offered some form of pension.

Investments

In the Netherlands, the prudent person principle applies in pension investments. There are no quantitative investment restrictions applicable. Risk mitigation in investment policy is controlled via risk-based solvency requirements for Dutch IORPs.

In line with the above, the Dutch SLL does not place any quantitative restrictions on investment strategy for Dutch schemes managed by overseas IORPs, nor on the range of funds offered by a DC fund. Other than the quantitative restrictions on self investments in the plan sponsor, investments in group companies and in regulated markets, as stated in the IORP Directive.

Dutch DC schemes may offer a default lifestyle investment option and individual members may fully decide themselves on the asset allocation. However, strict “advice”, “care” and “communication” requirements apply to the IORP that manages the Dutch scheme (see below – Information requirements).

Ring-fencing of assets belonging to the Dutch pension scheme managed by a foreign IORP is not required by Dutch SLL – but can be done.

Management of IORP

Dutch home country regulation contains several very strict governance requirements for Dutch IORPs (for instance, governing bodies, Board structure, and member representation). However, these requirements are not required under the Dutch SLL. As such, Dutch SLL imposes no restrictions on the management of an overseas IORP. For instance, there is no requirement for member-nominated representatives of Dutch schemes to be on the overseas IORP Board.

Dutch home country law contains several requirements for IORPs regarding reporting to the supervisory authorities. However, these requirements are obviously not made part of Dutch SLL, but left to the home country regulation and regulator.

Similarly, Dutch home country law contains strict requirements regarding the funding of Dutch IORPs that manage a Dutch pension scheme, e.g. technical provisions, solvency requirements, etc. None of these financial requirements are made part of Dutch SLL. It is left to the home country of the IORP to set the financial / funding requirements. One exception applies, though. If conditional indexation applies to a Dutch pension scheme, stress testing and “consistent funding” requirement is made part of Dutch SLL. It has not been tested yet to what extent this SLL requirement might interfere with other home country funding requirements. For Dutch DC schemes, (conditional) indexation is usually not in place. As such, this requirement will NOT be demanding.

The same goes for priority order in case of IORP bankruptcy. Dutch rules are not made part of Dutch SLL. It is up to the home country of the IORP to determine bankruptcy rules.

There is an extensive list of items in Dutch SLL, though, that have to be covered in a management contract between a Dutch plan sponsor and a foreign IORP. However, these requirements are qualitative in nature and in practice not all of the requirements are relevant for foreign IORPs. There are no quantitative requirements in Dutch SLL regarding profit sharing, maximum charges, exit clauses, contribution levels, etc. The Dutch SLL leaves it up to the foreign IORP and its client (the scheme) to negotiate the terms of the management contract.

Information Requirements

Dutch IORPs managing Dutch DC pension schemes must live up to very strict information to members requirements. Foreign IORPs managing a Dutch DC pension scheme must also comply with all these information requirements. These include:

- The information must be “clear and understandable”; although the Dutch language is not explicitly required one could assume that Dutch is applicable.
- Upon start, end of membership and once every five years if deferred member status: information on scheme rules, indexation, vested rights, etc, must be provided.
- Annually, member benefit info, statements of fund value, contributions and indexation must be provided to the members. This statement has a standardized format, pre-defined by Dutch law and is made part of Dutch SLL
- Adjustments in scheme rules and financing plan must be provided to members immediately.
- IORP financial and statutory info: a summary funding statement, statutes, etc, must be sent upon request

For Dutch DC schemes, a special and strict clause is included in Dutch SLL aiming at informing and ‘educating’ individual members regarding the investment options and associated risks. The foreign IORP has to live up to these strict requirements.

6.2 Taxation and social charge comparison

This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP versus a cross border IORP.

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	■ To be qualified as an IORP by the applicable foreign home country supervisor ■ To be formally registered and “designated” by + contract to be signed with Dutch tax authorities / Minister of Finance
Taxation of employer contributions to an IORP	DC Contributions to a domestic IORP are deductible as a business expense. No explicit ceiling applies although the company's tax inspector will review whether the contributions exceed "normal practice". This ceiling is high and generally not felt to be restrictive. Employer contributions do not generate a tax charge for the employee; the employer contribution is not included in the salary for tax purposes.
Taxation of employee contributions to an IORP	DC Contributions to a tax-approved IORP are tax-deductible to the extent that the total contribution (employer and employee) does not exceed an annual contribution level (see above). If the contribution exceeds a certain level, the employee will be charged.
Social security or payroll charges on contributions to an IORP	Employer contributions do not generate social security charges for the employer or the employee. There are no payroll taxes. Employee contributions are subject to social security charges at the standard rate.
Taxation to the employee of investment returns credited within an IORP	None
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	Pensions paid to NL residents are taxed as income, regardless of where the pension was earned. There are social security charges on benefit payments from IORPs. Payroll taxes are not deducted from the benefit. Premiums for social insurance schemes are deducted from the benefit via the first tax band. That rate is currently 13.25% on a benefit of up to €32,127. It is possible (although not compulsory) for a non-domestic IORP to be given the power to deduct tax and social security charges at source.

For members in a Dutch pension scheme, there are no key differences in taxation, social charge and payroll taxation if the scheme is being managed by a domestic Dutch IORP or by a non-domestic cross-border IORP. The same goes for a pension arrangement managed by a domestic insurer or a foreign insurer.

The only prerequisite is that the foreign IORP has to be formally designated by the Dutch tax authorities / Dutch Minister of Finance and has to sign a contract. This is a standard procedure and standards forms are available.

6.3 Portability of retirement assets

Pension rights are transferable to a qualifying recognised overseas IORP. All foreign pension institutions categorized as IORPs by their own local authorities qualify. A foreign IORP has to formally register with the Dutch tax authorities beforehand in order to become “recognised” and to assume tax liability (ie. the tax relief granted by the Dutch authority in the accumulation phase should be paid back to the Dutch fiscal authorities via withholding taxes in the pay-out phase). Registration requires certain reporting requirements.

Individual asset transfers have to comply with strict value calculation methods, set out in the Dutch SLL. In contrast, group bulk asset and liability transfers do not meet strict calculation methods, and should be mutually agreed upon by the plan sponsor and the Dutch IORP.

Dutch SLL contains strict requirements on the decision making process regarding a change of IORP provider. The Dutch Workers’ Council and -in case of an intended group asset transfer to a foreign IORP- also the Dutch tax authorities, the Dutch pension supervisor and the Board of the existing Dutch IORP must approve the transfer of a Dutch scheme to another (overseas) IORP.

6.4 Employment status of researchers

There are no requirements for researchers in the Netherlands (whether in the public or private sectors) to join any particular retirement arrangement – except where membership of an industry-wide fund is required for the employer and as such for the researchers.

Researchers in the public sector join either the Universities pension scheme or the general Dutch civil servants pension scheme – both of which are DB schemes. Both schemes are managed by the ABP pension fund. Opting out of the scheme and of the ABP pension fund by individual researchers would be very challenging. May restrictions apply. However, opting out by a single university or the entire group of Dutch universities from ABP would be feasible, although still challenging. For instance, the European scheme has to be proved to be at least “equivalent” to the current DB scheme. Moreover, leaving ABP pension fund would activate certain, potentially costly, exit clauses.

Researchers in the private sector –both nonprofit and profit sector- are normally either a member of an industry-wide pension fund or a company pension fund, depending on which employer is involved. If they are members of an industry-wide fund then they cannot normally opt out (although their employers can).

6.5 Implications for design of Researchers IORP

Any IORP should be able to provide Dutch DC pension benefits without much difficulty. Dutch DC schemes are not tightly regulated. Dutch host country SLL is condensed and disciplined, not causing major issues with home country regulation in other countries. However, there are a number of issues that need to be considered:

- Local member reporting requirements are strict
- The IORP must pay the benefit as a lifetime annuity (the IORP vehicle must be allowed to be risk bearing) or enter into an agreement with an insurer to outsource the biometric, longevity risks.
- It is possible for Dutch pensions to have "conditional indexation" (a formal practice of determining the level of pension increases based on the financial performance of the pension fund). However, if this is included in benefit design, it could result in additional implicit Dutch funding requirements.
- In the private sector, many researchers will be members of industry-wide funds. They are not permitted to opt out of these funds on an individual basis. Employers are able to out but may choose not to if that means that other non-research employees also have to leave the fund and have alternative pension provision elsewhere. No issue private sector access where no CLA, and researchers can be covered under a separate pension fund.
- Dutch public sector researchers (including those at universities) are grouped together within the ABP pension fund and are unlikely to want to (or be able to) leave their existing DB pension schemes.

7. Poland

7.1 Social and Labour Law implications

Benefits and Contributions

Pension schemes in Poland can be set up in two ways:

- As a PPE (Pracowniczy Program Emerytalny) which needs to comply with SLL and has tax advantages
- As a "non-qualified" pension plan, which does not need to comply with SLL but does not have the same tax advantages. A significant proportion of pension schemes in Poland are set up in this way, due to the flexibility about access and contributions that this provides.

Polish SLL imposes the following requirements:

- PPEs must be established on a Defined Contribution basis.
- A PPE may be operated in one of the following forms: 1. a pension fund 2. agreement regarding the employer depositing the employees' contributions into an investment fund 3. employees' group life insurance with an insurance society in the form of a group life insurance with a capital insurance fund 4. foreign management. The first type assumes gathering the contributions in a pension fund which is managed by a fund society and second refers to investing in one or multiple funds which are managed by a society. Both of these fund types are legal persons. The third regards the so-called 'investment life insurance' and money is gathered by the insurer within his assets. In such case, the fund is separated only for accounting purposes and is not a legal person. The fourth type (foreign management) regards any foreign IORP, regardless of whether the fund is a legal person or not and whether it has a separate fund manager or is self-managed.
- Risk benefits are not normally part of a PPE but they may be, if the form of the agreement is a group life insurance agreement. However, this is not allowed under foreign management. If a member dies then the sum of the accumulated fund is paid to the person the employee nominated.
- Access to benefits pre-retirement is allowed. If the employer contract ends then the employee is allowed to transfer to an individual pension account ("IKE") where the fund is allowed to be withdrawn prior to retirement, however there will be significant taxes payable (reflecting the loss of past tax exemption on investment returns).
- Employer contributions may be based on a percentage of pay and/or a fixed monetary amount. The same rule must apply to all members. They are limited to 7% of employee's salary. If the pension scheme rules permit, employees are allowed to pay additional contributions which is capped at an annual limit which is a formula based on the forecasted monthly remuneration of the national economy. For 2010 this is 14,368.50 PLN. There are no specific limits for non-qualified arrangements.
- Normal retirement is 60 for a female and 65 for male. There is no restriction to the age you retire but assets must be released by the age of 70. Benefits can be requested from age 60 (or from age 55 if the social security pension has started). (Workers in certain occupations may retire earlier.)
- Pension schemes must offer members the option to receive their retirement benefit as a cash sum. They can also be set up (if desired) to pay the benefit through a programmed withdrawal over a number of years.
- Members have a right to transfer their accrued benefits to a new pension scheme or to an individual plan (IKE) so long as they no longer has an employment contract with the company. The transfer amount is calculated on the last working day of the month and is the funds net assets divided by the number of accounting units determined on that day.
- Vesting rights are immediate.

Access

In normal circumstances a company may only operate one PPE and that must then be offered to all employees, although membership is voluntary. Companies are allowed to operate more than one scheme only in limited cases such as a merger and acquisition.

An employee is only eligible to join a scheme after three months of service, unless the pension agreement states a lesser period. Those aged over 70 are not allowed to join. A PPE cannot be set up if less than 1/3 of employees meet these eligibility requirements

A person employed by more than one company is allowed to join both schemes; however joining is optional. Membership cannot be restricted to a particular group of employees and all employees must have the same rights.

Investments

There are no material investment restrictions in addition to those in the IORP Directive.

If the pension scheme agreement permits it, employees can choose how their funds are invested (from the range of funds offered by their pension scheme). Pension schemes are not prohibited from offering a default lifestyle investment option, although this is not normal practice.

Ring-fencing of assets is not required – but can be done.

There is no minimum guaranteed investment return required by law, although pension funds can offer these.

Management of IORP

Polish SLL imposes no restrictions on the management of an overseas IORP. There is no requirement for member-nominated representatives to be on the IORP Board.

Pension schemes can be set up so that they are automatically liquidated if the assets fall below an amount stated in the pension schemes rules.

Information Requirements

Polish pension schemes must provide information in accordance to the law of 25 June 2004, including a plan description on joining, and a benefit statement on request when a member leaves the plan. There is no requirement to provide members with annual benefit statements.

Employers who operate PPEs must send the Polish authorities annual information covering, for example, employees covered, contributions paid, transfer payments made.

All information to participants must be in Polish

These requirements also affect Polish members of overseas IORPs and their employers.

7.2 Taxation and social charge comparison

This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross border arrangement.

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	Following the letter of the Polish regulations the host IORP for Polish employees can be established in only one form. Only entities registered within the EU are eligible. This form stipulates that all Polish regulations concerning IORP should be adopted also the tax scheme (Taxed Exempted Exempted - TEE). All IORP documentation needs to be conducted in Polish.
Taxation of employer contributions to an IORP	Contributions are deductible as a business expense. The basic contribution (employer) to a PPE is treated as taxable income for the employee. Contributions to non-qualified pension schemes are taxed as income for the employee and are also subject to social charges.
Taxation of employee contributions to an IORP	The additional contribution (employee) shall be deducted from the salary amount after tax. Contributions to a PPE can only be paid up to a threshold level (for 2010 this is 14,368.50 PLN, around €3,600). Contributions to non-qualified pension schemes do not receive tax relief.
Social security or payroll charges on contributions to an IORP	Employer contributions do not generate social security charges for the employer or the employee. There are no payroll taxes. Employee contributions are part of employee salary and subject to social security charges at the standard rate.
Taxation to the employee of investment returns credited within an IORP	None for PPEs. Investment returns in non-qualified plans are subject to tax (Belka tax)
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	None Please note that in special cases (ex. employee resignation, scheme liquidation) different taxation rules are adopted. Depending on the type of fund transfer adopted. Benefits from non-qualified plans are not taxed in Poland.

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement.

7.3 Portability of retirement assets

After leaving employment, a member can only transfer funds to another PPE or to an IKE (individual pension account). Funds in an IKE can then be withdrawn but they are taxed in that case.

Funds cannot be transferred to any other funding vehicle so, to transfer to an overseas IORP (unless this is the funding vehicle for a PPE), the funds would need to be transferred to an IKE, withdrawn (and taxed) and then paid into the overseas IORP as AVCs.

SLL does not prohibit the transfer of funds from an overseas IORP into a PPE. This is likely to generate an income tax charge for the member (subject to the exact conditions of the transfer and negotiation with the tax authorities).

7.4 Employment status of researchers

Most public sector employees in Poland (including those at universities) do not have any supplemental pension plans. (There are pension plans for certain public employees, for example police and army, but not any groups that are likely to include researchers.)

7.5 Implications for design of Researchers IORP

There are a number of issues which need to be addressed when establishing an IORP to ensure access to Polish researchers:

- Benefit flexibility is limited if the vehicle is classified as a PPE in terms of level of contributions
- Access must be offered to all employees within an organisation. To cover only researchers, it will be necessary to treat the cross-border IORP as a non-qualified plan. Approximately 2/3 of all pension funds are non-qualified.
- PPE benefits are taxed on a favourable basis. Non-qualified plans receive no preferential tax treatment, although benefits are tax-free
- The IORP must be able to pay benefits from a PPE as a cash sum, if requested by the member.
- Transfers to other arrangements from PPEs are limited
- There is a requirement to send information to Polish regulator about the Polish section on an annual basis

8. Spain

8.1 Social and Labour Law implications

Benefits and Contributions

Qualified Pension Plans in Spain fall into three categories:

- Company plans. Set up by single employers or groups of employers. Can receive contributions from employers and employees.
- Individual plans. Used by individual people. Receive employee contributions only.
- Associate plans. Set up by bodies that represent workers in a particular industry or profession (for example, trade unions or professional/trade bodies). Receive employee contributions only (although employees can permit their employers to make these payments out of their salary on their behalf).

Spanish SLL contains the following rules:

- There is no restriction on the form of benefit (pension or lump sum).
- Normal Retirement Age must be equal to the age at which it is normal to receive the pension from Social Security (currently 65).
- Early retirement is permitted from age 60, but only if the Social Security pension has started or if the employee stops working (or any professional activity) and paying contributions to Social Security (and if the plan rules permit retirement). It is possible to defer retirement after age 65 but once the Social Security pension has started no more retirement benefit may be earned (but death benefits may still be provided).
- There exists an annual contribution limit within the social labour law. This annual limit is €10,000 for those aged under 50 and €12,500 for employees aged 50 and over. This limit is the total amount of contributions from both the employer and employee.
- If the plan rules or the collective agreement permit then different contribution rates for participants are allowed in different sub plans. Membership of each sub-plan must be for a defined group of employees and employees cannot choose which sub-plan to join. The company contribution rate can be zero for some sub-plans. The differences can be in relation to type of plan (DB or DC), age, employment status, date of hire, etc.
- Employees can pay AVCs if the plan rules permit this. If the company contribution rate is zero in a sub-plan then the employees must be permitted to pay AVCs.
- There must be full and immediate vesting for the employees. For a DC plan the accumulated fund is the sum of direct and imputed contributions plus the corresponding profit sharing/returns minus expenses.
- For company qualified pension plans, transferring of benefits is only permitted if the plan rules allow it or in the case of dismissal.
- Pre-retirement access to benefits is limited to collective dismissals which must be authorised by the labour authorities. Access to benefits in this scenario is independent of age.
- The employer may reduce benefits for future service, but not accrued rights. The Control Committee (representatives of the pension fund) must be informed but cannot veto the change.
- Benefits may not be assigned to a third party until they are in payment or, alternatively, until such time as they could be paid to the member, even if the benefit has not yet been requested .

Access

If an employer operates a Qualified Pension Plan then all employees with two or more years of service must have the option to join the plan. However, although employees are eligible to join, the law allows

different contributions levels even zero employer contributions if the plan has different sub plans established in the plan rules or by collective agreement.

An employer may only operate one company qualified pension plan.

Membership of the plan is voluntary.

Investments

SLL does not place any restrictions on investment strategy of an overseas IORP in addition to those in the IORP Directive.

Individuals in a company or associate DC fund are not allowed to select their own investment allocation nor allowed to use a default lifestyle investment option. The plan or sub plan must decide on the investment allocation and in an associate or company plan, employees do not have a choice about which sub-plan to join (and, therefore, have no investment choice).

There is no requirement to provide a minimum guaranteed return.

Management of IORP

Spanish SLL requires that the Control Committee decides the funding vehicle that the pension plan will use. If it is a new plan which is being established then SLL requires a 'promoting committee' to decide this. The representation on a Control Committee or a Promoting Committee is the same: 50% employer and 50% employee/trade unions.

It is possible for a pension plan to have both DB and DC sub-plans. In this case (only) it is permitted to use separate funding vehicles for the DB and the DC sections.

There is not a requirement for an employee nominated representatives to be on the IORP Board. However, the IORP must designate an official representative (an individual or a corporate entity) based in Spain. This representative is responsible for answering the claims presented by the control committee, members and beneficiaries of the plans subject to Spanish legislation, representing the IORP to the Spanish administrative and judicial authorities and representing the IORP for any tax obligations as result of their activities in Spain.

Any changes to the benefit structure must be authorised by the Control Committee or the Collective Agreement.

Information Requirements

It is mandatory that individuals receive annual benefit statements (contributions, vested rights and a summary of the plan benefits and information about any excess on the contribution limits). Every six months, information must be provided on the movement of the individual accumulated funds, any legislative, plan, fund or investment changes, movement in plan asset and information on the fees and commission as a percentage on the accumulated fund.

These requirements apply to Spanish members of foreign IORPs. There is no requirement that the communication be in Spanish – although it is unlikely that the Control Committee would agree to use a funding vehicle that could not do this.

8.2 Taxation and social charge comparison

This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross border arrangement.

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to	The IORP must be registered with the Dirección GERAL de Seguros. It must also have a formal Representative based in Spain who deals

be granted equivalent host-country domestic-IORP tax treatment	with the tax authorities (see 11.1.4 above). There are no further requirements in order to receive tax relief.
Taxation of employer contributions to an IORP	Contributions, within the limit, are fully and immediately tax deductible in the corporate tax return. The annual contribution limit in 2010 is €10,000 for employees under age 50 and €12,500 for employees age 50 and over. Additionally, in 2010, employers receive an extra tax deduction based on 0.2% of employer contributions made on behalf of their employees for the part related to salaries up to €27,000. This additional deduction has been removed for later tax periods started from 1 January 2011. Employer contributions generate a benefit in kind tax charge for the employee if the total contribution (employer and employee) exceeds the limit on employee contributions (see below).
Taxation of employee contributions to an IORP	The annual contribution limit in 2010 is €10,000 for employees under age 50 and €12,500 for employees age 50 and over. There is also a tax deductible limit applicable in the employees' personnel tax returns. This limit in 2010 is the lower between €10,000 or 30% of the total personal income for employees under age 50 and the lower between €12,500 or 50% of the total personal income for employees age 50 and over.
Social security or payroll charges on contributions to an IORP	Employer and employee contributions do not generate social security charges for the employer or the employee. There are no payroll taxes.
Taxation to the employee of investment returns credited within an IORP	None. Pension funds and domestic IORP are levied to Corporate tax rated at 0%, and taxes withheld on dividends and interests must be reimbursed by the Spanish treasury.
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	Income tax rates are applied to the whole amount of the pension (no reductions) paid to the beneficiary. There are no social security charges on benefit payments from IORPs. Lump sum payments are also taxed as income. However, 40% of lump sum benefits payments funded with contributions made up to 31 December 2006 are free of tax.

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement.

At the employer's decision, there are two possible tax treatments for domestic insured retirement arrangements:

- To consider contributions/premiums as taxable salary in kind for the plan members and subject to withholdings tax. In this case, no tax reduction or deduction is applicable, social security charges are applied to the contribution and the plan member is fully and immediately vested. The employer receives tax relief on the contributions when they are paid. When the benefits are paid, only the part relating to investment returns is taxable.
- Not to consider contributions/premiums as taxable salary in kind for the plan members. In this case, the plan member does not pay tax while contributions are paid, social security charges are not applied

and vested rights design depends on the company's decision. The benefits are then fully taxed, and the employer only receives tax relief at the time that the benefits are paid.

8.3 Portability of retirement assets

On individual basis, in company pension plans, participants can only transfer the accumulated fund in case of termination of labour relationship if the Plan Rules allow for transfer of funds. No restrictions in case of individual or associate pension plans, assets are fully portable to another qualified pension plan (individual, associate or company) at member decision.

No taxes or penalties are applied in case of transferring of the accumulated funds to another pension plan (funded through a local fund or an IORP).

8.4 Employment status of researchers

Researchers in the public sector have a special Social Security regime and are also eligible to join a Company Qualified Pension Plan (plan for the general administration of the Spanish State). This QPP is a defined contribution plan, with very low employer contributions.

The plan is applicable to a number of ministries, state agencies, research centers, state councils, colleges, court accounts, constitutional court, National University of Distance Education, Universidad International Menendez Pelayo, etc. Unless the EC Researchers plan offers benefits that are at least as valuable as the existing QPP it is unlikely that many public sector researchers will join.

Under the special Social Security regime for public servants are included:

- The public servants working for the administration of the State, Administration of Justice, Parliament,
- Former Presidents, Vice Presidents and Ministers of the Government of the Nation,
- Career military personnel, professional soldiers and sailors, etc.

For Social Security purposes, the employees of local administrations (city councils), autonomous bodies and the Autonomous Communities are not treated as public servants.

Most universities not included in the above list and they frequently also offer company qualified pension plans to their employees. These plans are usually defined contribution plans and split the annual contribution of the University between the plan participants during the year with the criteria established in the plan rules.

8.5 Implications for design of Researchers IORP

An IORP should be able to provide Spanish approved pension benefits. The main implications of Spanish legislation are:

- Contributions are limited in cash amount by individual member under SLL.
- It is necessary to establish a Control Committee with equal employer and employee representation – and there must be a Spanish-based official representative for the cross-border IORP
- Members may not be given any investment choice. The investment choice is made for the plan (or sub-plan) by the Control Committee.
- If an employer sets up a company pension plan then all employees of that employer must be eligible to join the plan (if the employer and employees are to receive tax relief). It is possible to have different sections with one representing researchers, and there is no requirement for the employer to contribute for those other employees. However, employers can only operate one qualified pension plan, and can only have one IORP providing DC benefits for their employees. This means the only potentially viable route in Spain is to create a professional industry-wide plan for researchers, which would not restrict employers providing domestically financed benefits to other groups
- different benefits would be appropriate for those researchers covered by the special social security regime for public servants

9. Sweden

9.1 Social and Labour Law implications

Benefits and Contributions

Swedish social and labour law legislation does not restrict the benefit structure of a plan (benefits, vesting, indexation, contributions). However, significant constraints are imposed by various Collective Labour Agreements (see Section 12.4 below) – which cover a large proportion of the Swedish workforce.

Tax rules (see 12.2) also constrain the level of contributions and benefits that can be paid. In particular, in order for a pension plan to receive tax relief, pension benefits must be paid as an annuity (for at least 5 years), rather than a lump sum.

Access

There is no requirement for employers to offer a pension plan, unless this forms part of a relevant Collective Labour Agreement. Membership of a pension plan that is set up voluntarily by an employer can be limited to whichever groups of employees the employer chooses (subject to not breaching discrimination legislation, for example on grounds of sex or nationality).

Employers can make membership of the plan a condition of employment. However, where plans are funded, this is normally only with employer contributions (DB and DC plans). Therefore compulsory membership is not an issue for employees. For employees covered by a plan provided through a Collective Labour Agreement, employees can only opt out with the employer's agreement and further approval from the plan governing authority – this is not a simple process.

Investments

There is no requirement for benefits to be funded externally through an insurance company or pension fund.

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. Lifestyle investment options are permitted (subject to any restriction in the Collective Labour Agreement).

Ring-fencing of assets is not required – but can be done.

Management of IORP

SLL imposes no restrictions on the management of an overseas IORP.

There is no requirement for employee representation in the management of the IORP in SLL (although this is a common requirement for plans set up under Collective Labour Agreements).

Voluntarily set up pension plans can be changed by the employer.

Information Requirements

Swedish pension plans are required to provide a variety of items of information to members. This must be provided in Swedish, but may also be provided in other languages. This includes:

- Annual information regarding the value of benefits
- Information about fees
- Information regarding the terms of the contract
- The main features of the tax rules that apply
- Information regarding the right to transfer

These requirements would apply to overseas IORPs that cover Swedish employees.

9.2 Taxation and social charge comparison

This section of the report compares the impact of taxation and social charges resulting from membership of a locally established IORP retirement arrangement with that of a cross border arrangement

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	Once the IORP has been authorised to accept Swedish employees, there are no specific additional requirements.
Taxation of employer contributions to an IORP	Contributions to a tax-approved IORP are deductible for corporation tax. Different rules apply for defined benefit and defined contribution plans. - For DC plans, the main rule is that the maximum tax deductible premium for the employer is the lower of 35% of salary or 10 price base amounts (approx €40,000).. - For defined benefit plans, there is a supplementary rule setting out the maximum level of benefits that can be provided for tax deductibility of contributions. Also there are complicated maximum funding rules (for tax deductibility) relating to Swedish GAAP. Employer contributions are not counted as taxable income for the employee. An additional investment yield tax also applies. This is calculated based on 15% of the average yield available on specific Swedish government bonds over the past year (the rate is published annually by the Swedish tax authorities). The tax is paid by the employer for DB pension plans, but for DC plans it is paid by the IORP.
Taxation of employee contributions to an IORP	Contributions to a tax-approved IORP are tax-deductible to the employee up to a limit of 1 price base amounts (around €4,000). Employee contributions are rare, and are therefore implemented through salary sacrifice.

Social security or payroll charges on contributions to an IORP	There is a special payroll tax of 24.26% which applies on all employer pension costs. This is paid by the employer and is based on the contributions (to DC plans) or the cost of benefit accrual (to funded DB plans). There is no social security charge in respect of employer contributions.
Taxation to the employee of investment returns credited within an IORP	None
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	Pensions are taxed as income for the employee. Taxation for employer depends on type of vehicle (i.e. employers own pension fund, insurance company or book reserved). There are no social security charges on benefit payments from IORPs

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP based in another EU country, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement based in another EU country.

9.3 Portability of retirement assets

For domestic IORPs, any conditions relating to transfer capital is normally set out in Collective Labour Agreements. There are usually restrictions on the level of charges, whether a transfer is possible at all and the providers that have been authorized. There is no difference between transfers to a domestic or non-domestic cross-border IORP. Public sector pensions currently are not permitted to be transferred.

9.4 Employment status of researchers

Public sector employees, included university employees, are covered by one of a number of retirement plans (depending on the exact role). These are unfunded and provide a reasonably generous DB pension. Membership is compulsory. In exceptional cases it may be possible for employees to opt out, but they would need approval from the designated board responsible for the management of the pension plan according to the Collective Labour Agreement.

A high proportion of private sector employees in Sweden are covered by a Collective Labour Agreement which sets out a required retirement benefit plan. In 2009, around 80% of the private sector workforce was covered by a CLA.

For white collar workers this is normally a DB pension (although some newer employees in certain Collective Labour Agreements receive benefits on a DC basis). Benefits are sometimes funded but can be unfunded (including DC benefits). Employees do not usually have the right to opt out of all of these arrangements, although as they normally require no employee contribution it seems unlikely that employees would do this in order to join an overseas IORP.

Where plans are financed, the Collective Labour Agreements require that the benefits be financed through a defined list of approved (Swedish) providers.

Where this is not the case, an employer would be able to finance the CLA benefits through an overseas IORP and the form of benefits can be chosen by the employer (typically DC).

9.5 Implications for design of Researchers IORP

The main issue in respect of Swedish researchers which needs to be addressed is the level of provision already provided.

- Member reporting requirements are relatively extensive and extend to key features of tax implications
- An investment yield tax will need to be paid each year in respect of Swedish members by the IORP making administration more complicated.
- Private sector access is complicated with CLAs which mandate relatively generous and usually DB plans. 80% of the private sector workforce are covered under such arrangements. Employees can opt out only with employer consent. It should be possible (unless prohibited by the Collective Labour Agreement) for employers to finance the benefits through an overseas IORP – but that would need to follow the required benefit structure (normally DB)
- For employers who are not covered by a Collective Labour Agreement there are very few restrictions on the contributions or benefits or investment options that can be given. However, in order for the plan to receive tax relief, contributions or benefit levels must be restricted. Pension benefit must be taken as an annuity for at least 5 years.
- Public sector access is limited as researchers are covered under relatively generous DB plans. Opting out on an individual basis is possible but very complicated, and unlikely.

10. United Kingdom

10.1 Social and Labour Law implications

Benefits and Contributions

UK legislation contains a number of restrictions on the form and level of retirement benefits that may be provided to employees whose employment contractual relations are governed by UK law. Some of these are features of the taxation system – and only apply to retirement plans that receive the benefits of tax relief. These are summarised below and detailed in section 13.2 below.

SLL imposes the following requirements:

- Benefits must vest within a maximum of 3 months. On leaving service after 2 years the benefits must be retained in the pension fund, unless the members opts to transfer them to a new employer's pension fund (or a personal pension plan). Before 2 years the member has the option of a transfer to another pension arrangement or a return of his own contributions (unless the scheme offers full vesting)
- Vested benefits must be indexed until retirement – in a DC plan in line with investment returns; in a DB plan at the lesser of UK Retail Prices Index ("RPI") and 2.5% per annum – for benefits earned after 2009 (and up to 5% per annum for benefits earned before that date).
- Pensions from DB plans earned after 1997 must be indexed in payment in line with UK RPI (with an annual maximum of 2.5% for benefits earned on or after 6 April 2005 and 5% for those earned from 6 April 1997 to 5 April 2005). There are no such restrictions for pensions purchased from a DC plan.
- There is no requirement to have terminated employment with the sponsoring employer, or to be in receipt of a Social Security pension, before receiving a retirement pension.
- Employer contributions to a DC plan may be varied by age (but not by sex). However, employment law requires that this only be done to the extent that the increase in contributions with age can be proved to be reasonable in the light of the benefits generated.
- Between 2012 and 2017 (depending on the size of the employer) it will become a requirement for employers to contribute to a pension arrangement ("Personal Account") for all employees (unless they are covered by an alternative arrangement or the employee chooses to opt out). The contribution, once fully phased in, will be 3% from the employer, 4% from the employee and 1% tax relief.
- Benefits may not be assigned to a third party other than assignment to a dependant by surrender of own pension (dependant's resulting pension must not be greater than the member's reduced pension). On employee's bankruptcy, where there is a pension in payment, the trustee in bankruptcy is able to request a court to issue an attachment of earnings or income payments order against the pension.

In order to receive tax relief on the pension and contributions, the following rules also apply:

- No more than 25% of the pension may be taken as a cash lump sum
- Benefits may not be taken before the minimum early retirement age (55 from April 2010) except on death or disability retirement. They must commence by age 75 if restrictions on the amount of pension permitted to be drawn are not to apply.
- There are limits (see §3.2) on the total benefits payable from a tax-approved pension fund, and the annual accrual and contributions permitted.
- Pensions in payment may not normally be reduced

Access

There is no requirement for membership of plans to be open to all employees, nor for benefits to be the same for different groups of members. However, access to the plan must not discriminate on grounds of gender and there are age-based restrictions.

Investments

SLL does not place any restrictions on investment strategy of an overseas IORP, nor on the range of funds offered by a DC fund. DC funds may offer a default lifestyle investment option.

Ring-fencing of assets is not required – but can be done.

Management of IORP

UK SLL imposes no restrictions on the management of an overseas IORP. There is no requirement for member-nominated representatives to be on the IORP Board.

Information Requirements

UK pension funds are required to provide a variety of items of information to members. These include:

- Statements of fund value and contributions to DC plans must be provided annually. Annual statement of DB benefits must be provided on request (and is frequently provided automatically)
- A Summary Funding Statement must be sent annually to all DB members
- A copy of the latest annual report and accounts must be provided on request
- Trust Deed and Rules, actuarial valuation reports and Statements of Investment Principles must be available

These requirements do not apply to overseas IORPs that provide benefits for UK employees, although best practice would be to follow them where appropriate.

10.2 Taxation and social charge comparison

This section of the report assesses the impact of taxation and social charges resulting from membership of a locally established IORP or of a cross border arrangement.

Overview of host-country tax and social charge issues	
Requirements for a non-domestic cross-border IORP to be granted equivalent host-country domestic-IORP tax treatment	Registration with tax authorities.
Taxation of employer contributions to an IORP	Contributions to a tax-approved IORP are deductible as a business expense (no ceiling). They do not generate a tax charge for the employees unless they exceed, when combined with employee contributions, an annual limit (from 6 April 2010 - £255,000). For 2009/10 & 2010/11, if employee has taxable income over £130,000 and contributions are increased, tax at 20% or 30% may be payable by employee on the increase. From April 2011 tax will be payable at an increasing rate, between 0% and 30%, on employer contributions for those with income between £150,000 and £180,000, and at 30% for those with incomes over £180,000.

Taxation of employee contributions to an IORP	Contributions to a tax-approved IORP are tax-deductible to the extent that the total contribution (employer and employee) does not exceed the Annual Allowance (from 6 April 2010 - £255,000). For 2009/10 & 2010/11, if employee has taxable income over £130,000 and contributions are increased, tax at 20% or 30% may be payable by employee on the increase. From April 2011 tax will be payable at an increasing rate, between 0% and 30%, on employer contributions for those with income between £150,000 and £180,000, and at 30% for those with incomes over £180,000.
Social security or payroll charges on contributions to an IORP	Employer contributions do not generate social security charges for the employer or the employee. There are no payroll taxes. Employee contributions are subject to social security charges at the standard rate.
Taxation to the employee of investment returns credited within an IORP	None
Social security charges to the employee based on investment returns credited within an IORP	None
Taxation of benefit payments from an IORPs	Pensions paid to UK residents within the Lifetime Allowance are taxed as income, regardless of where the pension was earned. Up to 25% of the benefit may be taken as a lump sum that is free of all UK taxes. Penal tax rates (around 55%) apply to individuals with total fund values (from all pension plans with UK tax approval) in excess of the Lifetime Allowance. The Lifetime Allowance will be £1.80 million with effect from 6 April 2010. There are no social security charges on benefit payments from IORPs. For a UK tax resident, there is a 10% deduction from taxable pension income relating to non-UK service that is received from overseas pension arrangements. Also, lump sum payments in respect of non-UK service from such arrangements are free of UK tax.

There are no key differences in taxation, social charge and payroll taxation between membership of a domestic IORP and non-domestic cross-border IORP, nor between membership of a domestic insured arrangement and a non-domestic insured retirement arrangement. Income from overseas pension plans that does not relate to UK service is taxed at a preferential rate.

It should be noted that the method and timing of tax relief on UK member contributions differs for an IORP and an insured retirement arrangement. Immediate tax relief is given (via payroll) for IORP contributions. Relief under insured contract given in arrears – basic tax relief paid directly to insurer.

10.3 Portability of retirement assets

Pension rights are transferable to a "qualifying recognised overseas pensions schemes" in the other EU state (or Norway, Iceland or Liechtenstein). All IORPs in these countries would qualify as qualifying recognised overseas pensions schemes if they register as such with UK tax authorities. Registration requires certain reporting requirements where UK tax liabilities may arise.

10.4 Employment status of researchers

There are no requirements for researchers in the UK (whether in the public or private sectors) to join any particular retirement arrangement. Membership of pension plans is always voluntary.

However, many Researchers in the public sector will be eligible to join either the Universities Superannuation Scheme or part of the Local Government Pension Scheme, both of which provide a high level of Defined Benefit pension, and they may therefore be unwilling to join an alternative plan unless it offers a comparable level of benefit.

10.5 Implications for design of Researchers IORP

An IORP should be able to provide UK approved pension benefits without much difficulty.

- Public sector access is possible but unlikely as researchers are already covered under generous DB plans and are unlikely to opt out voluntarily. It will need to be able to provide retirement benefits mainly in pension form.

Appendix J – CEIOPS survey

We have reproduced the findings of the survey carried out by CEIOPS in 2009 among national supervisory authorities and specifying topics covered by host Member State law with which Guest IORPS operating in the host Member State must comply

Each of the questions below is coded as being of the type "SLL", "18.7" or "20.7" ("18.7" and "20.7" refer to Articles 18.7 and 20.7 of the IORPs Directive respectively.)

N.B.: Information was not provided for France

	<u>BE</u>	<u>ES</u>	<u>DE</u>	<u>IR</u>	<u>IT</u>	<u>NL</u>	<u>PL</u>	<u>SE</u>	<u>UK</u>
Q1 (SLL) Permitted benefit structures:									
Q 1.1 Benefit accrual type (e.g. defined benefit / defined contribution / deferred compensation)?	Y	Y	Y	N	Y	Y	Y	N	N
Q 1.2 Form in which retirement benefits (e.g. income / annuity or lump sum etc) must be provided?	Y	Y	N	N	Y	Y	Y	N	N
Q 1.3.1 Minimum indexation / adjustment of benefits: pre-retirement - active?	Y	N	N	N	N	N	N	N	Y
Q 1.3.2 Minimum indexation / adjustment of benefits: pre retirement - deferred?	Y	N	N	Y	N	N	N	N	Y
Q 1.3.3 Minimum indexation / adjustment of benefits: post retirement benefits?	Y	N	Y	N	N	N	N	N	Y
Q 1.4 Form in which risk benefits (death /disability or widows etc) must be provided?	Y	Y	N	N	N	N	Y	N	N
Q 1.5 Restriction on benefit reduction?	Y	Y	Y	Y	Y	N	N	N	N
Q 1.6 Assignment to a third party?	Y	N	N	Y	N	Y	N	N	Y
Q 1.7 Pre-retirement access to benefits?	Y	Y	N	N	Y	Y	Y	N	N
Q 1.8 Minimum benefit value?	Y	N	Y	Y	N	N	N	N	N
Q2 (SLL) Scheme access:									
Q 2.1 Rule as to who can / must join the scheme?	Y	Y	Y	N	Y	Y	Y	N	N
Q 2.2 Rule regarding who can be excluded?	Y	Y	N	N	Y	Y	Y	N	N
Q 2.3 Minimum contents of the contract between a member and the IORP?	Y	Y	N	N	Y	Y	Y	N	N
Q 2.4 Minimum contents of the contract between an employer and the IORP?	Y	Y	N	N	N	Y	Y	N	N
Q3 (SLL) Contribution obligations:									
Q 3.1 Are contributions obligatory?	N	N	N	N	N	N	N	N	N
Q3.2 Minimum contributions?	Y	N	N	N	N	N	N	N	N
Q 3.3 Maximum contributions?	Y	Y	N	N	N	N	Y	N	N
Q3.4 Obligations to continue contributions?	N	N	N	N	N	N	N	N	N
Q4 (SLL) Retirement age:									
Q 4.1 Minimum 'normal' retirement age?	Y	Y	Y	N	Y	N	Y	Y	N
Q4.2 Maximum 'normal' retirement age?	Y	N	N	N	Y	N	Y	N	N
Q 4.3 Minimum 'early' retirement age?	Y	Y	Y	N	Y	N	Y	N	N
Q 4.4 Maximum 'early' retirement age?	N	N	N	N	Y	N	N	N	N
Q 4.5 Rules re 'late' retirement?	Y	Y	N	N	Y	N	Y	N	N
Q 4.6 Rules re 'early' retirement?	Y	Y	Y	N	Y	Y	Y	N	N

	<u>BE</u>	<u>ES</u>	<u>DE</u>	<u>IR</u>	<u>IT</u>	<u>NL</u>	<u>PL</u>	<u>SE</u>	<u>UK</u>
Q5(a)(SLL) Investment									
Q 5.a.1 Quantitative investment rules?	N	N	N	N	N	N	Y	N	N
Q 5.a.2 Qualitative investment rules?	N	N	N	N	N	N	Y	N	N
Q 5.a.3 Minimum return on investment obligation?	Y	N	N	N	Y	N	N	N	N
Q 5.a.4.1 Permitted / prohibited assets: Self investment?	N	N	N	N	N	N	Y	N	N
Q 5.a.4.2 Permitted / prohibited assets: Other assets?	N	N	N	N	N	N	Y	N	N
Q5(b)(18.7) Investment									
Q 5.b.1 Quantitative investment rules?	N	Y	Y	N	Y	N	Y	Y	N
Q6 (SLL) IORP management:									
Q 6.1 IORP legal structure?	N	Y	N	N	N	N	Y	Y	N
Q 6.2 Member representation in management?	Y	N	N	N	Y	N	Y	N	N
Q 6.3 Profit sharing?	Y	N	N	N	N	N	N	N	N
Q 6.4 (Maximum) charges?	Y	N	N	N	N	N	Y	N	N
Q6.5 (SLL) Changes to benefit structure:									
Q 6.5.1 by employers/union	Y	Y	N	N	Y	N	N	N	N
Q6.5.2 by supervisory authority	N	N	N	N	N	N	N	N	N
Q 6.5.3 by trustees	N	N	N	N	Y	N	N	N	N
Q 6.5.4 by member	Y	N	N	N	N	N	N	N	N
Q6.6 (SLL) Changes of pension providers:									
Q 6.6.1 by employees/union	Y	Y	N	N	Y	Y	Y	N	N
Q 6.6.2 by supervisory authority	Y	N	N	N	N	N	N	N	N
Q7 (SLL) Vesting/preservation:									
Q 7.1 Minimum vesting period?	N	N	Y	Y	Y	N	N	N	N
Q 7.2 Maximum vesting period?	Y	Y	Y	N	Y	Y	N	N	N
Q 7.3 Minimum vesting age?	N	N	Y	N	Y	N	N	N	N
Q 7.4 Maximum vesting age?	N	N	N	N	Y	Y	N	N	N
Q 7.5 Vested rights (calculations / changes)?	Y	Y	Y	Y	Y	Y	N	N	N
Q8 (SLL) Transfers:									
Q 8.1 Rights to transfer out of plan?	Y	Y	Y	Y	Y	Y	Y	N	Y
Q 8.2 Calculations of transfer values?	Y	Y	Y	Y	Y	Y	Y	Y	Y
Q 8.3 Change of pension provider?	Y	Y	Y	N	Y	Y	Y	N	N
Q 8.4 Obligation on employer in the event of mergers and acquisitions?	Y	Y	N	N	Y	Y	Y	N	N
Q9 (SLL) Integration/co-ordinated with state benefits:									
Q 9.1 Levels of benefit?	N	N	N	N	N	N	N	N	N
Q 9.2 Timing of pay-out?	Y	Y	N	N	Y	N	Y	N	N
Q 9.3 Provisions in connection with further state insurance (e.g. State health insurance)?	N	N	N	N	N	N	N	N	N

	<u>BE</u>	<u>ES</u>	<u>DE</u>	<u>IR</u>	<u>IT</u>	<u>NL</u>	<u>PL</u>	<u>SE</u>	<u>UK</u>
Q10(a) (SLL) Information to members/potential members:									
Q10.a.1 Individual member benefit information?	Y	N	Y	N	Y	Y	Y	N	N
Q 10.a.2 Financial reporting to members?	Y	N	N	N	Y	Y	Y	N	N
Q 10.a.3 Pre-sale / pre-joining (prior to concluding contract) information to a potential member?	N	N	N	N	Y	Y	N	N	N
Q 10.a.4 Disclosure of costs and fees to members?	Y	N	N	N	Y	Y	Y	N	N
Q 10.a.5 Language requirements?	Y	N	N	N	Y	N	Y	N	N
Q10(b) (SLL) Information to local/host supervisory authority:									
Q10.b.6 registration of pension scheme?	Y	Y	N	N	N	N	Y	N	N
Q10.b.7 reporting requirements	N	Y	N	N	Y	N	Y	N	N
Q10.b.8 supervisory measures	Y	Y	N	N	Y	N	N	N	N
Q10(c) (20.7) Information to members/potential members:									
Q10.c.1 Individual member benefit information?	N	Y	Y	Y	Y	Y	N	Y	Y
Q 10.c.2 Financial reporting to members?	N	Y	Y	Y	Y	Y	N	Y	Y
Q 10.c.4 Disclosure of costs and fees to members?	N	Y	Y	Y	Y	Y	N	Y	Y
Q11 (SLL) Dispute resolution and appeal procedures:									
Q11 Dispute resolution and appeal procedures?	N	N	N	N	Y	Y	Y	N	Y
Q12(a) (SLL) Benefit funding and security:									
Q 12.1 Employer guarantees / obligations for shortfalls?	Y	Y	Y	N	N	N	N	N	N
Q 12.2 Third party guarantees?	N	N	N	N	Y	N	N	N	N
Q 12.3 Fund insurance (shortfall) obligations?	N	N	Y	N	Y	N	N	N	N
Q 12.4 Local solvency obligations?	N	N	N	N	N	N	N	N	N
Q 12.5 Ring-fencing assets?	N	N	N	N	Y	N	N	N	N
Q12(b) (SLL) Termination of scheme:									
Q 12.6 Priority order of entitlements / assets in the event of scheme insolvency?	N	Y	N	N	Y	N	N	N	N
Q13 (SLL) Anti-discrimination provisions:									
Q 13.1 EU Law rules?	Y	Y	Y	N	Y	Y	N	Y	N
Q 13.2 National rules over and above EU Law?	Y	Y	N	N	Y	Y	N	N	N
Q14 (SLL) Collective bargaining agreements:									
Q 14 Collective bargaining agreements?	Y	Y	Y	N	Y	N	Y	N	N

Appendix K – Salary Scales

The salary scales below were developed starting from average salaries published in “Remuneration of Researchers in the Public and Private sectors” issued by European Commission – Research Directorate in April 2007

This average salary was assumed to be an age 40 salary, to determine the salary between 25 and 44 and 46 and 65 this average salary was respectively decreased or increased with 0.5 percent

France			Germany			Italy		
Age	Private	Public	Age	Private	Public	Age	Private	Public
20	39.419	49.274	20	47.343	43.696	20	35.122	32.845
21	39.616	49.521	21	47.580	43.914	21	35.297	33.009
22	39.814	49.768	22	47.818	44.134	22	35.474	33.174
23	40.013	50.017	23	48.057	44.354	23	35.651	33.340
24	40.213	50.267	24	48.297	44.576	24	35.830	33.507
25	40.414	50.519	25	48.538	44.799	25	36.009	33.674
26	40.617	50.771	26	48.781	45.023	26	36.189	33.842
27	40.820	51.025	27	49.025	45.248	27	36.370	34.012
28	41.024	51.280	28	49.270	45.474	28	36.552	34.182
29	41.229	51.537	29	49.516	45.702	29	36.734	34.353
30	41.435	51.794	30	49.764	45.930	30	36.918	34.524
31	41.642	52.053	31	50.013	46.160	31	37.103	34.697
32	41.850	52.313	32	50.263	46.391	32	37.288	34.871
33	42.060	52.575	33	50.514	46.623	33	37.475	35.045
34	42.270	52.838	34	50.767	46.856	34	37.662	35.220
35	42.481	53.102	35	51.021	47.090	35	37.850	35.396
36	42.694	53.368	36	51.276	47.325	36	38.039	35.573
37	42.907	53.634	37	51.532	47.562	37	38.230	35.751
38	43.122	53.903	38	51.790	47.800	38	38.421	35.930
39	43.337	54.172	39	52.049	48.039	39	38.613	36.109
40	43.554	54.443	40	52.309	48.279	40	38.806	36.290
41	43.772	54.715	41	52.571	48.520	41	39.000	36.471
42	43.991	54.989	42	52.833	48.763	42	39.195	36.654
43	44.211	55.264	43	53.098	49.007	43	39.391	36.837
44	44.432	55.540	44	53.363	49.252	44	39.588	37.021
45	44.654	55.818	45	53.630	49.498	45	39.786	37.206
46	44.877	56.097	46	53.898	49.746	46	39.985	37.392
47	45.101	56.377	47	54.168	49.994	47	40.185	37.579
48	45.327	56.659	48	54.438	50.244	48	40.386	37.767
49	45.554	56.943	49	54.711	50.496	49	40.588	37.956
50	45.781	57.227	50	54.984	50.748	50	40.791	38.146
51	46.010	57.513	51	55.259	51.002	51	40.994	38.337
52	46.240	57.801	52	55.535	51.257	52	41.199	38.528
53	46.472	58.090	53	55.813	51.513	53	41.405	38.721
54	46.704	58.380	54	56.092	51.771	54	41.612	38.915
55	46.937	58.672	55	56.373	52.029	55	41.821	39.109
56	47.172	58.966	56	56.654	52.290	56	42.030	39.305
57	47.408	59.260	57	56.938	52.551	57	42.240	39.501
58	47.645	59.557	58	57.222	52.814	58	42.451	39.699
59	47.883	59.855	59	57.508	53.078	59	42.663	39.897
60	48.123	60.154	60	57.796	53.343	60	42.877	40.097
61	48.363	60.455	61	58.085	53.610	61	43.091	40.297
62	48.605	60.757	62	58.375	53.878	62	43.306	40.499
63	48.848	61.061	63	58.667	54.147	63	43.523	40.701
64	49.092	61.366	64	58.961	54.418	64	43.741	40.905
65	49.338	61.673	65	59.255	54.690	65	43.959	41.109

Poland			Spain			UK		
Age	Private	Public	Age	Private	Public	Age	Private	Public
20	13.618	12.446	20	32.952	29.923	20	58.016	48.357
21	13.687	12.509	21	33.116	30.073	21	58.306	48.598
22	13.755	12.571	22	33.282	30.223	22	58.598	48.841
23	13.824	12.634	23	33.448	30.374	23	58.891	49.086
24	13.893	12.697	24	33.616	30.526	24	59.185	49.331
25	13.962	12.761	25	33.784	30.679	25	59.481	49.578
26	14.032	12.825	26	33.953	30.832	26	59.779	49.826
27	14.102	12.889	27	34.122	30.986	27	60.078	50.075
28	14.173	12.953	28	34.293	31.141	28	60.378	50.325
29	14.244	13.018	29	34.464	31.297	29	60.680	50.577
30	14.315	13.083	30	34.637	31.453	30	60.983	50.830
31	14.387	13.148	31	34.810	31.611	31	61.288	51.084
32	14.458	13.214	32	34.984	31.769	32	61.595	51.339
33	14.531	13.280	33	35.159	31.928	33	61.903	51.596
34	14.603	13.347	34	35.335	32.087	34	62.212	51.854
35	14.676	13.413	35	35.511	32.248	35	62.523	52.113
36	14.750	13.480	36	35.689	32.409	36	62.836	52.374
37	14.824	13.548	37	35.867	32.571	37	63.150	52.636
38	14.898	13.616	38	36.047	32.734	38	63.466	52.899
39	14.972	13.684	39	36.227	32.898	39	63.783	53.163
40	15.047	13.752	40	36.408	33.062	40	64.102	53.429
41	15.122	13.821	41	36.590	33.227	41	64.423	53.696
42	15.198	13.890	42	36.773	33.393	42	64.745	53.965
43	15.274	13.959	43	36.957	33.560	43	65.068	54.234
44	15.350	14.029	44	37.142	33.728	44	65.394	54.506
45	15.427	14.099	45	37.327	33.897	45	65.721	54.778
46	15.504	14.170	46	37.514	34.066	46	66.049	55.052
47	15.582	14.241	47	37.702	34.237	47	66.380	55.327
48	15.660	14.312	48	37.890	34.408	48	66.711	55.604
49	15.738	14.383	49	38.080	34.580	49	67.045	55.882
50	15.817	14.455	50	38.270	34.753	50	67.380	56.161
51	15.896	14.528	51	38.461	34.927	51	67.717	56.442
52	15.975	14.600	52	38.654	35.101	52	68.056	56.724
53	16.055	14.673	53	38.847	35.277	53	68.396	57.008
54	16.135	14.747	54	39.041	35.453	54	68.738	57.293
55	16.216	14.820	55	39.236	35.630	55	69.082	57.580
56	16.297	14.894	56	39.432	35.808	56	69.427	57.867
57	16.378	14.969	57	39.630	35.988	57	69.774	58.157
58	16.460	15.044	58	39.828	36.167	58	70.123	58.448
59	16.543	15.119	59	40.027	36.348	59	70.474	58.740
60	16.625	15.195	60	40.227	36.530	60	70.826	59.033
61	16.708	15.270	61	40.428	36.713	61	71.180	59.329
62	16.792	15.347	62	40.630	36.896	62	71.536	59.625
63	16.876	15.424	63	40.833	37.081	63	71.894	59.923
64	16.960	15.501	64	41.038	37.266	64	72.253	60.223
65	17.045	15.578	65	41.243	37.452	65	72.614	60.524

Appendix L – Variations in Contribution Schedules

France

For private sector employees, Social Security and ARRCO and AGIRC provide together, for the salary levels modeled, benefits over 60% of the targeted replacement income.

Hence contributions were limited to 1% of salary.

For public sector employees the statutory systems aim for 75 percent replacement income final pay, also here no supplementary benefits deemed needed.

Germany

The contribution proposed in step-rated with the Social Security ceiling, i.e., the maximum salary taken into account to determine the Social Security pension.

The proposed contributions amount to 7% of salary up to this ceiling (2010: 66.000€) and 18% of the salary in excess of this ceiling.

Italy

The contribution proposed in step-rated with the Social Security ceiling, i.e., the maximum salary taken into account to determine the Social Security pension.

The proposed contributions amount to 2% of salary up to this ceiling (2010: 92.400€) and 18% of the salary in excess of this ceiling.

No variations between public and private sector.

Poland

In view of the salary levels in-scope and the benefits provided by Social Security and the compulsory second pillar we propose a contribution of 4% of salary.

Spain

In Spain, for the level of salaries in-scope, Social Security provides more than the targeted replacement income hence no contributions deemed needed to supplementary plan.

UK

The contribution proposed contains an offset for State Basic Pension.

The proposed contributions amount to 0% of salary up to this ceiling (2010: 5.600€) and 18% of the salary in excess of this ceiling.

Appendix M – 15 Sample Calculations

Summary Results

Career Pattern Entered

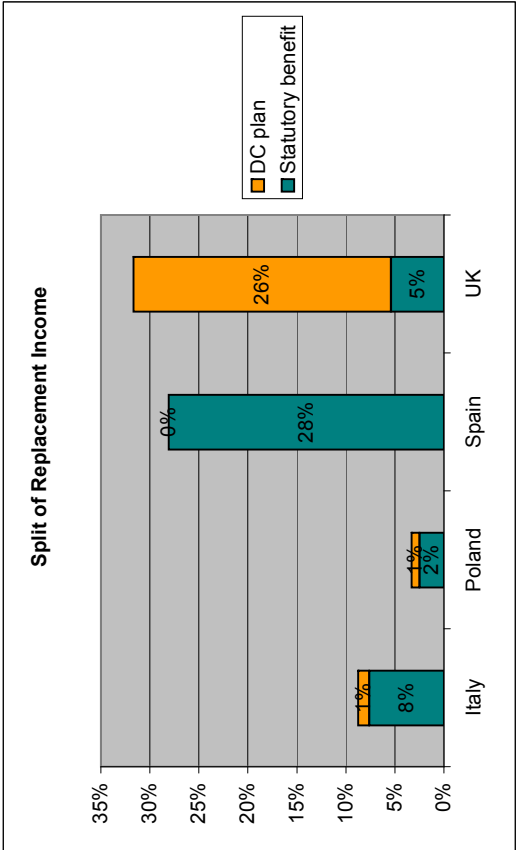
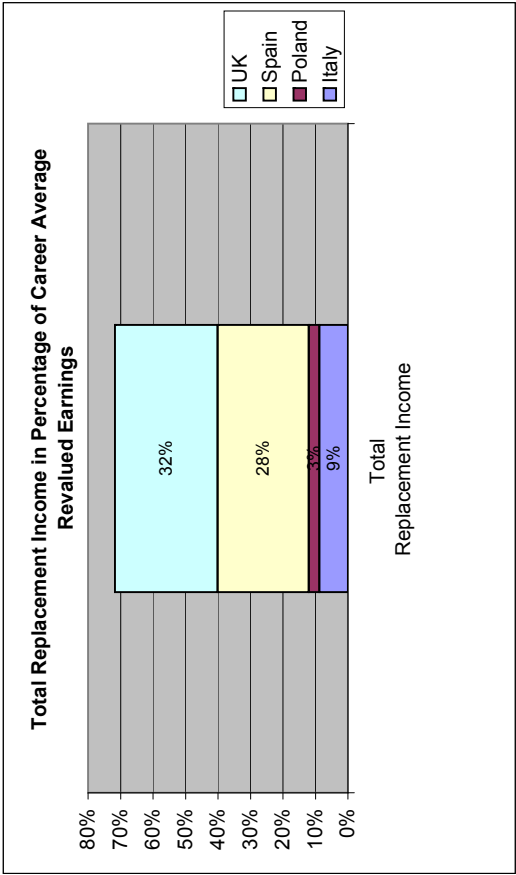
Country	Start age	End age	Sector
Italy	25	29	Public
Poland	30	34	Public
Spain	35	49	Public
UK	50	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
Italy	8%	1%	9%
Poland	2%	1%	3%
Spain	28%	0%	28%
UK	5%	26%	32%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

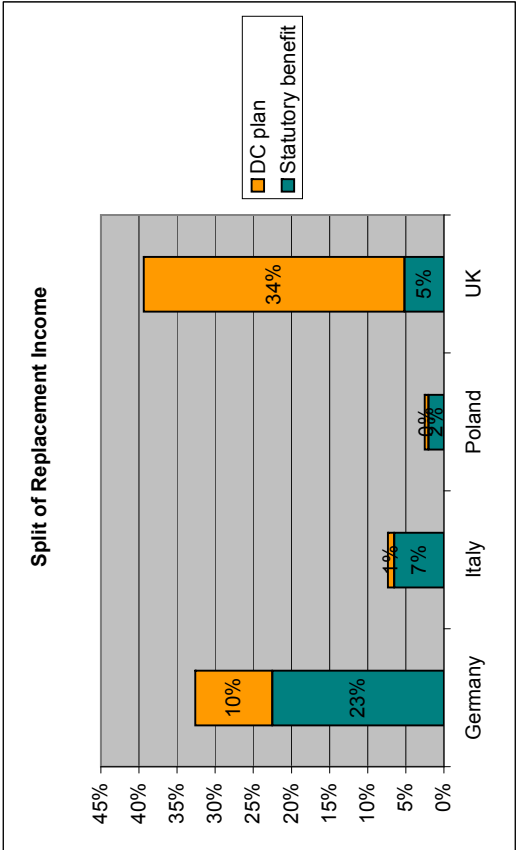
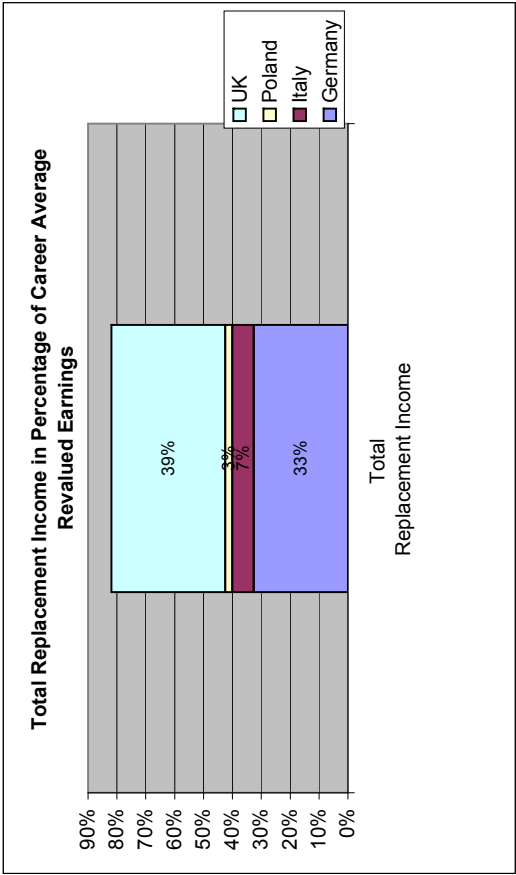
Country	Start age	End age	Sector
UK	25	39	Public
Italy	40	44	Public
Germany	45	59	Public
Poland	60	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
Germany	23%	10%	33%
Italy	7%	1%	7%
Poland	2%	0%	3%
UK	5%	34%	39%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

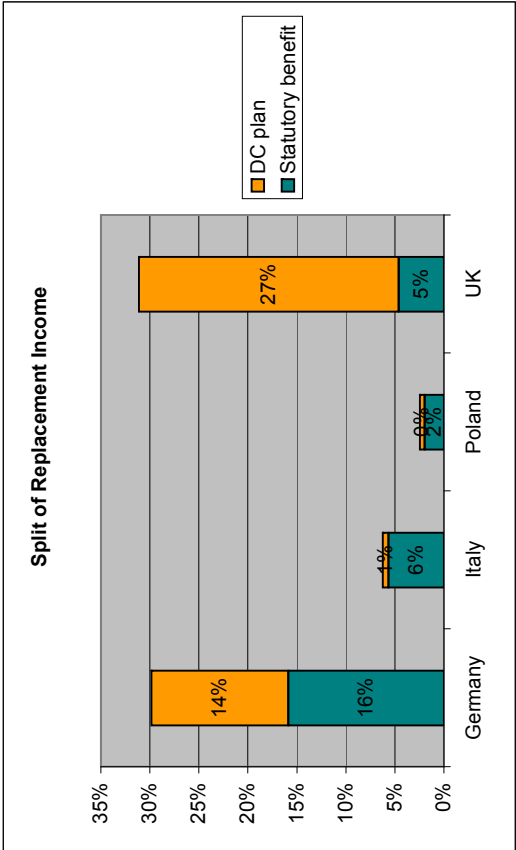
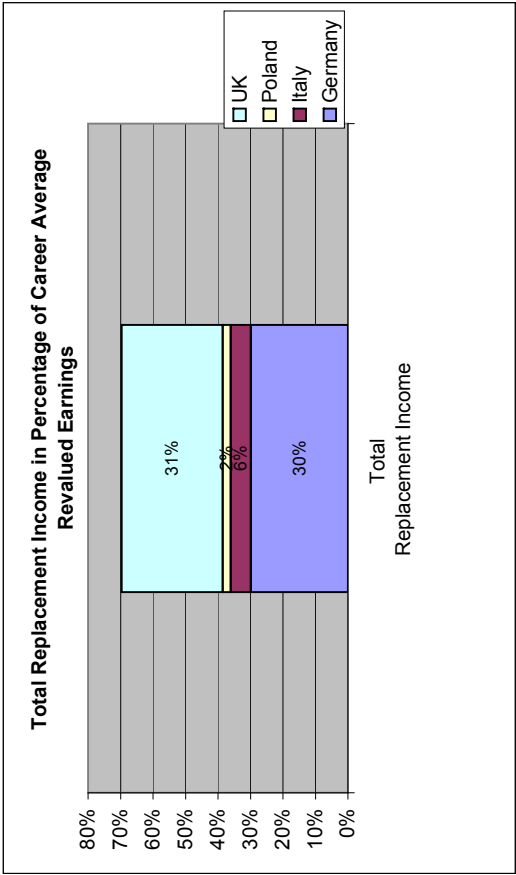
Country	Start age	End age	Sector
Germany	25	39	Private
UK	40	54	Public
Poland	55	59	Public
Italy	60	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
Germany	16%	14%	30%
Italy	6%	1%	6%
Poland	2%	0%	2%
UK	5%	27%	31%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

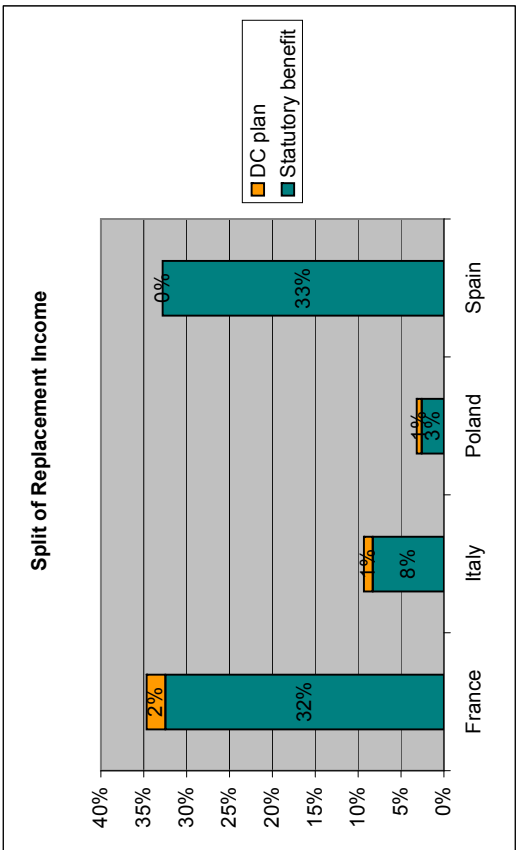
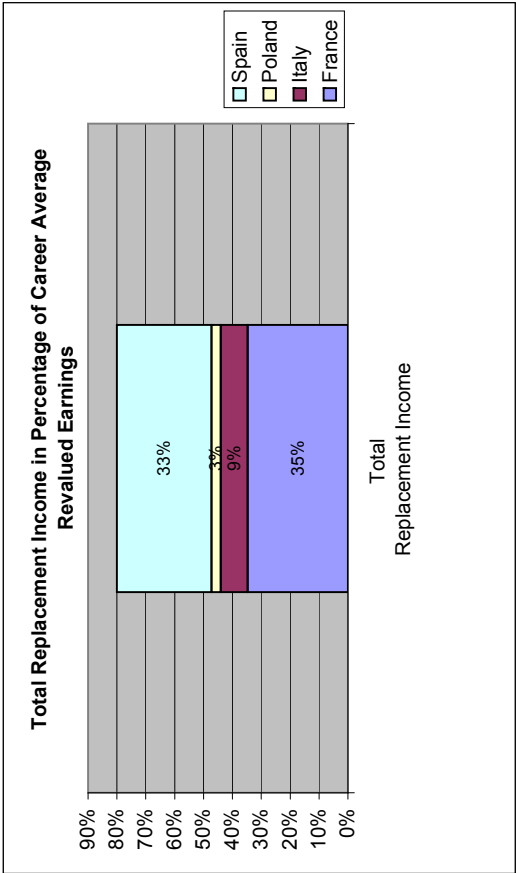
Country	Start age	End age	Sector
France	25	39	Private
Italy	40	44	Public
Spain	45	59	Public
Poland	60	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
France	32%	2%	35%
Italy	8%	1%	9%
Poland	3%	1%	3%
Spain	33%	0%	33%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

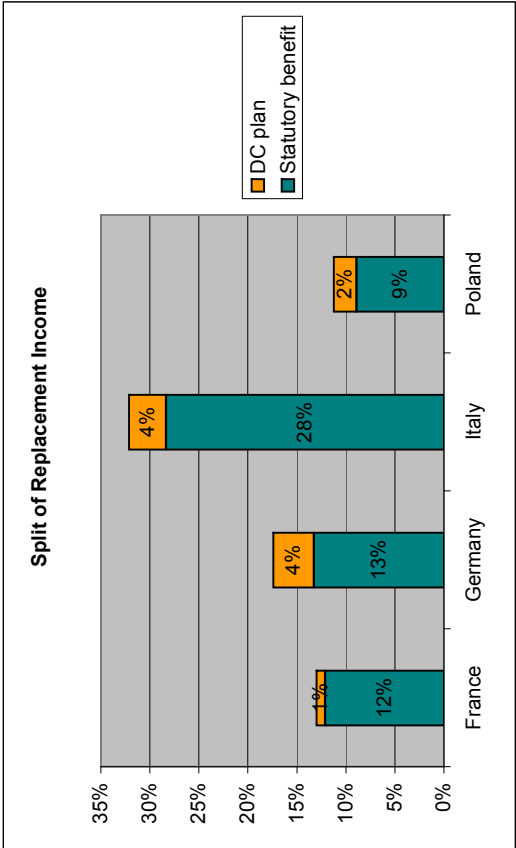
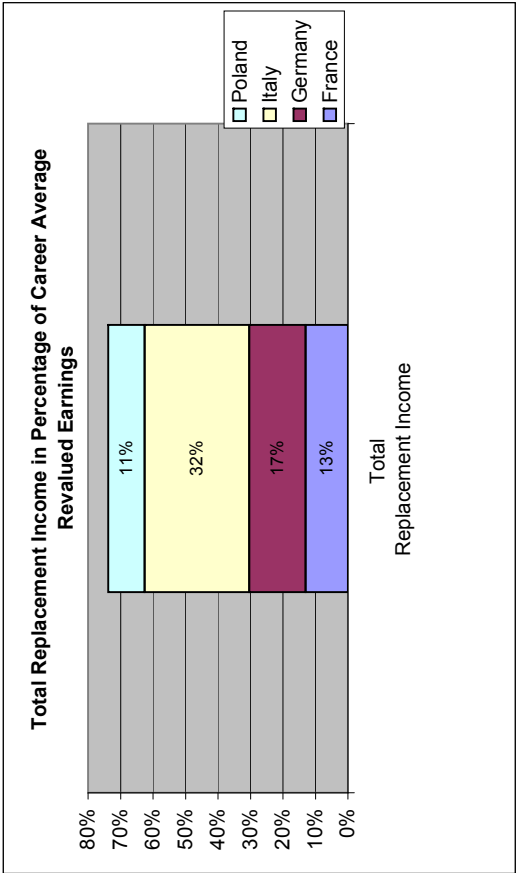
Country	Start age	End age	Sector
France	25	29	Private
Italy	30	44	Public
Poland	45	59	Public
Germany	60	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
France	12%	1%	13%
Germany	13%	4%	17%
Italy	28%	4%	32%
Poland	9%	2%	11%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

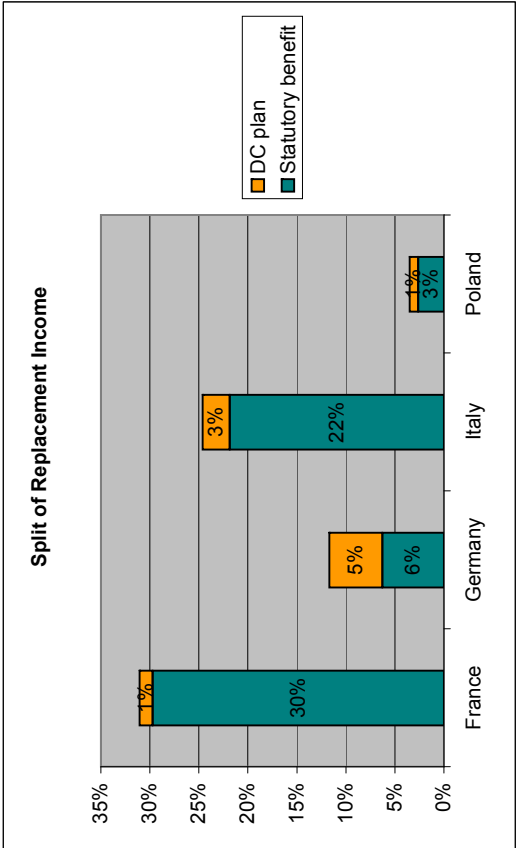
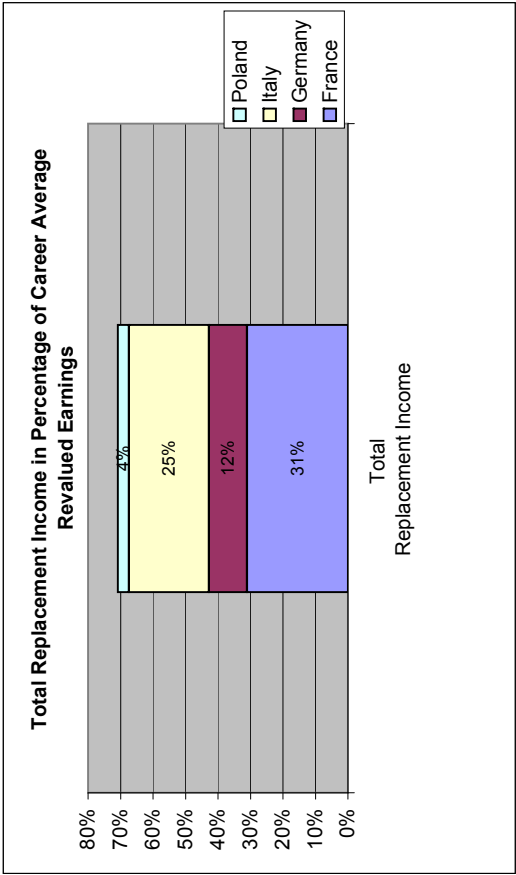
Country	Start age	End age	Sector
Poland	25	29	Public
Germany	30	34	Private
Italy	35	49	Public
France	50	65	Private

Replacement Income by Country

Country	Total Replacement Income		
	Statutory benefit	DC plan	Income
France	30%	1%	31%
Germany	6%	5%	12%
Italy	22%	3%	25%
Poland	3%	1%	4%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

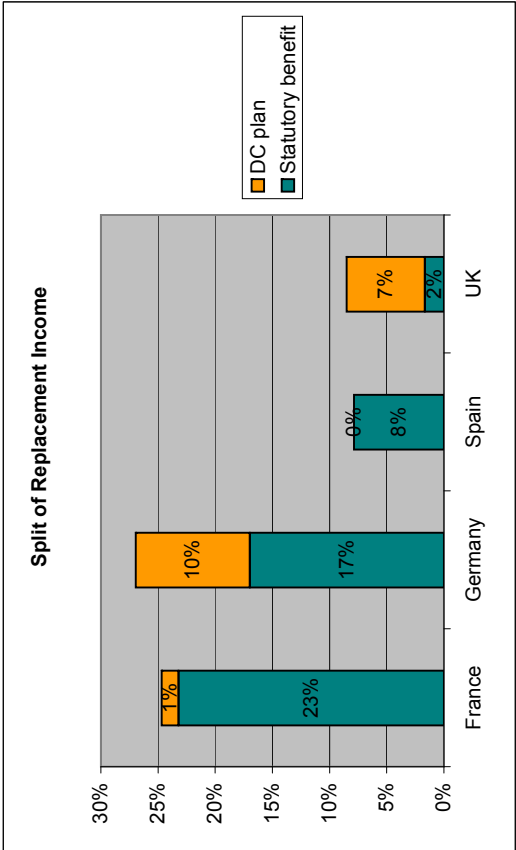
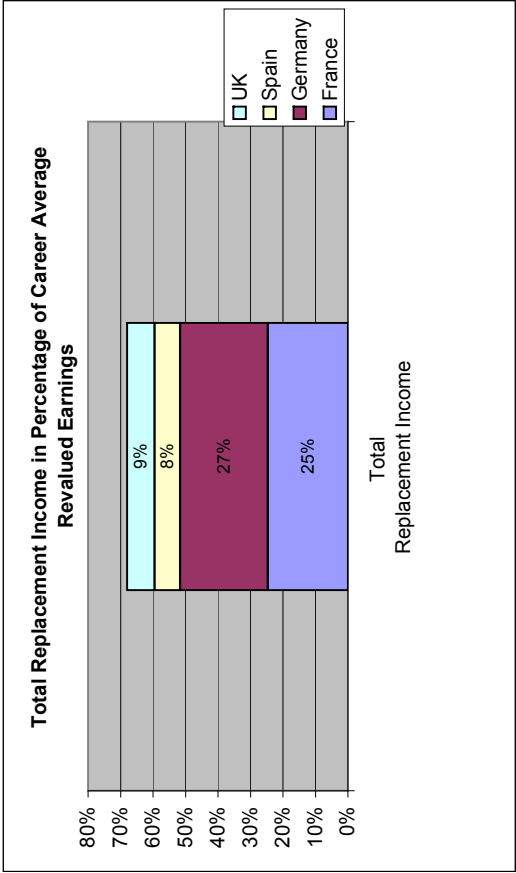
Country	Start age	End age	Sector
Spain	25	29	Public
France	30	44	Private
Germany	45	59	Private
UK	60	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
France	23%	1%	25%
Germany	17%	10%	27%
Spain	8%	0%	8%
UK	2%	7%	9%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

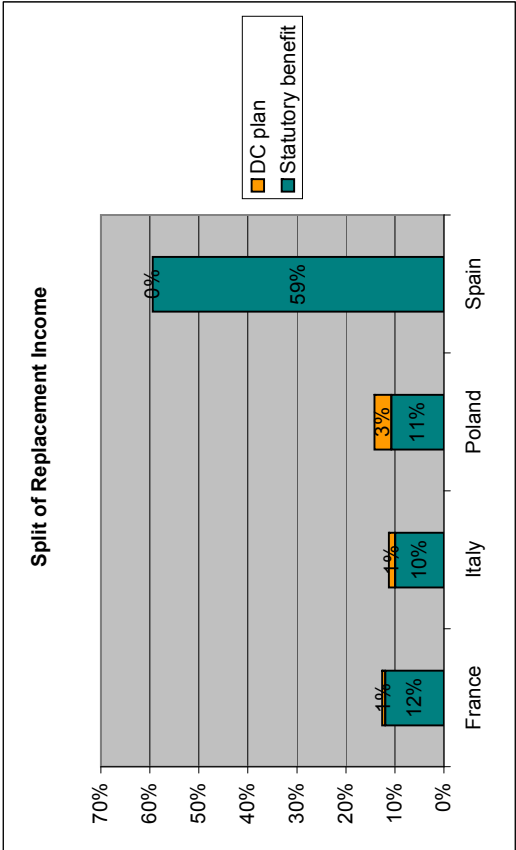
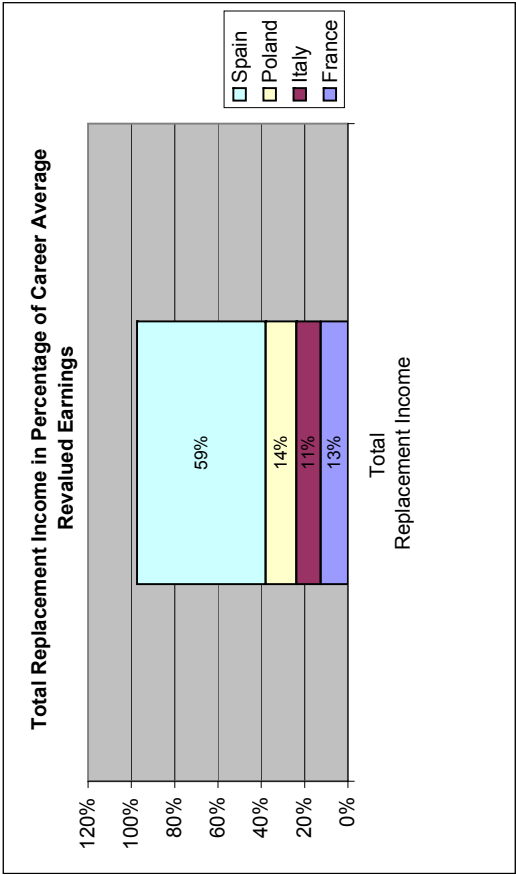
Country	Start age	End age	Sector
Poland	25	39	Private
Italy	40	44	Private
France	45	49	Private
Spain	50	65	Private

Replacement Income by Country

Country	Replacement Income	
	Statutory benefit	DC plan
France	12%	1%
Italy	10%	1%
Poland	11%	3%
Spain	59%	0%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

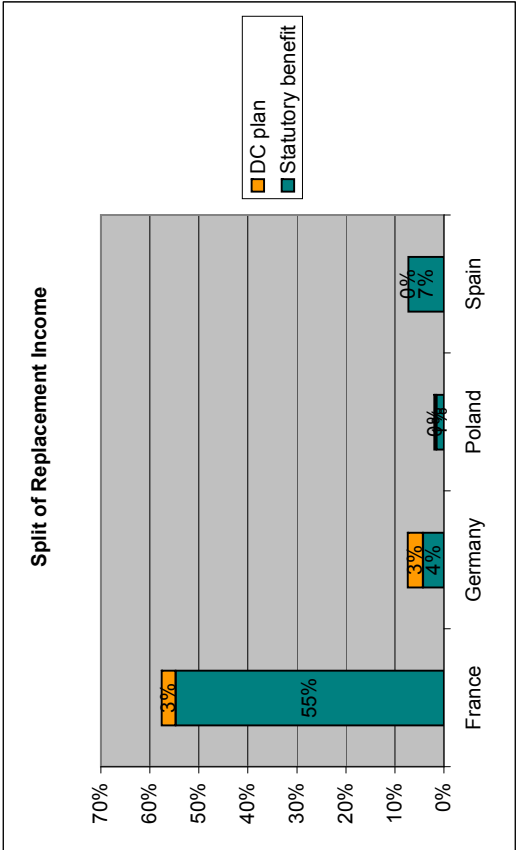
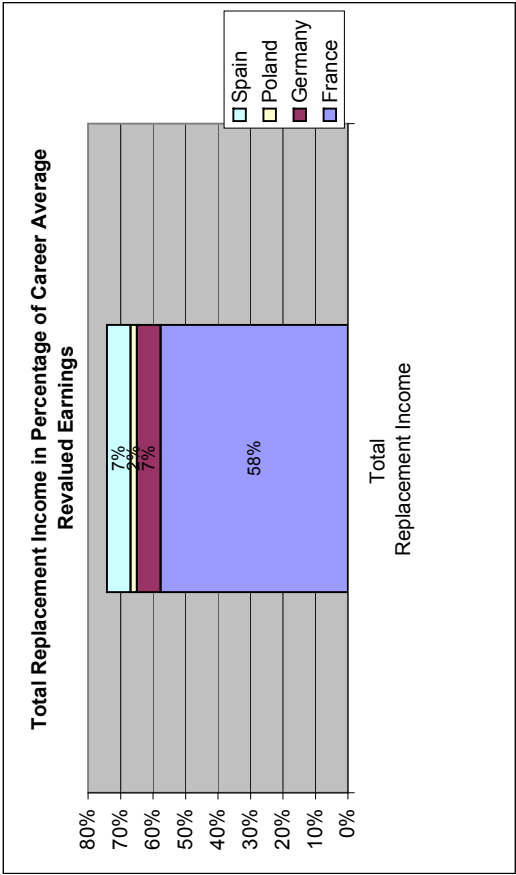
Country	Start age	End age	Sector
Germany	25	27	Public
Poland	28	30	Public
Spain	31	34	Public
France	35	65	Private

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
France	55%	3%	58%
Germany	4%	3%	7%
Poland	1%	0%	2%
Spain	7%	0%	7%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

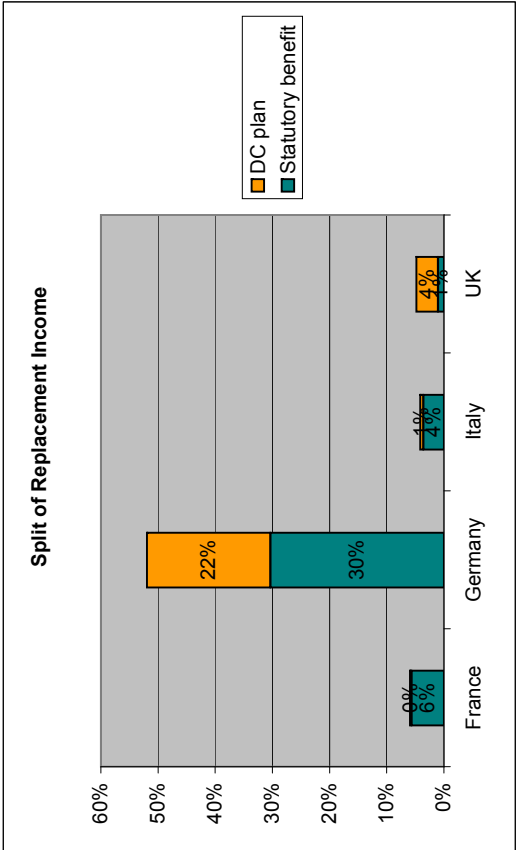
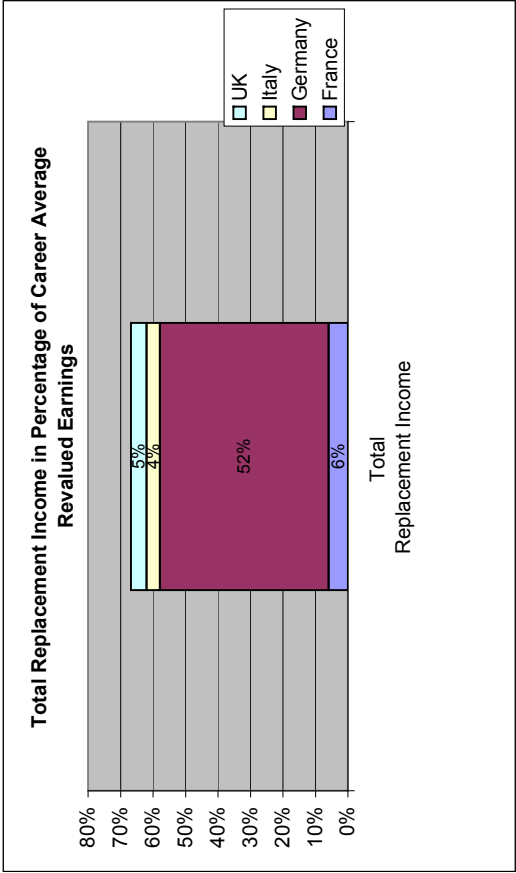
Country	Start age	End age	Sector
Italy	25	27	Public
Germany	28	57	Private
France	58	61	Private
UK	62	65	Public

Replacement Income by Country

Country	Total Replacement Income		
	Statutory benefit	DC plan	Income
France	6%	0%	6%
Germany	30%	22%	52%
Italy	4%	1%	4%
UK	1%	4%	5%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

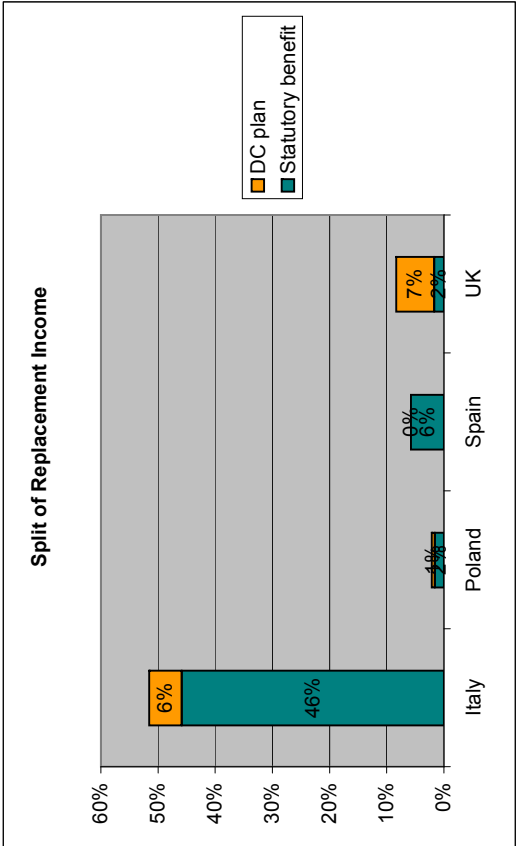
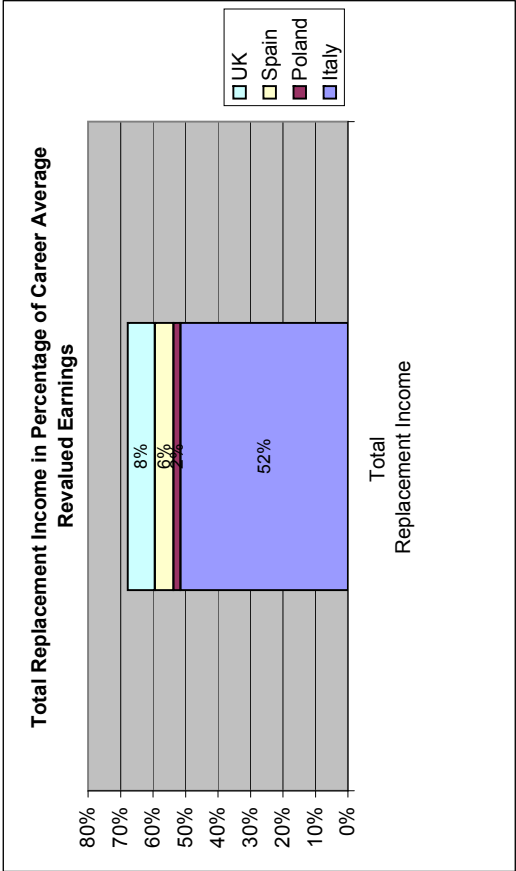
Country	Start age	End age	Sector
Poland	25	27	Public
Spain	28	30	Public
Italy	31	60	Private
UK	61	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
Italy	46%	6%	52%
Poland	2%	1%	2%
Spain	6%	0%	6%
UK	2%	7%	8%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

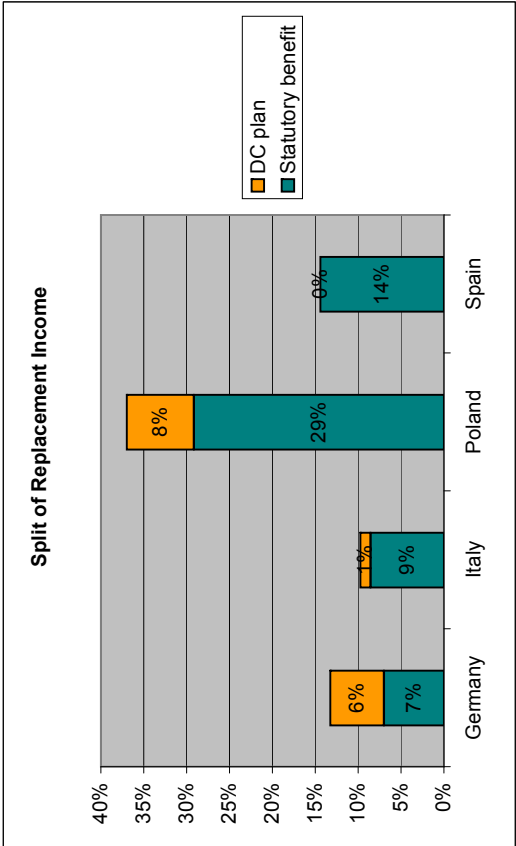
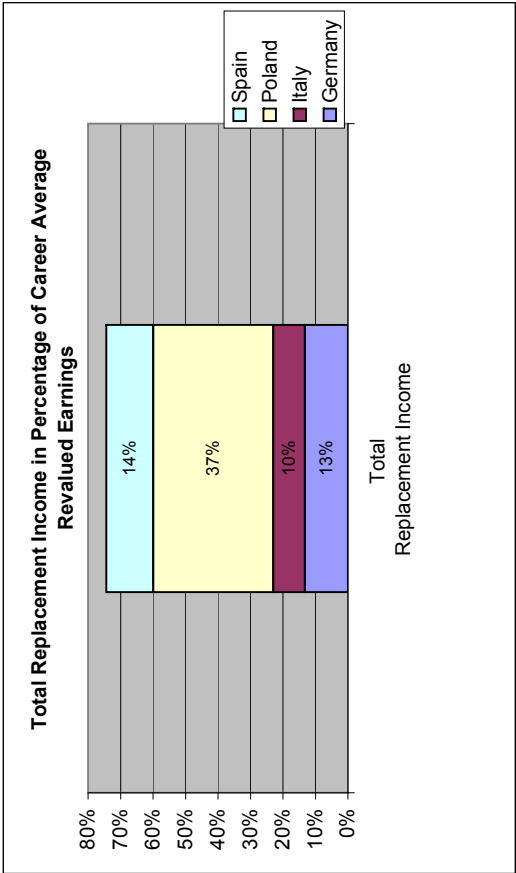
Country	Start age	End age	Sector
Spain	25	28	Public
Germany	29	31	Private
Italy	32	34	Public
Poland	35	65	Private

Replacement Income by Country

Country	Total Replacement Income		
	Statutory benefit	DC plan	Income
Germany	7%	6%	13%
Italy	9%	1%	10%
Poland	29%	8%	37%
Spain	14%	0%	14%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

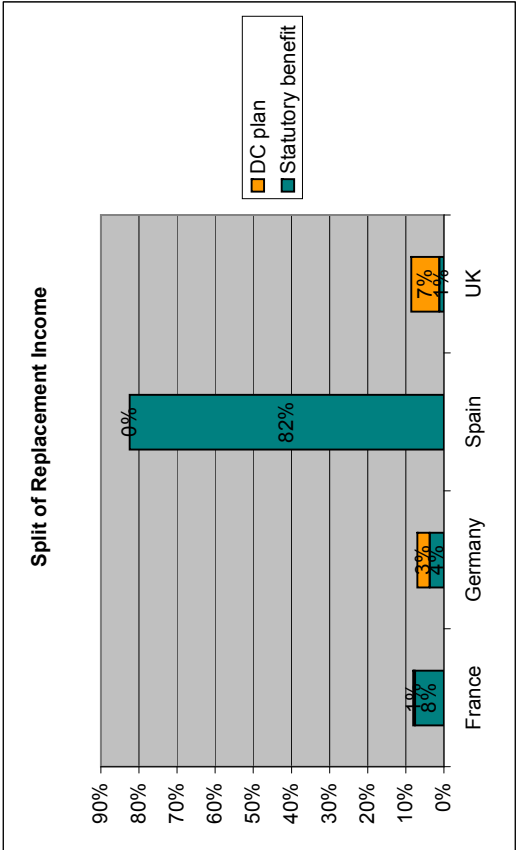
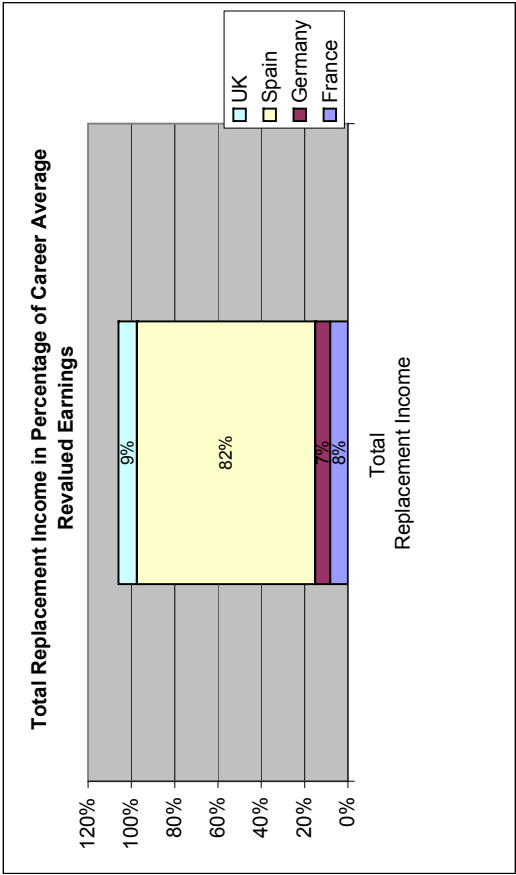
Country	Start age	End age	Sector
France	25	28	Private
Germany	29	31	Private
UK	32	34	Public
Spain	35	65	Private

Replacement Income by Country

Country	Total Replacement Income		
	Statutory benefit	DC plan	
France	8%	1%	8%
Germany	4%	3%	7%
Spain	82%	0%	82%
UK	1%	7%	9%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

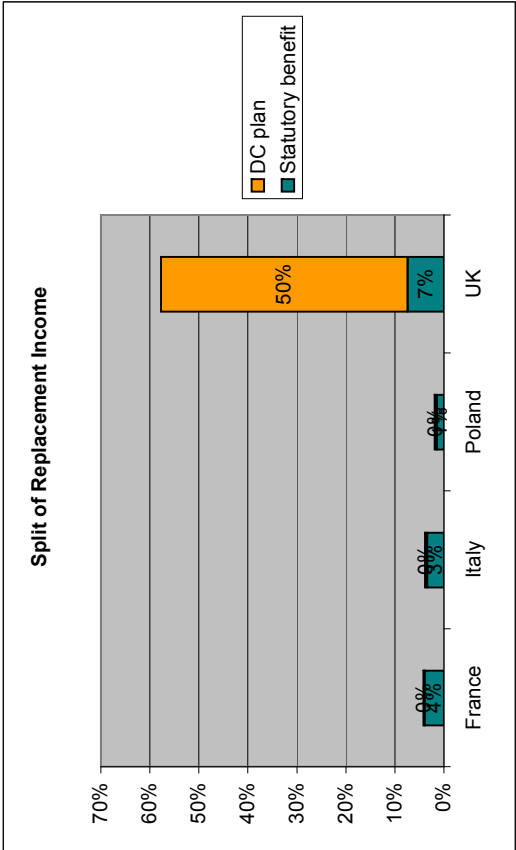
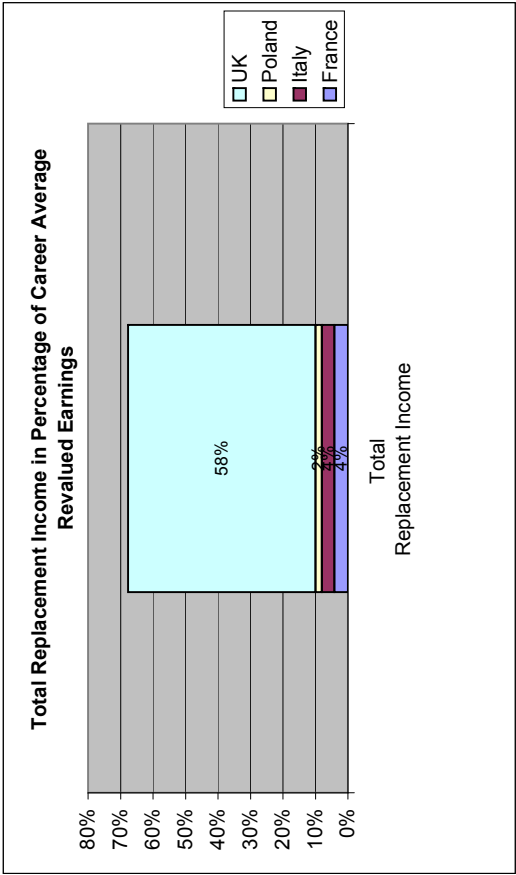
Country	Start age	End age	Sector
Poland	25	28	Public
Italy	29	31	Private
France	32	34	Private
UK	35	65	Private

Replacement Income by Country

Country	Total Replacement Income	
	Statutory benefit	DC plan
France	4%	0%
Italy	3%	0%
Poland	1%	0%
UK	7%	50%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

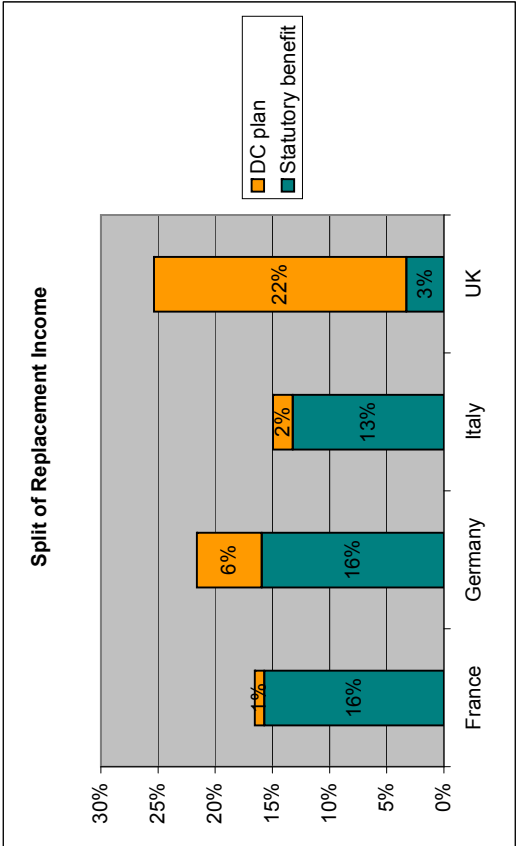
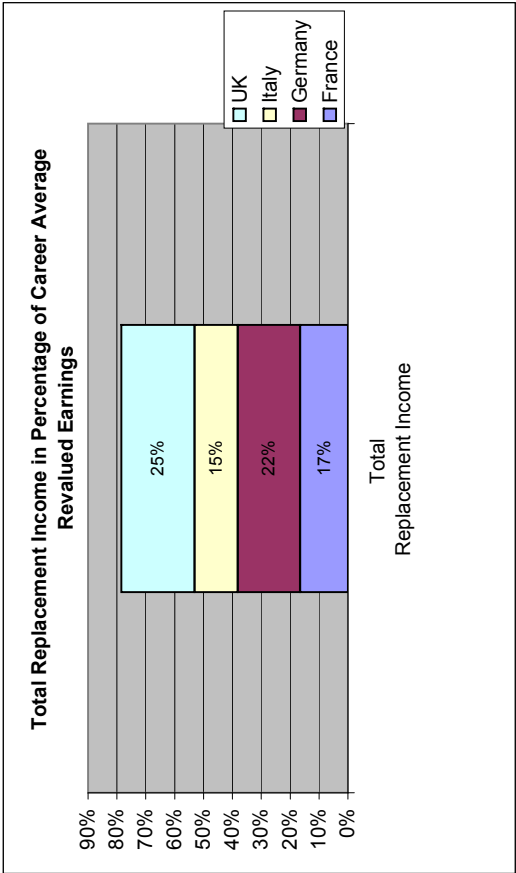
Country	Start age	End age	Sector
UK	25	34	Public
Italy	35	44	Private
France	45	54	Private
Germany	55	65	Public

Replacement Income by Country

Country	Statutory benefit	DC plan	Total Replacement Income
France	16%	1%	17%
Germany	16%	6%	22%
Italy	13%	2%	15%
UK	3%	22%	25%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

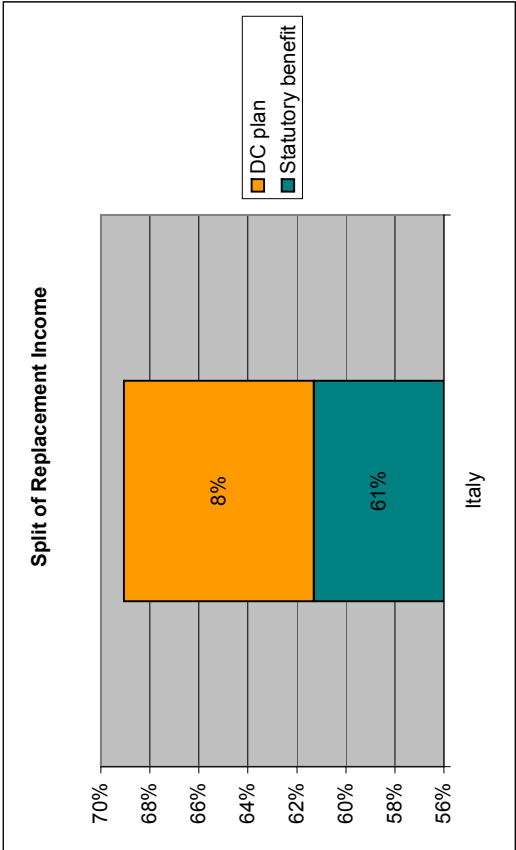
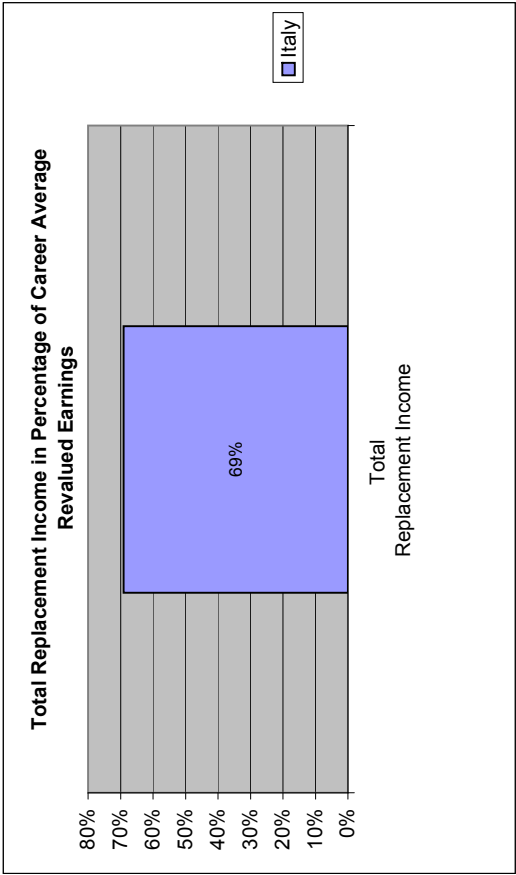
Country	Start age	End age	Sector
Italy	25	34	Private
Italy	35	44	Private
Italy	45	54	Private
Italy	55	65	Private

Replacement Income by Country

		Total Replacement Income
Country	Statutory benefit	DC plan
Italy	61%	8%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

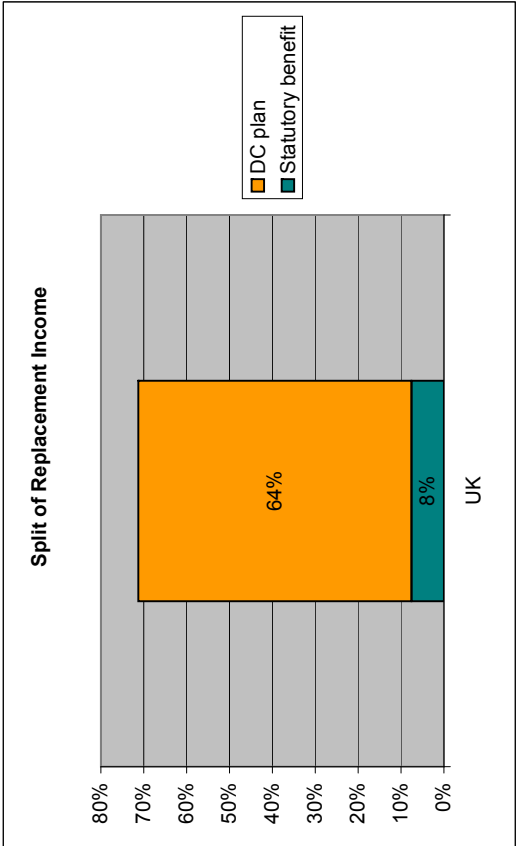
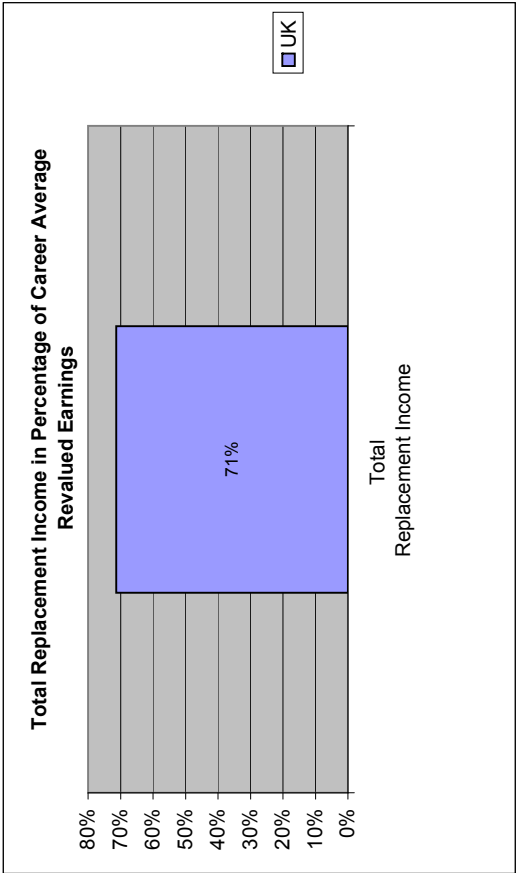
Country	Start age	End age	Sector
UK	25	34	Private
UK	35	44	Private
UK	45	54	Private
UK	55	65	Private

Replacement Income by Country

		Total Replacement Income
Country	Statutory benefit	DC plan
UK	8%	64%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

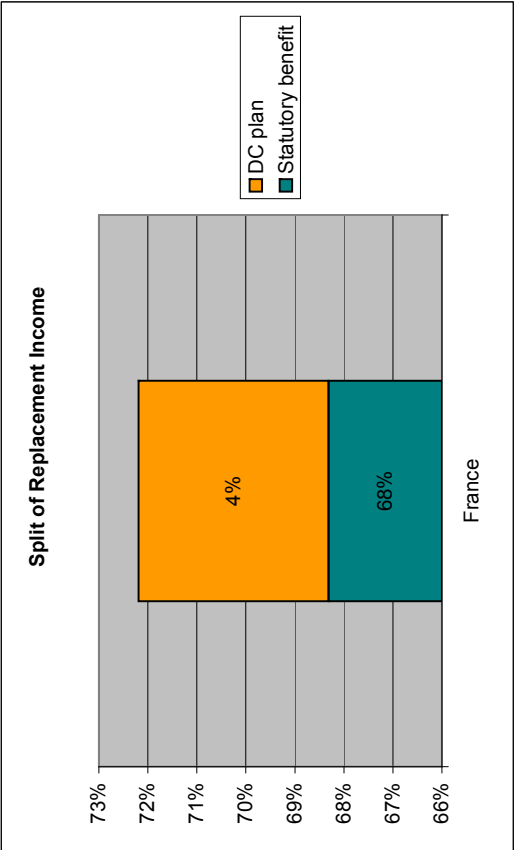
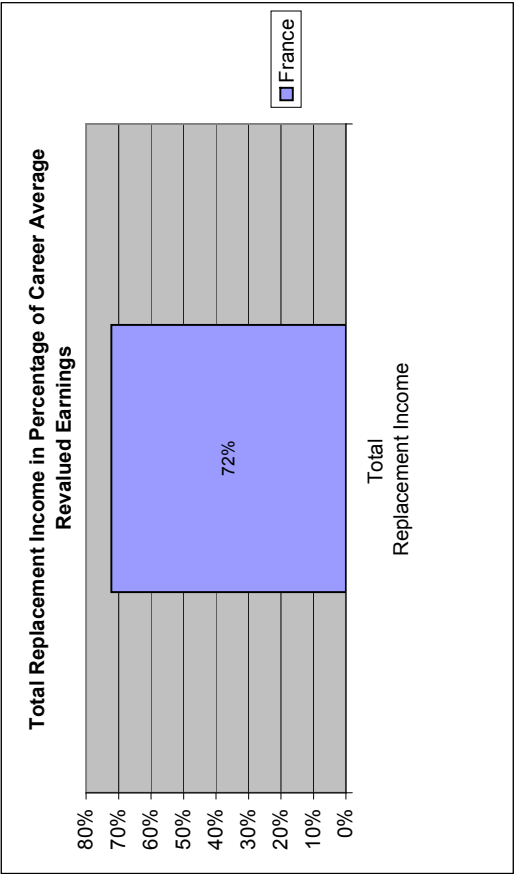
Country	Start age	End age	Sector
France	25	34	Private
France	35	44	Private
France	45	54	Private
France	55	65	Private

Replacement Income by Country

	Statutory benefit	DC plan	Total Replacement Income
Country	68%	4%	72%
France			

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

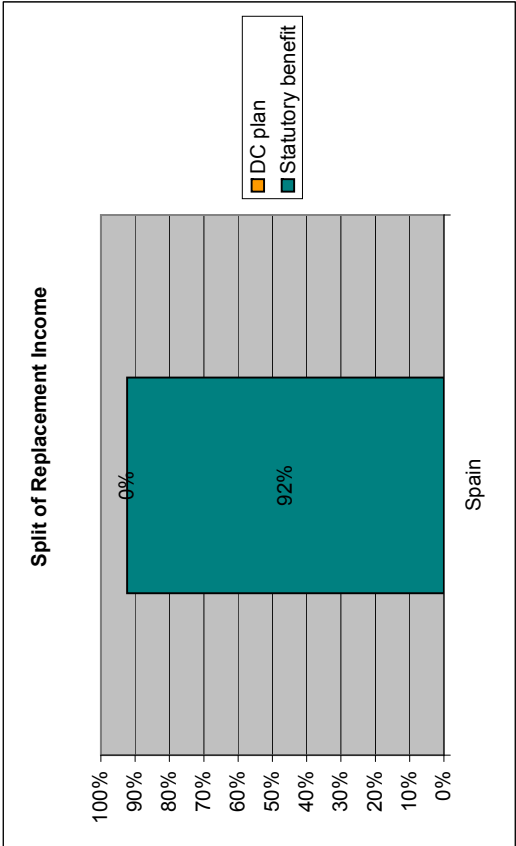
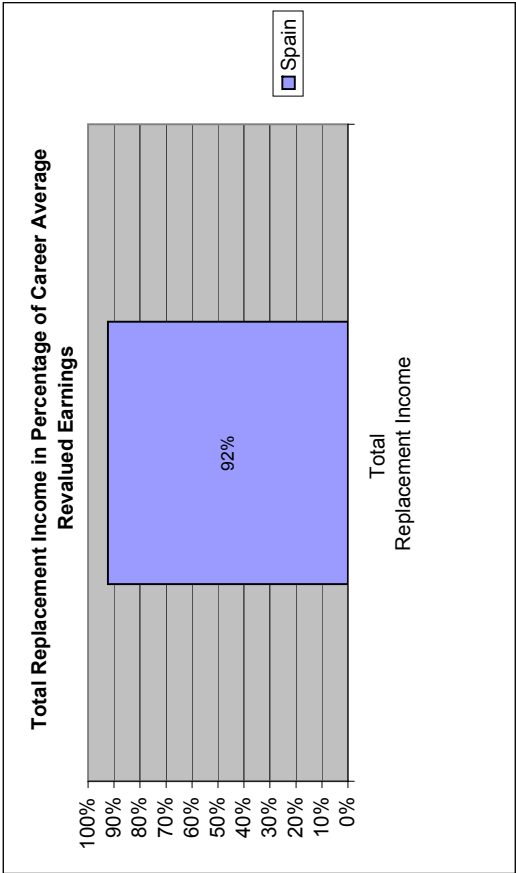
Country	Start age	End age	Sector
Spain	25	34	Private
Spain	35	44	Private
Spain	45	54	Private
Spain	55	65	Private

Replacement Income by Country

Total Replacement Income		
Country	Statutory benefit	DC plan
Spain	92%	0%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Summary Results

Career Pattern Entered

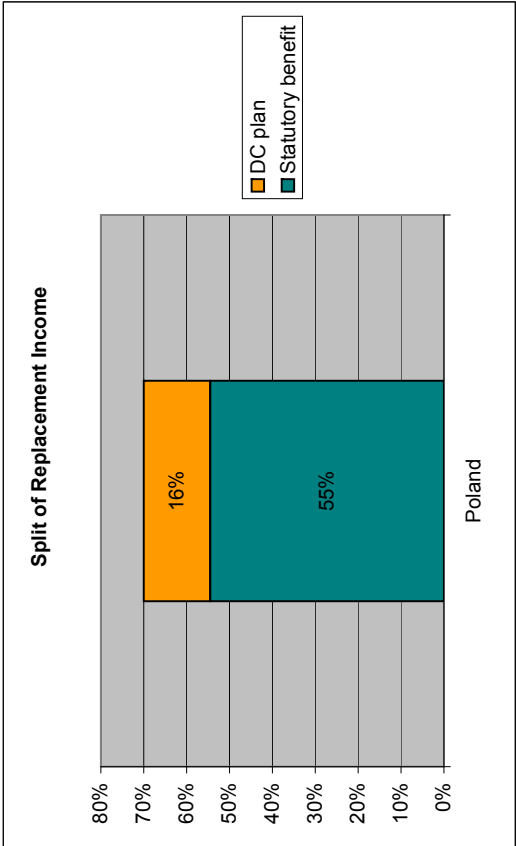
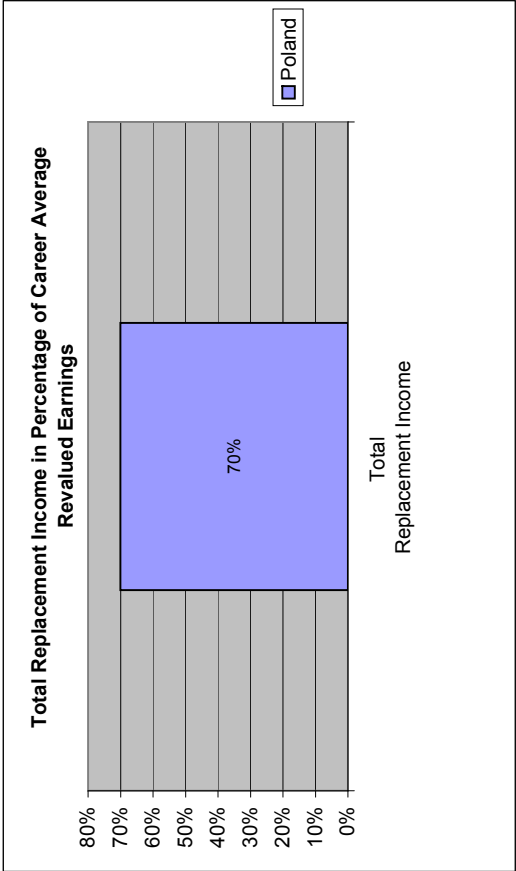
Country	Start age	End age	Sector
Poland	25	34	Private
Poland	35	44	Private
Poland	45	54	Private
Poland	55	65	Private

Replacement Income by Country

		Total Replacement Income
Country	Statutory benefit	DC plan
Poland	55%	16%

Assumptions

Normal Contribution	18%
% of Normal Contribution Paid	100%
Investment Return in Excess of Inflation	2%



Appendix N – Terminology

We use the following terminology and abbreviations in this report:

	Abbreviation	Definition
Additional Voluntary Contributions	AVCs	Contributions over and above a member's normal contributions, if any, which the member elects to pay in order to secure additional benefits.
Collective Labour Agreement	CLA	A contract between employees and/or unions and management governing wages, benefits and working conditions
Defined Benefit	DB	Benefits from a DB pension plan are defined independently of the contributions paid and are not directly related to the investments of the plan.
Defined Contribution	DC	A DC pension plan determines the individual member's benefits by reference to contributions paid into the plan in respect of the member usually increased by an amount based on the investment return on those contributions.
Double Taxation Treaty	DTT	An agreement between two countries that covers the taxation of individuals or entities that would otherwise be liable to pay taxes in both countries. The DTT will generally aim to avoid the same item being taxed twice.
Social and Labour Law	SLL	The body of laws, administrative rulings, and precedents which addresses the legal rights of, and restrictions on, working people and their organizations.

Country Abbreviations

BE	Belgium	SK	Slovakia
BG	Bulgaria	FI	Finland
CZ	Czech Republic	SE	Sweden
DK	Denmark	UK	United Kingdom
DE	Germany		
EE	Estonia		
IR	Ireland		
EL	Greece		
ES	Spain		
FR	France		
IT	Italy		
CY	Cyprus		
LV	Latvia		
LT	Lithuania		
LU	Luxembourg		
HU	Hungary		
MT	Malta		
NL	Netherlands		
AT	Austria		
PL	Poland		
PT	Portugal		
RO	Romania		
SL	Slovenia		