ALFI AND ALFP JOINT CONTRIBUTION TO THE CONSULTATION OF THE EUROPEAN COMMISSION GREEN PAPER TOWARDS ADEQUATE, SUSTAINABLE AND SAFE EUROPEAN PENSION SYSTEMS

1. Introduction

ALFI

The Association of the Luxembourg Fund Industry (**ALFI**) is the representative body of the Luxembourg fund industry. It counts among its membership over 1 200 funds and asset management groups from around the world and a large range of service providers. According to the latest CSSF figures, on 31 August 2010, total net assets of undertakings for collective investment were 2,068.990 billion euros.

As of August 2010 there are 3,614 undertakings for collective investment in Luxembourg, of which 2,234 are multiple compartment structures containing 11,338 compartments. With the 1,380 single-compartment UCIs, there are a total of 12,718 active compartments or sub-funds based in Luxembourg.

According to June 2010 EFAMA figures, the Luxembourg's fund industry has a market share of 25.25% of the European Union fund industry, and according to 2010 PWC/Lipper data, 76.2% of UCITS that are engaged in cross-border business are domiciled in Luxembourg. As one of the main gateways to the European Union and global markets, Luxembourg is the largest cross-border fund centre in the European Union and, indeed, in the world.

ALFP

The Association of the Luxembourg Pension Funds (*Association Luxembourgeoise des Fonds de Pension* – **ALFP**) is a not-for-profit association which brings together pension funds involved in the second pillar of pensions (i.e. supplementary pensions).

Following the law of 8 June 1999 on supplementary pension schemes, as well as pension fund regulations, some Luxembourg pension funds took the initiative to provide a platform for reflection and exchange of knowledge, on which entities sharing the same concerns can discuss problems encountered and future prospects. It is in that spirit that the ALFP was created and serves as an interlocutor – notably for the relevant public authorities. The ALFP was created on 23 July 2003 in order to protect the interests of all Luxembourg pension funds at national and international level.

The ALFP represents both types of pension funds governed by Luxembourg law: SEPCAVs and ASSEPs authorised by the Commission for the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier*) as well as pension funds monitored by the Insurance Commission (*Commissariat aux Assurances*).

Luxembourg background

With two laws adopted in 1999 and 2000, Luxembourg created a flexible and secure pension fund environment for domestic and pan-European pensions. The 1999 law introduced the Pension Savings Company with Variable Capital (*société d'épargne – pension à capital variable* or SEPCAV) and the Pension Savings Association (*association d'épargne – pension* or ASSEP) supervised by the *Commission de Surveillance du Secteur Financier* (CSSF), the Luxembourg supervisory authority for the financial sector. The 2000 law introduced the pension fund as insurance contracts supervised by the Commissariat aux Assurances (CAA), the Luxembourg insurance regulator. Moreover Luxembourg offers pension pooling vehicles.

ALFI and ALFP (the **Respondents**) would like to thank the European Commission for the opportunity to participate in this consultation and welcomes the Commission's intervention in this matter that facilitates examination of the main issues of concern with regard to pensions in the European Union.

2. Specific answers/comments to the questions raised for consultation

Question 1: How can the EU support Member States' efforts to strengthen the adequacy of pension systems? Should the EU seek to define better what an adequate retirement income might entail?

Question 2: Is the existing pension framework at the EU level sufficient to ensure sustainable public finances?

The Respondents share the analysis of the European Commission and its concerns regarding the adequacy of the current European pension systems, and encourages the European Commission to support the Members States in their efforts to strengthen adequacy.

The Respondents call for more harmonization and consistency in the EU. If the adoption of the IORP Directive was indeed a major achievement, there are still barriers to cross-border activities.

The Respondents support an EU wide extension of the pension framework through the creation of an additional legal framework for portable private pension plans (please see below). Any consideration of portable pension plans must cover both the period of accumulation of savings and the period of pension payout, as well as an appropriate framework for the mutual recognition of pension plans from other countries.

The Respondents call for EU wide efforts to improve financial education of the consumers. Awareness of the consumers has to be raised on the need to prepare early for an adequate pension through personal efforts, as a complement to public pensions.

Question 5: In which way should the IORP Directive be amended to improve the conditions for cross-border activity?

A. The procedure provided for by the IORP Directive with regard to cross-border activities seems sufficiently flexible and swift, so that the procedure in itself is not a problem.

B. However, pursuant to a report issued by the CEIOPS on 31 March 2008, there are differences in the approach taken by the Member States to determine what the concept of "cross-border activity" covers.

   Member States have different understandings of the definition of such activity. Member States take different approaches: some Member States consider the "nationality of the scheme" (the pension scheme is subject to the social and labour law of another Member State) as critical to determine whether a cross-border activity exists, whereas some other Member States rely on the location of the sponsoring undertaking as a decisive factor. Some others also look at both criteria. This is particularly harmful and could lead to deadlock: the home Member State considers an activity as cross-border whereas the host Member State, where the pension fund wants to carry out its activity, decides otherwise.

   The Commission should resolve these definitional issues as soon as possible, in particular by explaining more precisely what "cross-border activity" means. It is unfair that pension funds in the same situations are subject to different requirements, depending on the Member States involved.

To this end, the issuance by the Commission of an “interpretative communication” following the example of the one drafted with regard to the freedom to provide banking and insurance services would be useful.

C. The key brake on cross border activity is undoubtedly the obligation for a pension fund to apply the host Member State’s social and labour law to the relationships between the sponsoring undertaking and its pension scheme members. Those provisions are so diverse and so divergent within the EEA that it becomes very difficult, even impossible for a pension fund to administer scheme governed by foreign laws.

   Some Member States have moreover an extensive interpretation of the concept of “social and labour law”. Each Member State has, in addition, its own criteria with regard to this matter. Most of the Member States have chosen a “defensive” approach. **Please see annex 1** regarding the Belgian position.

   As a consequence, would it not be possible at European level to give less latitude to the Member States in this field? Could we not only impose to the paneuropean funds the obligation to comply with “core” social provisions with regard to occupational pensions, as, for instance, the social principles which are applicable when an employee is posted in an EEA state?

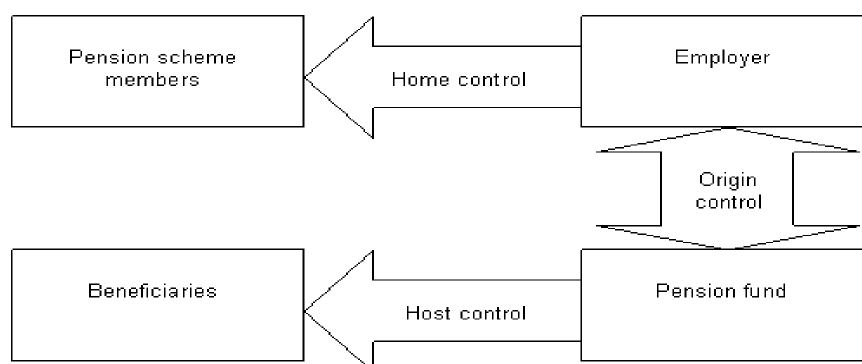
   This would not aiming at limiting the rights of pension scheme members, which would remain governed by ad hoc social provisions ; however the management of those pension funds would be simplified via this minimum harmonisation of the social provisions at European level. **Please see also annex 2** describing the distinction to be made in the relationships between a pension fund and its various interlocutors in order to avoid legislation conflicts or redundancies.

   Those pension funds could be obliged to comply with some specific rules set forth by social law such as: information on the accrued rights on a regular basis (for example, an annual pension sheet), communication on the vested rights in case of early leaving… Those principles could be named “core” social rules, but only where related to occupational pensions (2nd pillar), which would be applicable when it comes to cross-border structures, the sponsoring undertaking itself being responsible for the compliance with any other social provisions.

   Indeed, it is not necessary that pension funds have to ensure the compliance with the entire social law of the 27 Member States (and EEA States) where the sponsoring undertakings are likely to be established. The latter are solely responsible for this particular aspect of supplementary pension. Moreover, the perfect knowledge of the social legislation of every EEA member state by a pension fund established in one of those states remains merely utopia.

   However there would be nothing to prevent (which is not the case today) from providing that pension funds must report to host Member States on the proper performance of certain obligations towards beneficiaries.

   The targeted organisation of paneuropean supplementary pension could be schematized as follows :



D. One particular issue arose during the first application of the IORP directive in respect of expatriates: a number of expatriates, were excluded from their home country pension plan when the home country enforced the IORP-regime, particularly where there were relatively few (less than 100) expatriates in a host country. The principal reasons given for the exclusion were the full funding requirement for cross-border plans and the effort required to amend scheme rules and administration procedures to adapt them to the different social and labour law requirements of each host countries, where this effort far exceeded the perceived benefit of maintain relatively few affiliates in the plan. The funding issue is clearly a question for the host country, butthe requirements for compliance with social and labour laws for this very specific set of circumstances will need to be resolved at the EU level. As a first step, consideration may be given to an extension of the exemption for small pension plans under article 5 of the directive 200/41/EC. Currently, small pension plans (those having less than 100 members) may be exempt from the requirements of the Directive in their home country. In order to improve the mobility of workers, an extension of this exemption to cover established pension schemes with less than 100 members in a given host country would be helpful. In particular it should provide an exemption from the requirement to comply with host country social and labour laws and enable pension plans to cover expatriate populations more effectively. Such an exemption would have two key advantages: It would avoid one of the certainly unintended consequences of the IORP-directive (excluding expatriates from their home country plans almost by default) and it could enable the creation of pension plans for expatriates, thus extending the scope of cross-border pension plans currently available.

Question 6: What should be the scope of schemes covered by EU level action on removing obstacles for mobility?

Except for the social aspect (addressed in question 7), the main barriers to mobility within the EEA are tax related.

To the extent that the European Union treaty requires the Member States to abolish any discriminatory rules, the European Commission has undertaken to combat discriminatory measures, in particular with respect to taxation, taken by some Member States against pension institutions established in other Member States.

Today, the Commission should increase this pressure in order to allow citizens to fully excercise their free movement rights and to ensure that tax rules effectively comply with fundamental freedoms set out in the European Union treaty.

To this end, in case a written reminder addressed to the Member State concerned does not have the expected effects, the Commission should systematically initiate proceedings at the European Court of Justice for all tax discrimination cases regarding cross-border pension entitlements. It is unacceptable that pension funds have to initiate themselves legal proceedings, which are often burdensome and costly, in order to remove those barriers.

In the tax field, four areas are essential for transnational mobility:

A. Tax treatment of contributions

a. When measures on tax deductibility are granted with regard to contributions paid to domestic pension funds, they should also apply under the same conditions to the contributions paid to cross-border IORPs which authorised in their home Member State.

   In this regard, it should be pointed out that the OECD inserted in its model tax convention published in 2008 a specific clause aiming at preserving the tax treatment of the employers' and

employees' contributions in the host state, provided that the pension scheme which should collect the contributions can be recognised as pension scheme in both states. The advocated clause makes the deductibility of the contributions subject to the same conditions and limitations provided for under the law of the host state. **Please see in annex 3** the clause suggested by the OECD.

While recognising that it could create practical difficulties, the OECD also proposes a complementary clause to the states who would like to extend the deductibility of the contributions paid by or for a person moving from a state to another while continuing to make contributions to a pension scheme established in a third state. **Please see in annex 4** the clause suggested by the OECD.

It would be paradoxical and hard to justify that what is recommended in the sphere of OECD cannot be carried out within the EU.

b. Moreover, most of the Member States do not treat the employers' contributions as taxable income at the level of the members ; it cannot be otherwise when these contributions are paid to a pension fund established in another EEA country.

B. Income of the pension funds

IORPs invest the contributions received in assets that may generate income. Most of the Member States provide for a tax exemption in respect of any investment income and capital gains of IORPs (for example, non-taxation of dividends and/or interests). It cannot be otherwise when the income is allocated to an IORP established abroad.

In this regard also, the OECD has shown the way when drafting the 2008 model tax convention and proposed a clause prompted by the idea that when each of two contracting states exempts from any tax income pension funds established on its territory, any income coming from the other state should be exempted in this State. **Please see in annex 5** the clause suggested by the OECD.

C. Transfers of accrued rights in the event of a change of employer

If pursuant to the pension law of the Member State concerned, a member who leaves an employer may transfer exempted of any tax his vested rights to the pension scheme of his new employer in the same Member State, the same should apply when an employee moves from an employer in one Member State to an employer in another Member State. The taxation by a Member State of a cross-border transfer of vested rights, whereas this transfer is exempted for domestic situations, would be against the principles of free movement of persons. The Commission have a duty to protect the rights of employees moving within the EEA, including with regard to supplementary pension schemes.

The idea of keeping tax neutrality of a transfer of vested rights from a pension scheme established in one Member State to a pension scheme established in another Member State, when each of the two Member States grants tax neutrality to the transfers occurring within its national territory, has been also recommended by the OECD in its 2008 works. **Please see in annex 6** the clause suggested by the OECD.

D. Tax treatment of retirement benefits

Most of the Member States tax retirement benefits at the level of the beneficiaries, whether paid periodically or as a lump sum. However, tax rates varies substantially from one Member State to another. Eventually, attempt must be made to align the divergent systems.

Problems may also arise from the system chosen (TEE or EET). Those differences may lead to double taxation of migrant workers or of the persons retiring in another Member State than the Member State where they worked. For example, it might be the case for a member of a Luxembourg pension funds (where TEE system applies) who lives, at the time of his retirement, in a country where EET system applies (as in France or Germany for example). This double taxation is obviously a major issue in terms of cross-border mobility. If the Member States have sole competence in tax matters, the fact remains that the members of those supplementary pension schemes are penalised due to the lack of European harmonization. This is not due to the fact that an IORP is established in another Member State, but only to the regulatory tax discrepancies between the Members States and their choices regarding double taxation treaties.

It would therefore be useful to consider measures to deal with the co-existence of these different systems. In so far as the application of such different tax rules create unjustified obstacles to the free movement of persons, those obstacles must be eliminated.

This could of course be resolved by including specific provisions in international conventions.

But in this matter, the Commission should exert pressure on the Member States so that coordinated measures are taken at the European level.

Question 7: Should the EU look again at the issue of transfers or would minimum standards on acquisition and preservation plus a tracking service for all types of pension rights be a better solution?

It seems appropriate to us that the Commission puts again on the drawing board the draft directive “portability of supplementary pension rights”. It should however stick to the question of workers’ mobility and seek advice from specialists in this field.

It might prove useful to go back to this draft as it had already been presented in the face of population ageing and reform considering an increased role of supplementary pension schemes.

Within this framework, it is indeed necessary to ensure that the rules governing the operation of these schemes do not hamper the freedom of movement of workers within the European Union.

Potential barriers relate, among other, to the conditions under which pension rights are vested and to the conditions of treatment of those rights when a member changes of employer. It seems important to us that a closely coordinated system for both the acquisition and the retention and transfer of supplementary pension rights is put in place to enable the dismantlement of obstacles to employees' mobility.

However, in order to avoid an increase of the costs incurred by employers, transitional provisions should be laid down which will allow them to gradually adapt their pension schemes to those new principles.

The measures to be taken, regardless of the scheme funding vehicle, could be twofold:

A. Acquisition of rights

A member leaving an employer (whatever the circumstances are : resignation, dismissal…) after a certain period of service, should be entitled to dispose of it supplementary pension rights, that he could, as the case may be, transfer to the pension scheme of his new employer.

With regard to those “vested rights”, equal treatment must be ensured between people who move from one job to another within the same Member State and those who move to another EEA state.

“Vested rights” mean all entitlements to benefits obtained after fulfilment of the conditions required by the rules of a supplementary pension scheme. In this respect, the European legislation could provide for a maximum period of time for the acquisition of the rights constituted by the payment of employers' contributions, which shall apply when employees change employer.

Of course this period of time does not apply to the benefits financed by the employees’ contributions which will be taken out of the employees’ remuneration. When employees change employer, employees will still be entitled to this part of their pension rights without any further condition…

With regard to the benefits financed by the employer’ contributions, changing employer established in the same or in another Member State, after a few years of services, cannot cause the loss of accrued supplementary pension rights.

Penalization of any changes of employer by making the ex-member lose all his rights to supplementary pension clearly infringes the principle of freedom of movement of persons laid down by the European Union treaty. Make the grant of supplementary pension subject to the obligation to still be with the same employer at the time of retirement is unacceptable in this perspective.

The period of time for the acquisition of the rights shall however be reasonable. It is important to bear in mind that the setting up of a supplementary pension scheme contributes to enterprises' human resources policies. Such scheme, if it is efficient, may help to recruit high-level professional staff; it also increases staff retention while accepting a certain labour mobility. It should therefore be possible to agree on a maximum length of service whereupon the supplementary pension rights financed by the employer are vested, whatever happens. If the employee leaves his employer after the end of such period, those vested rights shall not be withdrawn. However, if he leaves the employer before a certain length of service, he loses those rights and their value is reinvested in the pension scheme in order to finance the rights of the remaining members.

The “length of service” criterion seems adequate, without needing to add a condition regarding age, which is otherwise a discriminatory criterion. We do not see any reason that would justify, for example, requirement for a minimum length of service earlier than 25 years, and nothing thereafter. Any member, irrespective of age, should justify a certain length of service with his employer, before being entitled to claim these accrued rights. In this regard, we could provide for a maximum length of service of 5 years. The employer could adjust this period in accordance with his human resources policy, but not exceeding a period of service of 5 years.

In this regard, there is no need to link this to an obligation to enrol newly hired people within a certain time limit.

Indeed, if with regard to death and disability, the affiliation determines the starting date of the member’s coverage, the same does not apply to retirement. The promised pension benefits are, by definition, in the long run ; the exact time at which an employee is enrolled is not relevant for him to the extent that the affiliation will only trigger the funding of the promised pension benefits at the level of the employer. When the employee leaves the firm with vested rights, we will only check that those rights have been effectively financed. If not, the employer shall pay the balance which settles the financing.

B. Portability and preservation of rights

When the employee leaves the firm with his rights, different options are offered to him, depending on the applicable law.

If the legislation allows him to transfer his vested rights to the pension scheme of his new employer, he should also have this option when he moves to another EEA state, in order to promote labour mobility within the European Union.

In order to enable the relevant member to make an informed choice, he shall receive clear and complete information from his former employer on the value of the rights to be transferred, and from his new employer on the consequences of such transfer of rights.

The modalities pursuant to which those rights shall be taken into account in the new pension scheme should remain governed by the law applicable to the new pension scheme.

It is understood that the rights that have been transferred cannot be subject to new criteria for vesting. In any event, these rights are definitively vested to the member. Only the portion of the rights financed by the new employer could be subject to a period of time for vesting pursuant to applicable law.

Moreover, there should be no penalty imposed on the ex-member in order to proceed to this transfer abroad.

If, when leaving his employer, the ex-member do not want to transfer his vested rights (or cannot transfer them : he is not entitled, for example, to a pension plan with his new employer), he should always have the possibility to maintain his vested rights within the supplementary scheme of his previous employer in accordance with the law applicable to the scheme. Under these circumstances, he should continue to be kept informed, at least once a year, of the changes of the value of his rights.

However if the vested rights do not exceed a certain threshold set by the applicable law to his previous supplementary pension scheme, the ex-member should also have the option to ask for the payment of those rights rather than their preservation or their transfer abroad.

The application of these principles would not, in any case, constitutes grounds for a reduction of the vesting, transfer and preservation conditions of the supplementary pension rights already existing in the Member States.

Moreover, these various principles could be included in the European regulation n° 883/2004, thus opening a new chapter dedicated to supplementary pensions.

Indeed, the purpose of the above mentioned regulation is to coordinate social security systems, in particular in the field of statutory pensions, in relation to the principle of the free movement.

Those new provisions will be fully in the spirit of this policy, especially in the light of the fact that there is a substantial regulatory gap for supplementary pension schemes, gap to be filled in the light of the increasing importance that those schemes will have in the future.

As the schemes differ notably from one Member State to the other, a European framework is the only way to gradually bring the various systems into line in order to make it easier to transfer from one supplementary pension scheme to another.

(8) Does current EU legislation need reviewing to ensure a consistent regulation and supervision of funded (i.e. backed by a fund of assets) pension schemes and products? If so, which elements?

(9) How could European regulation or a code of good practice help Member States achieve a better balance for pension savers and pension providers between risks, security and affordability?

The Respondents are fully aware of the attraction of “defined contribution pension schemes” for a few years and of the fact that they have overshadowed defined benefits pension schemes, when new schemes are set up.

However, in the Respondents’ opinion it is necessary to draw the Commission’s attention to the fact that, as the matter is technical, confusion could arise in perception of the two types of pension schemes.

The main reason why the defined contribution schemes are particularly successful with employers wishing to provide a pension scheme in their firms is that the concept itself of those schemes implies the idea that either expressed as a percentage of the wage bill or even as fixed amounts, the empoyers' contributions will remain, in any circumstances, within the limits defined beforehand.

On the contrary, within the framework of a defined benefits pension scheme, where the retirement lump sum or annuities is/are expressed as a percentage of the member's final salary, admittedly the cost of the scheme can be extremely heavy burden during the outer years preceding the employee's retirement.

Indeed each salary increase gives rise to an increase of retirement benefits, which mut be financed over shorter and shorter time as the member moves towards his retirement date. This effect might be drastic in the countries where salaries are automatically indexed.

While recognising adverse automatic effects of defined benefits pension schemes when they are not conceived on a prudent basis, it is however important to set this vision of things against two points :

- On one hand, the fundamental purpose of a supplementary pension scheme is to generate a supplementary replacement income which, added to the statefinanced pension, represents an adequate proportion of the member's final salary. From this perspective, defined benefit pension schemes offer better opportunities than defined contribution pension schemes, which will only provide the member with a benefit reflecting contributions paid throughout his professional life increased by the financial performance of the financial instruments in which the contributions have been invested. The adequacy between investment performance of the contributions and the member's final salary is overall random.

- On the other hand, it is quite possible for an employer to limit the financing risks to which he is exposed by choosing a defined benefit pension scheme.
    - On one hand, and in so far the law applicable to supplementary pension funds allows it, the pension rules (*règlement de pension*) may include clauses pursuant to which, when the threshold of the employer's contributions is exceeded for example beyond a certain percentage of the members' salary costs or the company payroll, the scheme's rules may be modified upon decision of the employer in order to bring the employer's contributions below the threshold laid down in the pension rules.

    - On the other hand, actuarial techniques tried and tested for years enable to equalise the development of the schemes in the long run. Those techniques presuppose a prefinancing of the future of the scheme's costs with regard to the members whose retirement is a long way off with the consequent lower costs increases in the end of the careers.

The Respondents support the EFAMA's proposal relating to the Officially Certified European Retirement Plan" (OCERP) which consists in the development of a simple personal retirement plan, with unified standards across Europe. Implementation of OCERP would increase the consumer-friendliness of long-term investments and be appropriate for the Commission's vision for European pension systems.

OCERPs are wrapper designed to be retirement plans, not the underlying investment products. They could be designed as a European Personal Pension Account (EPPA), i.e., an account in which an individual accumulates savings, retirement claims, and/or other insurance-related claims, all of which are dedicated exclusively to providing retirement income.

The basic requirements for OCERPs are that they should (i) be transparent (domiciled in EU or within the EEA, annual statement on the costs, and annual statement on accumulated savings) (ii) facilitate investment choice (limitation of the range of underlying products in which individuals can invest, default investment option, solutions for dealing with investment risks), (iii) be transferable/portable, (iv) provide adequate flexibility (flexible withdrawal/borrowings options and suspension rights), and (v) be managed cost-efficiently and safely.

The IORP Directive could be used as the basis creating a single market for pan-European personal retirement plans.

Question 10: What should an equivalent solvency regime for pension funds look like?

The current solvency regime for pension funds under Article 17 of the IORP Directive is principally based on the "prudent person principle" according to which pension funds shall be managed so as to ensure at all times the security, quality, liquidity and profitability of the portfolio. The respondents consider that the "prudent person principle" - duly applied in accordance with the terms and the spirit of the IORP Directive - is the best way to adequately govern the solvency requirements of the large variety of situations and circumstances that inevitably exist in the context of international pension schemes.

In the respondents' view, the "prudent person principle", which was at the heart of the prudential approach when elaborating the IORP directive and which some would consider as being its overarching concept, is a convenient and adequate approach which allows to reconcile the need for adequate employee protection whilst allowing to reflect geographic, economic, demographic and similar differences as may exist between Member States, regions, businesses, etc.

The respondents' view on the practical implementation of the "prudent man principle" is that pension fund solvency management should - in the best interest of the employees, the employer and the market as a whole - be regulated by qualitative criteria rather than uniform quantitative limits based on the types of assets in which pension funds may be invested.

A qualitative approach in accordance with the "prudent person principle" allows a tailored (and hence, flexible) supervisory approach according to the specific situation and complexity of an IORP. Such approach enables the supervisor to tighten or loosen the solvency requirements depending on the circumstances at hand, to ensure efficient solvency management, without however creating unnecessary cost and administrative burden to the detriment (ultimately) of the beneficiaries. Indeed, the proportionality principle appears to be inherent to the "prudent person principle" requiring an adapted assessment on a case-by-case basis.

The respondents believe that Solvency II should not be applied to pension funds. There are a number of differences between insurance companies and IORPs:

- Pension funds are financial institutions set up for the social purpose of providing retirement income.
- They are non-profit-making entities without third-party shareholders.
- Their obligations are made-up of long-term liabilities, and they are usually subject to comprehensive regulation.
- In case of insufficient funding and depending on the regulatory regime in force, pension funds may have access to refinancing by way of additional contributions from the sponsoring entities or they may be able to modify their obligations by, for example, suspending indexation of benefits

The imposition of prudential capital rules on all pension funds would significantly increase the cost of occupational pension provision and may lead to the closure of even more plans than in the past.

Alternative solutions to cover the contingency of employer failure exist, for example in the form of a mutual insurance arrangement such as the *Pensionssicherungsverein auf Gegenseitigkeit* in Germany.

The respondents believe that the definition of the right level and method of risk orientation should be left to individual Member States, as the management of pension risk must be appropriate to the overall context of pension provision in each Member State. The CEIOPS-OPSSC-01/08 "Survey on fully funded, technical provisions and security mechanisms in the European occupational pension sector" has shown that, despite the fact that systems and assumptions are very different throughout Europe, the global levels of protection do not materially differ (due to interaction between parameters). In fact, the geographic, economic, demographic, etc. environment is so different from one Member State to another that a quantitative harmonisation would not appear to be a convenient solution.

Question 12: Is there a case for modernising the current minimum information disclosure requirements for pension products (e.g. in terms of comparability, standardisation and clarity)?

Question 13: Should the EU develop a common approach for default options about participation and investment choice?

As stated in the OECD guidelines for the protection of rights of members and beneficiaries in occupational pension plans, "rights may be meaningless, unless they are adequately disclosed and understood."

Need for clear and transparent information

The respondents agree that information provided to individuals must be as clear, simple and transparent as possible; otherwise information will be useless to its addressees, who will be unable to fully understand and make use of it.

In the case of member-directed DC pension schemes, where the pension scheme members have the right to direct their investments, individuals should first be made aware of this responsibility.

They should also receive adequate information upon which they can make well-funded decisions.

Pursuant to the current requirements of the IORP directive, where the plan member bears the investment risk, he shall receive, on request, the range of investment options, if applicable, and the actual investment portfolio as well as information on risk exposure and costs related to the investments.

The same principles could also be used for communications to individuals in member-directed DC pension plans and to employers.

Need for financial education

The respondents believe that general awareness of the need for long-term savings must be increased, and pension reforms taking place explained to individuals.

Within DC pension schemes, where the investment and longevity risks weigh on pension scheme members, individuals must understand the information provided to them on the investment products available in order to make informed choices.

Financial education would also be required with regard to the use of retirement benefits, in particular with regard to the choice between lump sum payment and annuities.

Individuals' abilities to make well-informed investment decisions must be improved.

By and large we have to encourage more financial awareness and transparency through better information and disclosure requirements.

Question 14: Should the policy coordination framework at EU level be strengthened? If so, which elements need strengthening in order to improve the design and implementation of pension policy through an integrated approach? Would the creation of a platform for monitoring all aspects of pension policy in an integrated manner be part of the way forward?

Member States are responsible for their pension provisions, and decisions on pensions in a Member State inevitably impact pensions in other Member States. The creation of a platform for monitoring all aspects of pension policy and regulation in an integrated manner might be useful.

Furthermore, the mobility of EU citizens is steadily increasing, so we encourage the EU efforts to better evaluate and coordinate the pension efforts.

Annex 1 - Interpretation of the concept of "social and labour law": the Belgian position.

In Belgium, for example, the *Commission Bancaire Financière et des Assurances* (CBFA), the prudential supervisor, published on its website[1] a list of the legislation applicable to a pension fund whishing to administer a pension scheme relating to a Belgian enterprise. And this one is particularly impressive: it is not only the legislation specific to supplementary pensions as we might have thought, but also the legislation regarding remuneration, collective agreements, anti-discrimination, use of languages...

And there is more : the Belgian supervisory body adds « this overview is not exhaustive and without prejudice to the obligation to comply, in pursuing activities in Belgium, with the provisions of th Belgian law which are not mentioned hereafter. » ! Moreover, the failure to comply with certain provisions of the Belgian law is subject to criminal sanctions.

Clearly, such a catalogue of provisions to comply with does not contribute to encourage cross-border activities.

[1] www.cbfa.be, note dated 30 May 2007.

Annex 2 - **Description of the relationships between a pension fund and its various interlocutors.**

A minimum harmonisation of the social provisions at European level is also justified by the fact that within this matter, which is already a complicated subject, in order to avoid legislation conflits or redundancies, it is important to distinguish between

- the relashionship between the enterprise and the members. This field falls undoubtedly under the social law of the Member State where the sponsoring undertaking is established. The key element that governs this relationship is the firm's pension rules (*règlement de pension*). The purpose of the pension rules is to set out the rights and obligations of the members and of the enterprise. The pension rules must comply with the legislation of the Member State where the sponsoring undertaking is established. The determination of the benefits, the employer's contributions, the members' financial participation to the building up of the future benefits, the conditions of membership, the vesting of rights in case of change of employer, retirement age…fall under the pension rules.
- the relashionship between the pension fund and
    - the sponsoring undertaking :
        - the sponsoring undertaking must
            - pay to the pension fund the contributions needed to fund the benefits provided for in the pension rules
            - make available to the pension fund the pension rules and all the data required for calculating and providing the benefits
        - the pension fund must
            - manage the assets resulting from the contributions that it receives
            - honour the obligations to achieve a result (price undertaking) that it might have contracted. In this case, we remind that the pension fund must have adequate resources in order to comply with the regulatory required own capital rules.
    - the members
        - the members must, if necessary, make available to the pension fund – or its manager – the data required for the relevant calculations.
        - the pension fund must inform the (ex) members of their rights
    - the beneficiaries (of payable benefits)
        - the beneficiaries must, if necessary, make available to the pension fund – or its manager – the data required for the relevant calculations.
        - the pension fund must provide the payable benefits to the beneficiaries
    - the supervisory authorities in the home Member State of the pension fund
        - the pension fund must primarily comply with reporting obligations under domestic law

The approach of the relationships between the pension funds and its various interlocutors takes into account the fact that the pension fund is only responsible for the contributions' collection, the management of the assets accumulated thanks to the contributions and the payment of the benefits. The pension fund shall not assume any duties beyond those above described.

Annex 3 – OECD 2008 Model Tax Convention on Income and on Capital - Commentary on article 18 concerning the taxation of pensions – Paragraph 37

« 1. Contributions to a pension scheme established in and recognised for tax purposes in a Contracting State that are made by or on behalf of an individual who renders services in the other Contracting State shall, for the purposes of determining the individual's tax payable and the profits of an enterprise which may be taxed in that State, be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that State, provided that :

a) the individual was not a resident of that State, and was participating to the pension scheme, immediately before beginning to provide services in that State, and

b) the pension scheme is accepted by the competent authority of that State as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

2. For the purposes of paragraph 1 :

a) the term a « pension scheme » means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the services refferred to in paragraph 1, and

b) a pension scheme is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.

Annex 4 – OECD 2008 Model Tax Convention on Income and on Capital – Commentary on article 18 concerning the taxation of pensions – Paragraph 38

« 1. Contributions made by or on behalf of an individual who renders services in a Contracting State to a pension scheme

a) recognised for tax purposes in the other Contracting State,

b) in which the individual participated immediately before beginning to provide services in the first-mentioned State,

c) in which the individual participated at the time when that individual was providing services in, or was a resident of, the other State, and

d) that is accepted by the competent authority of the first-mentioned State as generally corresponding to a pension scheme recognised as such for tax purposes by that State,

shall, for the purpose of

e) determining the individual's tax payable in the first-mentioned State, and

f) determining the profits of an enterprise which may be taxed in the first-mentioned State,

be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme recognised for tax purposes in that first-mentioned State.

For the purposes of paragraph 1 :

a) the term a « pension scheme » means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the services refferred to in paragraph, 1 and

b) a pension scheme is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.

Annex 5 – OECD 2008 Model Tax Convention on Income and on Capital - Commentary on article 18 concerning the taxation of pensions – Paragraph 69

« Notwithstanding any provisition of this Convention, income arising in a Contracting State that is derived by a resident of the other Contracting State that was constituted and is operated exclusively to administer or provide pension benefits and has been accepted by the competent authority of the first-mentioned State as generally corresponding to a pension scheme recognised as such for tax purposes by that State, shall be exempt from tax in that State. »

Annex 6 - OECD 2008 Model Tax Convention on Income and on Capital - Commentary on article 18 concerning the taxation of pensions – Paragraph 68

« Where pension rights or amounts have accumulated in a pension scheme established in and recognised for tax purposes in one Contracting State for the benefit of an individual who is a resident of the other Contracting State, any transfer of these rights or amounts to a pension scheme established in and recognised for tax purposes in that other State shall, in each State, be treated for tax purposes in the same way and subject to the same conditions and limitations as if it had been made from one pension scheme established in and recognised for tax purposes in that State to another pension scheme established in and recognised for tax purposes in the same State. »