

Mapping Exercise for Further Work on Solvency of IORPs

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Country abbreviations

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
ES	Spain
FI	Finland
FR	France
GR	Greece
HR	Croatia
HU	Hungary
IE	Ireland
IS	Iceland
IT	Italy
LI	Liechtenstein
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SE-FN	Sweden – Pension foundations
SE-PF	Sweden – Pension funds
SE-A4	Sweden – Article 4 Insurers
SI	Slovenia
SK	Slovakia
UK	United Kingdom

1. Introduction

- 1.1. In the context of its further work on solvency issues for IORPs, EIOPA has undertaken several fact-finding exercises, aiming to inform the considerations and developments presented in the consultation paper on those issues.¹
- 1.2. The further work on solvency of IORPs mainly covers the five following areas:
 - Valuation of sponsor support;
 - Supervisory responses;
 - Discretionary mechanisms;
 - Reductions of benefits;
 - Contract boundaries;
- 1.3. In order to cover all the relevant issues in those areas, four questionnaires have been circulated to EIOPA members for their views and description of the situation in their respective jurisdictions. Those four mapping exercises are the following:
 - Sponsor support, funding requirements and recovery plans;
 - Discretionary decision-making processes;
 - Benefit reduction mechanisms;
 - Contract boundaries.
- 1.4. The analyses and summaries of the responses received have been put together in this document, structured by issue following the four themes mentioned above. For each issue, a summary of the responses is presented, followed by a more comprehensive overview of the responses received.
- 1.5. It should be highlighted that the responses of EIOPA members were given within the context of gathering material for the further work on solvency issues. For this purpose some responses may have been simplified or may only represent the majority of cases. Therefore, the responses may not be (fully) representative in certain circumstances and can certainly not be extrapolated to individual IORPs. By no means can general information on a national sector in this document be construed as specific information on the situation of individual IORPs.

¹ EIOPA, Consultation Paper on Further Work on Solvency of IORPs, EIOPA-CP-14/040, 13 October 2014.

2. Sponsor support, funding requirements and recovery plans

2.1. Summary

- 2.1. EIOPA distributed a questionnaire on current practices with regard to sponsor support and supervisory responses to all its members. This section aims to collate all answers received and to draw some very preliminary conclusions from these collated responses.

Sponsor support

- 2.2. The results of this survey showed that, between member states, there is significant variation in the treatment of sponsor support. For member states where sponsor support does exist, there is also variation in the regulatory framework surrounding it. Results of the survey confirmed that the three main types of sponsor support are: unlimited, limited and non-legally enforceable sponsor support.
- 2.3. Sponsor support can cover a wide range of IORPs across the EU from DB with a salary link, DB targeting specific benefits, to DC with an investment/annuity guarantee. The majority of IORPs covered by sponsor support are DB with a salary link. It is possible that EIOPA will need to do further work around the materiality of sponsor support for small DC IORPs with guarantees.
- 2.4. The primary form of sponsor support experienced in member states is an increase in sponsor contributions, but a variety of other methods exist across the EU. These types of sponsor support may be enforced through law, collective agreement and financing agreement depending on the regime in each member state. Legally enforceable sponsor support may occur via social and labour law, bankruptcy law, sponsor regulations and/or collective agreements depending on the arrangement present in member states. It will be important to carry out detailed assessment into how binding these agreements are.
- 2.5. Supervisory approval of some form is required in most cases where the IORP is underfunded to the extent where the sponsor and IORP are required to put in place a contribution schedule.
- 2.6. In most member states with sponsor support, guarantees from parties other than the sponsor are generally allowed. It will be important to assess the strength and enforceability of any such guarantees when attempting to place a value on them for the purposes of calculating sponsor support.

Funding requirements

- 2.7. In order to better understand the assumptions used in member states in setting current funding requirements, EIOPA members provided information about the primary assumptions used to both value the

liabilities upon which the recovery plan is based, and the recovery plan itself if these are different.

- 2.8. In deriving the discount rate, the results of the survey showed that member states have adopted a wide range of methods. Discount rates tend to be linked to government bond/swap yields (either national or Eurozone), but in some member states discount rates may be linked to the asset allocation of the particular IORP. Many member states set a maximum rate.
- 2.9. In deriving mortality, most IORP regimes adopt a standard base table, based on mortality experience to date, and include an assumption for the future trend of mortality, which incorporates an allowance for prudence.
- 2.10. Fifteen member states have at least some IORPs that fall under Article 17.1, meaning they are subject to additional regulatory own fund requirements. Six member states have additional buffer requirements, including the traffic light stress tests in DK and SE.

Recovery plans

- 2.11. Two broad approaches can be discerned with regard to recovery plans:
 1. Short term approaches, meaning IORPs should have sufficient capital at all times, by imposing recovery periods measured in months. An important element in recovery plans is the reduction of mismatch risk. Alternatively, shareholders (BG, HR, SI) or sponsors (DK, NO) have to provide immediate capital injections.
 2. Longer term approaches, i.e. the recovery of shortfalls may be smoothed over time. This group of member states imposes average/maximum recovery periods that range from 1 to 15 years. The way shortfalls are resolved in recovery plans very much depends on the specific security and benefit adjustment mechanisms that are in place in the various member states. In many countries expected asset returns can also contribute to recovering deficits.
- 2.12. Six member states provided data on the proportion of IORPs in their jurisdiction that are currently subject to a recovery plan: BE (13%), DE (2%), GR (30%), IE (27%), NL (65%) and the UK (75%). Ten member states responded that 0% or a negligible number of IORPs are subject to a recovery plan.

2.2. Introduction

Background

- 2.13. EIOPA distributed a questionnaire on current practices in regards to sponsor support and supervisory responses to all its members. This section aims to collate all answers received and to draw some conclusions from these collated responses.

Responses received

- 2.14. Members from 22 countries responded to the questionnaire. The questionnaire allowed member states to send in separate responses if different sets of rules/practices applied to different types of IORPs/pension plans. Sweden submitted three separate responses for pension funds, pension foundations and insurers subject to Article 4 of the IORP Directive, which are included within the results under the abbreviations SE-PF, SE-FN and SE-A4 respectively.
- 2.15. Nine EEA countries have not responded to the questionnaire. These missing member states are: CZ, IS, LT and RO (no IORPs in these four countries), HU (only 1 or 2 IORPs), LV and SK (both only DC IORPs), LI (cross border IORPs only) and CY.
- 2.16. Some member states have provided additional comments on the topics in question throughout the paper. These comments provide further information on the issues faced in the countries for which answers are provided and are not likely to fully reflect the issues faced in all countries.

2.3. Sponsor support

- 2.17. EIOPA undertook a Quantitative Impact Study (QIS) on Institutions for Occupational Retirement Provision (IORPs), which ran between mid-October and 17 December 2012 in seven member states. The QIS exercise represented a first comprehensive attempt to calculate prudential balance sheet and solvency figures on a common and consistent basis for defined benefit IORPs in Europe.
- 2.18. EIOPA published the final report with the outcomes of the QIS in July 2013.
- 2.19. One of the most significant aspects of the QIS results is the figure for sponsor support. As noted by stakeholders and IORPs in both the public consultation and during the QIS itself, the methodology for valuing sponsor support is subject to considerable practical difficulties. In response to this feedback, EIOPA initiated work to consider how to improve the general sponsor support methodology as set out in the QIS technical specifications, and to look at some issues worth investigating.
- 2.20. As set out in EIOPA's advice on the review of the IORP directive, four forms of different sponsor support, involving an obligation on the part of the plan sponsor to cover deficits, can be distinguished:
- A - Increases in contributions;
 - B - Subsidiary liability of the sponsor;
 - C - Contingent assets of the sponsor;
 - D - Claims on the sponsor.

Q1) What forms of sponsor support are available?

2.21. Member states reported that sponsor support may take various forms within their jurisdiction. Primarily, sponsor support takes the form of increases in employer contributions, either through regular or one-off contribution requirements.

	Number	Breakdown of responses
Increases in employer contributions	16	AT, BE, DE, DK, ES, FI, IE, IT, LU, NL, NO, PT, SE-A4, SE-PF, SE-FN, UK
Increases in employee contributions	3	ES, IE, NL
Subsidiary liability of the sponsor	4	DE, DK, ES, IT
Contingent assets of the sponsor	2	IE, UK
Claims on the sponsor	5	ES, IE, NL, SE-PF, UK
Other	8	BE, BG, EE, HR, MT, NL, SI, UK

2.22. Only Ireland and the United Kingdom reported that contingent assets may be classified as a form of sponsor support.

2.23. Eight member states reported that "other" forms of sponsor support exist in their jurisdiction. These other forms may include:

- Claims on parties related to the sponsor (UK);
- Claims on the sponsor that may be payable only in certain circumstances (NL);
- Subordinated loans (BE);
- Lending/cross-sharing (BE);
- Stability buffers (BE).

2.24. Some countries note that no sponsor support is provided (BG, CZ, EE, MT, SI).

Q2) What types of sponsor support are available?

2.25. A slight majority of respondents reported that they have unlimited sponsor support.

2.26. Eleven responses referred to non-legally enforceable sponsor support, which is covered in the questionnaire on discretionary decision-making processes and so not expanded on here.

2.27. In eight member states IORPs may not dispose of any sponsor support or no sponsor support currently exists in their jurisdiction.

	Number	Breakdown of responses
Unlimited	13	AT, BE, DE, DK, ES, FI, IT, LU, NL, PT, SE-PF, SE-FN, UK
Limited	4	AT, IT, NL, SE-PF
Non-legally enforceable sponsor support	11	DE, DK, FI, HR, IE, IT, NL, NO, PT, SE-A4, SE-PF
No sponsor support	8	AT, DE, FR, MT, NL, PL, SE-PF, SI

2.28. The results show that the modelling of sponsor support needs to be able to cope with a range of sponsor support types.

Q3) What types of institutions dispose of some form of legally enforceable sponsor support?

2.29. Article 4 insurers do not dispose of legally enforceable sponsor support.

	Number	Breakdown of responses
IORPs	14	AT, BE, DE, DK, EE, ES, FI, IT, LU, NL, PT, SE-FN, SE-PF, UK
Article 4 insurers	0	

Q4) What are the legal or contractual bases of sponsor support?

2.30. There is a wide range of responses from countries regarding how sponsor support is enforced. In particular, there is a spread between:

- Law;
- Collective agreement;
- Financing agreement between IORP and sponsor;
- Rules of operation/IORP statutes;
- Other.

	Number	Breakdown of responses
Law	8	BE, DE, EE, ES, FI, LU, SE-FN, UK
Collective agreement	7	AT, BE, DE, EE, ES, IT, PT
Financing agreement between IORP and plan sponsor	7	AT, BE, DE, EE, ES, LU, NL
Rules of operation / IORP statutes	5	BE, DE, DK, ES, SE-PF
Other	0	

Q5) Are there regulations that affect sponsor support?

2.31. There are a range of approaches reported by member states:

- In Belgium and Germany, sponsor support is based on social and labour law;
- In Portugal, sponsor support is based on collective agreement as well as various regulations;
- In Spain, sponsor support is based on social and labour law, and bankruptcy law;
- In the UK, sponsor support is based on the legally binding Pensions Act 2004 and the Occupational Pensions (Employer Debt) Regulations 2005.

	Number	Breakdown of responses
Yes	7	BE, DE, ES, LU, PT, SE-FN, UK
No	5	AT, DK, FI, NL, SE-PF

2.32. In understanding the extent to which sponsor support calculations should be allowed for in the holistic balance sheet, it will be important to fully understand the extent to which sponsor support can be claimed under the legal and social framework within which the IORP and sponsor operates.

Q6) What types of plans are covered by sponsor support?

	Number	Breakdown of responses
DB plans with salary link	13	AT, BE, DE, DK, ES, FI, IT, LU, NL, PT, SE-FN, SE-PF, UK
DB plans targeting specified benefits	6	AT, BE, DK, ES, LU, NL
DC style DB plans with investment guarantees	9	AT, BE, DK, ES, LU, NL, PT, SE-FN, UK
DC style DB plans with annuity guarantees	3	DK, ES, NL

2.33. Any method for valuing sponsor support put forward by EIOPA may need to be able to incorporate guaranteed DC plans, as well as full DB plans. DC plans with guarantees could be seen as contingent DB plans and so a stochastic method or a suitable simplification may be required here.

Q7) When is sponsor support called for?

2.34. Responses to this question fell into a few categories, which are summarised as follows:

- When there is a deficit in the IORP (AT, BE, DE, FI, LU, PT, SE-A4, SE-PF, UK);

- When an IORP is not compliant with solvency regulations (BE, DE, DK, SE-A4);
- When an IORP falls below minimum required funding level (LU, NL, PT);
- When a sponsor exits from the IORP (UK).

Q8) Is supervisory approval required for sponsor support?

	Number	Breakdown of responses
Yes	1	LU
No	7	AT, ES, FI, IT, SE-PF, SE-FN, UK
In some cases	5	BE, DE, DK, NL, PT

2.35. Members provided the following specific responses:

- BE - The supervisor must approve recovery plans. The supervisor can request more prudent assumptions with regard to technical provisions if the sponsor is weak. Shortfalls must be met within one year for a short-term funding target and within five years for a long-term funding target.
- DE - Pensionfonds must submit recovery plans for supervisory approval.
- DK - If part of a recovery plan or if sponsor support comes as a subordinated loan.
- NL - Supervisory approval is not needed when agreeing financing agreements. The supervisor only checks that it complies with Dutch regulations. Approval is needed if sponsor support needs to be called up due to the financial position of the IORP. The IORP will then submit a recovery plan, and the supervisor requires written consent that the sponsor is willing and able to provide the support.
- PT - Immediate injections do not require supervisory approval but an increase in future contributions as part of a recovery plan does in a certain sense, as recovery plans are subject to approval of the supervisor.
- UK - Recovery plans do not require formal regulatory approval, although they are examined by the regulator who will intervene when necessary. Other forms of sponsor support may be informally "approved" during discussions on recovery plans. The UK Pension Protection Fund (PPF) needs to provide formal approval on the use of any contingent assets which count towards the PPF risk-based levy.

Q9) Can parent/other guarantees be used?

	Number	Breakdown of responses
Yes	8	BE, DE, ES, IT, LU, NL, PT, UK
No	6	AT, BG, DK, FI, SE-PF, SE-FN

2.36. Members provided the following specific comments:

- BE - These are enforced through contractual agreements between the sponsor and other entities. If implicit guarantees are provided, the legal sponsor is approached for extra funding.
- DE - The guarantee will usually have a legally binding commitment of the guarantor to the IORP. The IORP would have to enforce this through the courts. There is no known case where such support has been necessary.
- ES - Benefits can be insured by an external company.
- NL - Enforcement is carried out in the same way as 'direct' sponsor support, i.e. requiring written consent on recovery plan measures.
- PT - Multi-sponsor IORPs may call on other sponsors to provide support.
- UK - Entities which are not sponsors of the IORP (e.g. parent companies) can provide guarantees.

Q10) Are there other relevant aspects of how sponsor support works?

2.37. Members were invited to provide information on any other relevant aspects of how sponsor support works in their jurisdictions. Three members provided additional information:

- BE - No claims on the sponsor can be taken into account on the balance sheet, except to cover the solvency margin and if subject to a bank guarantee.
- SE-FN - Some employers with pension foundations have credit insurance (or a similar arrangement), covering employer default. This is not a requirement by law if the foundation assets fully cover the technical provisions, but might be a requirement by collective agreement. The foundation might be combined with book reserves covering part of the promise, in which case the credit insurance is required by law for all of the promise. This might also be an alternative to sponsor support in the form of immediate injections if the assets do not cover technical provisions. Another alternative is to transfer the promise to an insurance company or pension fund.
- UK - The Pensions Regulator's Code of Practice for IOPR funding sets out how investment and funding should reflect the trustees views on the

value and risks of sponsor support. The Pensions Regulator has powers to issue Contribution Notices and Financial Support Directions on legal entities in order to obtain additional funding for IORPs.

2.4. Current practices regarding funding requirements

2.38. This section explores the following issues and practices:

- The funding requirements and the primary assumptions adopted to value the liabilities on which funding requirements are based;
- The high-level methodology behind these assumptions and how they differ between member states;
- The current applicability of the IORP Directive to IORPs across member states.

Q11) What approach to the of discount rate is used to establish technical provisions?

2.39. Member states reported a wide range of methods for setting discount rates used for establishing technical provisions. In many member states, a maximum rate is set but for the most part, discount rates tend to be lined to government bond yields (either local country or Eurozone). Some member states link discount rates to the asset allocation of the particular IORP but this is not a very common approach.

What type of discount rate is used to establish technical provisions?	Number	Breakdown of responses
Current risk-free market rates	4	DK, EE, NL, UK
Expected return on assets	5	BE, DE, LU, MT, UK
Fixed discount rates	11	AT, BE, DE, DK, FI, FR, GR, HR, IE, NO, PT
Other	11	BE, BG, ES, IE, IT, NL, PT, SE-A4, SE-PF, SE-FN, SI

2.40. Members provide the following specific comments:

- AT - IORPs come to an agreement with the sponsor. Rates currently range between 2% and 6.5%, although there is a maximum of 3% for new contracts.
- BE - Most IORPs take account of expected asset returns, but also the level of prudence included in these. The discount rate can be reduced to allow for prudence or a margin can be added in the form of a buffer. The discount rate can also be determined by taking into account the market yields of high-quality or government bonds. Most IORPs

determine a fixed discount rate and change these at each valuation date. The average discount rate is currently around 4% per annum.

- BG - An upper limit of 3.5% is defined in legislation. The rate is determined by reference to the yield on backing assets and/or the yield on government bonds.
- DE - Pensionfonds normally use expected return on assets. Pensionskassen use fixed discount rates, based on the rates that applied at the start of the contract plus a safety margin. The current maximum rate is 1.75%, but this may reduce to 1.25% in 2015. For older contracts, the rate at the start of the contract is used, but with the possibility to allow for changes to yields (as prescribed by law and/or with supervisory approval).
- DK - An IORP may use a different discount rate – for example a fixed discount rate – if for each member the value of the technical provisions is not lower than if the value was calculated on a technical basis based on the current risk-free market rates and where all other variables are “best estimates”.
- FI - The maximum rate is 3.5%. The range is between 2% and 3.5% p.a., with 3.5% p.a. most common.
- FR - The rate used is based on a synthetic rate derived from French sovereign bonds.
- GR - An average of 1999 to 2010 euro-area government bonds (2.5% p.a.).
- HR - Conservative determination, maximum of 3% p.a.
- IE - Technical provisions are calculated at market value for pensioners in payment, and at a combination of fixed discount rates depending on the term to retirement (7% blended with 4.5% with some adjustment for long bond yields). The 7% figure was originally an expected return on assets figure.
- IT - On a prudent basis, taking account of asset allocation. Not higher than the long-term sovereign debt projections made by the treasury.
- NO - Maximum discount rates are prescribed by legislation, and determined by Finanstilsynet. The maximum rate is 2.5% for benefits financed after 1 January 2012 (3% for benefits financed between 2004 and 2011; and 4% for benefits financed before 2004; and 3% for schemes established after 1993). IORPs tend to adopt the maximum rates.
- NL - Current risk-free market rates are adjusted by (a) taking into account an Ultimate Forward Rate in a way similar to Solvency II; and (b) using a two-month average of spot date interest rates.

- PL - DC only.
- PT - The prudential rules regarding the calculation of the minimum funding requirement establish that a minimum amount of liabilities should be determined based on a fixed discount rate of 4.5%. In addition, for some sectors there are other specific rules for calculating the amount of liabilities, including the discount rate to be used, provided that the resulting amount is not lower than the minimum amount of liabilities previously referred.
- SE-A4 and SE-PF - A Solvency II type curve with UFR is used.
- SE-FN - A flat discount rate specified by Finansinspektionen, based on a 12 month average of long-term (last market point) government bonds, changed once a year and published in October for use the next year (3.6% for 2011, 3.5% for 2012, 2.2% for 2013, 2.6% for 2014).
- SI - In the 'accumulation' period, the interest rate cannot be lower than the minimum of 40% of the average government bond yield and 1.5%.
- UK - Rates are set with reference to government bond yields, with an additional requirement to prudently take account of the investments held by the IORP and the strength of the sponsor covenant.

Q12) How are mortality assumptions set when valuing technical provisions?

2.41. Most IORP regimes adopt a standard base table, based on mortality experience to date, and then include an assumption for the future trend of mortality, which incorporates an allowance for prudence.

	Number	Breakdown of responses
Current mortality rates	16	AT, BE, DK, ES, FI, IE, IT, LU, MT, NO, NL, PT, SE-A4, SE-PF, SE-FN, UK
Trend included	15	BE, DE, DK, FR, HR, IE, IT, LU, NL, NO, SE-A4, SE-PF, SE-FN, SI, UK
Prudence added	14	AT, BE, BG, DE, HR, IT, LU, MT, NL, SE-A4, SE-PF, SE-FN, SI, UK

Q13) Are mortality tables prescribed or not?

2.42. The majority of member states use mortality tables that include a margin for prudence to some extent. The majority of mortality tables are prescribed by the central supervisory agency, by the local society of actuaries or have a default table that can be altered. Most tables are split by male/female and age, but many member states adopt further splits such as by location and by size of pension. In some member states

scheme specific mortality assumptions are not mandated as populations are too small for statistical significance.

2.43. This issue is not relevant for some non-DB IORP countries.

Q14) Are IORPs required to hold regulatory own funds in accordance with Art 17.1 of the IORP Directive or the Life Directive?

	Number	Breakdown of responses
Yes	11	AT, DK, EE, FR, IT, MT, NL, NO, SE-A4, SE-PF, SI
No	8	ES, GR, IE, LU, PL, PT, SE-FN, UK
Some IORPs	5	BE, BG, DE, FI, HR

2.44. Some members provide the following comments:

- BE - A solvency margin is imposed on IORPs which manage plans for independent workers (because there is no sponsor). Solvency margins may also be added if IORPs bear mortality/disability risks (but are calculated differently from Art 17.1).
- BG - Only in respect of cross-border activity of which there is currently none.
- DE - IORPs within the scope of Art 17.1 are required to hold regulatory own funds.
- FI - Only for one industry-wide pension fund.
- HR - Only for one pension insurance company - the rest are DC.
- IE - Legislation envisages the possibility of Art 17 schemes, but the supervisor is not currently aware of the existence of any.
- PT - The question was answered from the perspective of the pension funds. Pension fund management entities are required to hold regulatory own funds.
- UK - In practice there are no regulatory own funds in the UK at present.

Q15) Are IORPs subject to (additional) national buffer/capital requirements?

	Number	Breakdown of responses
Yes	7	DE, ES, IE, NL, NO, SE-A4, SE-PF
No	17	AT, BE, BG, DK, EE, FI, FR, GR, HR, IT, LU, MT, PL, PT, SE-FN, SI, UK

2.45. Members responding 'yes' provided the following comments:

- DE - IORPs not within the scope of Article 17.1 are required to hold regulatory own funds in accordance with Articles 17a-17d.
- DK - DK, like SE, operates a so-called red traffic light stress test, which supplements the required capital margin. Reports of traffic lights have to be done every quarter. (Between reports of traffic lights, the DFSA estimates the effect of the development in the interest rates and equities.) If an IORP does not have sufficient basic own funds to cover the risk, the Danish FSA instructs the IORP not to increase its risk.
- ES - IORPs have to comply with solvency capital, in particular, solvency margin requirements.
- IE - From 1 January 2016, DB schemes will be required to hold a reserve comprising a mismatching/investment risk reserve and an interest rate movement reserve.
- NL - IORPs need to have a risk-based funding buffer to withstand shocks with a 2.5% probability of occurring over a one-year period. For an average pension fund, the buffer is about 25% of technical provisions.
- NO - Minimum own funds are based on Basel I and Solvency I. The supervisor can also prescribe additional capital requirements.
- SE-A4 and SE-PF - Assets, subject to quantitative conditions, must cover technical provisions. There is a quarterly stress-test, which is not used for strict funding purposes, but acts as a tool for proactive supervision.

Q16) If there are (additional) national buffer/capital requirements, is the solvency requirement calculated using the actual funding level or another level?

	Number	Breakdown of responses
Actual funding level	6	DE, ES, IE, NO, SE-A4, SE-PF
Another funding level	1	NL

2.46. The member that responded "Another funding level" provided the following explanation:

- NL - Using the risk-based funding level, which is the level at which the IORP fulfils the risk-based requirements. The actual calculation is carried out by means of an iterative process.

2.5. Current practices regarding recovery plans

2.47. This section explores the nature of recovery plans and the role of the national supervisor in setting them and prescribing assumptions.

Q17) What percentage of IORPs are currently subject to recovery plan?

2.48. Most member states marked 0% or N/A for this because:

- there are no DB plans in the member state;
- there are very few IORPs and, hence, there is no experience of recovery plans;
- there is a lack of suitable data;
- there is no concept of an IORP being underfunded in the member state;
- any IORP that is underfunded is wound up.

2.49. Six member states provided data on the proportion of IORPs in their jurisdiction that are currently subject to a recovery plan: BE (13%), DE (2%), GR (30%), IE (27%), NL (65%) and the UK (75%).

Q18) What are the trigger events for a recovery plan?

2.50. For the majority of member states, this covered:

- being below 100% funded on an ongoing basis;
- being below 100% funded on a solvency basis;
- some other prudential ratio not being covered.

2.51. In Ireland from 2016 funding to technical provisions will include a reserve requirement.

2.52. BG, FI, HR, PL and SI have no concept of recovery plans, as institutions must be fully funded at all times or face liquidation.

Q19) What are the key assumptions used in setting trigger events for recovery plans?

2.53. Member states indicated that the discount rate and the rate of mortality are the primary assumptions used in setting the recovery plan. This is likely to be because they are the primary assumptions used in setting the liabilities.

Q20) Are IORPs legally obliged to demonstrate to the supervisors that measures in the recovery plan are realistic (in terms of availability and expected effects)?

	Number	Breakdown of responses
Yes	16	AT, BE, BG, DE, DK, EE, HR, IE, IT, LU, NL, NO, PT, SE-A4, SE-PF, SL
No	4	ES, FR, GR, UK

2.54. Members provided the following specific responses:

- AT - A reorganisation plan to demonstrate expected income and expenses (incl. administrative expenses), development of the minimum yield reserve, expected obligations and financial resources is required.
- BE - The recovery plan must be approved by the board of the IORP and submitted (with meeting minutes) to the supervisor, FSMA. A simulation of the recovery path must also be provided, and the FSMA requires a commitment from the IORP and sponsors that it will be met. Sponsors must also commit to pay minimum contributions (usually 50%) even if the recovery path has been obtained (e.g. due to market improvements) and as long as there is still a shortfall.
- BG - The national supervisor approves the recovery plan.
- DE - IORPs have to explain recovery plan assumptions to the supervisor. Sponsor financial strength is a relevant factor. Pensionfonds are covered by the pension protection scheme, PSVaG.
- DK - The national supervisor has to approve the plan.
- IE - Actuarial certification is a requirement that demonstrates that the actuary expects the recovery plan to have a reasonable chance of success. The financial assumptions underlying the recovery plan have prescribed limits. The sponsoring employer is required to support the plan by written agreement (this is not necessarily contractually binding).
- HR - The national supervisor reviews the recovery plan and responds within 15 days.
- LU - Additional sponsor support is at first demand.
- NL - IORPs have to demonstrate that recovery plan measures are realistic, including a requirement for a written declaration of the employer in case sponsor support is needed. IORPs must also demonstrate the effect of all recovery plan measures, using a standard template from the DNB website.
- NO - The "stepping-up plans" are based on financing from any future surplus in addition to possible contributions. This needs to be sensible, based on judgement made by Finanstilsynet.
- PL - DC only.

- SE - The recovery plan must contain information about the financial situation and forecast of the next three years, as well as measures the company will undertake to remedy the situation.
- SI - The recovery plan must be based on realistic assumptions.
- UK - There is no legal requirement, but it may form part of the supervisory process in examining the suitability of actuarial valuations and recovery plans.

Q21) Is there a legally prescribed maximum period for each level required?

	Number	Countries
Yes	9	BG, DE, ES, FR, GR, IE, NL, PT, SI
No	10	AT, BE, DK, EE, HR, LU, NO, SE-A4, SE-PF, UK

Q22) If the recovery plan length is prescribed under law, can the supervisor allow different longer/shorter periods to be used?

	Number	Countries
Yes	8	DE, ES, FR, GR, IE, NL, PT, SI
No	0	

2.55. Members provided the following specific responses:

- DE - There is a maximum period of 10 years. The supervisor can shorten this if it considers it appropriate.
- ES - There is a maximum recovery period of 5 years. The supervisory authority can authorise a maximum period of 10 years.
- FR - The authority can shorten the period if agreed with the IORP.
- IE - The length of the recovery plan is ultimately at the discretion of the authority. At present, up to 10 years is allowed. Longer is possible in extraordinary circumstances (there has been no instance of this to date).
- NL - Longer periods can be granted by the supervisors in specific cases. Shorter periods may be imposed if needed to protect members and beneficiaries. The government may also issue regulations to extend the maximum recovery period (used in 2008). Stepping up plans should have a maximum duration of 5 years from 2014. This is subject to a final government decision.

- PT - In practice, a flexible approach is followed and the length of the recovery plans is established on a case by case basis, considering the specific circumstances.
- SI - The supervisory authority determines a reasonable time period.

Q23) What is the maximum period of time for submitting a recovery plan, and from what point in time?

2.56. Members provide the following responses:

- BE - A plan must be submitted as soon as a deficit occurs (no legal limit). Interim reporting with accompanying plans is requested by the end of February in case of deficits. A recovery plan is normally required within one month of receiving an annual report.
- BG - 3 days.
- DE - Within 3 months of underfunding being determined.
- DK - Often there will be a very short time for submission depending on the concrete situation.
- ES - The deficit has to be covered from the year following the year in which the deficit arises.
- FR - 1 month.
- GR - No maximum period, but the supervisor can request one.
- HR - No IORPs have yet been subject to recovery plans.
- IE- One year from the effective date of the certification that the recovery plan is required.
- LU - At first demand.
- NL - Within 3 months of underfunding being determined.
- PT - If within one year counted from the date of verification of the underfunding situation, a suitable recovery plan has not been established, the management entity shall wind up the pension fund or collective adhesion.
- SE-A4 and SE-PF – There is no prescribed timeframe according to law, so it depends on the specific situation, but the company is expected to come up with a plan more or less immediately after the situation is discovered.
- SI - Usually 8 to 15 days after receipt of an order from the supervisors to submit a recovery plan due to a poor financial situation.
- UK - 15 months after the valuation date.

Q24) What is the average length of recovery plans?

2.57. Members provide the following responses:

- BE - Short-term provisions: one year. Long-term provisions: five years.
- DK - Typically 3-6 months.
- GR - This is decided upon on a case by case basis.
- IE - The modal length is 10 years, but shorter terms are not uncommon.
- NL - Short-term provisions: 3 years. Long-term provisions: 15 years.
- NO - The length is expected to be five years for "stepping up plans". For "real" recovery plans, a length of more than 2 months is unlikely to be accepted.
- PT - 3-5 years.
- SE - There are no recovery plans currently, but historically (there have been a few cases) on average 12 months.
- UK - An average of 8 years.

2.58. Note that some respondents provided the maximum recovery period specified in national law and others the average recovery period.

2.59. All other member states have either no experience of putting a recovery plan in place, or too little experience to provide a meaningful average recovery plan length.

Q25) How are recovery plan lengths determined?

2.60. Members provide the following responses:

- BE - Through circulars issued by the supervisor, FSMA, and in function of the specific situation of an individual IORP.
- DE - This depends on the specific situation of the IORP; asset/liability structure, risk profile, liquidity plan and member age profile.
- DK - It depends on the required time to undertake the measures without too much damage, for example if you need to sell illiquid assets like private equity or real estate.
- ES - The length of recovery plans are typically determined by the IORP (a maximum of 5 years).
- GR and PT - This is determined on a case by case basis.
- IE - Trustees apply for a particular term.
- NL - This is set by law.
- SE - It depends on the time needed to implement measures (e.g. selling illiquid assets, like private equity or real estate) without too much damage.
- SI - This is determined by the supervisory authority, but there is a

maximum of 3 years.

- UK - By negotiation between the IORP trustees and the sponsor.

2.61. The remaining member states have no experience of setting recovery plan lengths and no agreed policy.

Q26) Is there a follow-up procedure following an initial approval?

2.62. Often approval is followed by monitoring and more frequent reporting by the IORP to the supervisor. Some member states reported that, once in place, recovery plans need to be certified annually to demonstrate whether they are on target or not.

Q27) What are the common elements of a recovery plan?

2.63. The following table sets out the top 3 responses to elements that make up a typical recovery plan in their jurisdiction for each member state that responded to this question. Some respondents, such as NL, provided more than one element for a given ranking.

	Ranked first	Ranked second	Ranked third
Reduction of investment/mismatch risk	DK, NL, NO, SE-A4, SE-PF	FR, HR, SI	BE
Increase in shareholder capital/subordinated liabilities	BG, HR, SI		
Expected future investment returns	NL, UK	AT, DE	GR, HR, NO, SI
Immediate sponsor payments	DE, LU, NL	BE, DK, ES, IE, NO, UK	
Increase in future sponsor contributions	BE, DE, ES, IT, LU, NL, PT, UK		NO
Contingent assets of the sponsor			UK
Guarantees by the sponsor	NL	GR	DE, ES
Reduction in indexation of benefits	NL		IE
Reduction of benefits	GR	NL	DK, FR
Other	FR, NL		BE

2.64. BG, HR and SI are the only countries where shareholders are primarily responsible for recovering the shortfalls of the related IORPs. Reductions of investment/mismatch risk are ranked in second place.

- 2.65. DK, FR, NO and SE take an insurance type of approach. The dominant recovery mechanism is a reduction in mismatch risk. In France the solvency position is most often restored through higher pricing of new policies. In DK and NO immediate sponsor injections replace external shareholders in private insurance.
- 2.66. Other countries take a longer term approach where the recovery of any shortfall may be smoothed over time. The way shortfalls are recovered very much depends on the specific security and adjustment mechanisms in place:
- AT shortfalls are predominantly recovered through future investment returns; GR shortfalls are mainly recovered by reductions of benefits, sponsor guarantees and expected investment returns.
 - BE, DE, ES, IE, LU, PT and the UK depend to a large extent on sponsor support to recover shortfalls.
 - NL makes use of a range of security and adjustment mechanisms as well as expected future investment returns and the reduction of investment risk.
- 2.67. In around 50% of countries allowance can be made in recovery plans for excess returns on assets.

Q28) Are there any combinations of the above (except immediate injections) that would alleviate the need for a recovery plan?

	Number	Breakdown of responses
Yes	2	IE, PT
No	16	AT, BE, BG, DE, DK, ES, FR, GR, HR, LU, NL, NO, SE-A4, SE-PF, SI, UK

- 2.68. Members provide the following specific comments:
- IE - A reduction in benefits could be severe enough not to need a recovery plan
 - PT - Reduction of benefits, even though it does not happen very often in practice.

Q29) What risk assessments, valuation requirements, or other conditions are required for guarantees to be recognised as part of a recovery plan?

- 2.69. Members provide the following responses:

- DE - Sponsor financial strength is a relevant factor. Pensionfunds are covered by PSVaG insolvency insurance, so it is not necessary to examine sponsor strength in detail.
- DK - It is not possible to include sponsor guarantees in a recovery plan.
- IE - Guarantees would not typically be a formal part of a recovery plan. An employer guarantee might be a factor in confirming employer support for the scheme.
- NL - The only guarantees that can be recognised are additional sponsor contributions. Sponsors must provide written statements to show that they are willing and able to pay them.
- SI - All assessments must be based on reasonable assumptions.
- UK - The supervisor's credit assessment advisers will review recovery plan proposals.

2.70. Other member states had insufficient or no experience of guarantees.

Q30) Is it common practice to cease future accrual or close the IORP to new members if a recovery plan is in place?

	Number	Breakdown of responses
Yes	2	IE, PT
No	15	AT, BE, BG, DE, DK, ES, FR, GR, HR, NL, NO, SE-A4, SE-PF, SI, UK

2.71. Members provided the following specific comments:

- IE - The cessation of future accruals is a frequently adopted practice where employers want to limit exposure to DB costs whilst recognising a moral obligation to secure accrued benefits. It is not a prerequisite for the approval of a recovery plan.
- PT - These practices can even be observed before an underfunding situation is reached.
- UK - There is no requirement to approve a recovery plan. Closing to accrual is one choice (that can be suggested by the Regulator). Many IORPs have closed to future new members or future accrual, and this trend is continuing.

Q31) Are there any restrictions in respect of risk management of IORPs if a recovery plan is in place (e.g. investment policy)?

2.72. Generally, there are no legal restrictions in place in member states. However, supervisors have the scope to impose a range of restrictions to

reduce the risk of the IORP. Restrictions are primarily in relation to the investment strategy, through the restriction or reduction of investments in certain asset classes.

2.73. On the liabilities side, the assumptions adopted to value the liabilities can be made more prudent. In some member states, supervisors can require pensions in payments to be matched by bonds at the end of the recovery period.

	Number	Breakdown of responses
Yes	8	AT, BE, DE, DK, FR, IE, NL, NO
No	9	BG, ES, GR, HR, PT, SE-A4, SE-PF, SI, UK

Q32) Are there any important regulations/laws affecting recovery plans?

	Number	Breakdown of responses
Yes	7	BE, BG, DE, NL, NO, PT, UK
No	9	AT, ES, FR, GR, HR, IE, SE-A4, SE-PF, SI

2.74. The following is a summary of responses for those member states which have important laws/regulations affecting recovery plans:

- BE - Short-term provisions: members have the right at any time to transfer acquired reserves (e.g. to another employer), so the technical provisions corresponding with these acquired rights must be covered within 12 months. There is a minimum threshold for IORPs.
- BG - No dividends during recovery period.
- DE - The German pension protection scheme, PSVaG, is set up and governed by social and labour law. This impacts recovery plan design. As the PSVaG provides protection of benefits in the case of sponsor default, it is not necessary to examine the financial strength of sponsors in great detail.
- NL - Plan members that change jobs have a right to transfer pension values to their new pension provider. This right to transfer is postponed if the pension provider has a funding level of below 100%.
- PT - Prudential, sector specific regulations.
- UK - There are a number of relevant rules and regulations regarding recovery plans, including those around the Pension Protection Fund, employer debt, statutory schemes that cannot close to new members,

member consultation requirements for changes to benefits, protection of accrued benefits, preservation rules and minimum statutory pension increases.

Q33) Are there any other aspects of interest?

2.75. Members provided the following responses:

- DE - Recovery plans are based on existing contracts and commitments. They refer to local GAAP for trigger events. Existing contracts must be respected by prudential law.
- IE - The approach adopted is that the requirements placed on a recovery plan are set out in Authority guidance as clearly as possible, so that trustees can agree a plan with the employer with relative confidence that Authority approval will be granted.
- NO - There are two types of recovery plans linked to (a) insolvency situations and (b) implementing new mortality tables in technical provisions.

3. Discretionary mechanisms

3.1. Summary

3.1. EIOPA distributed a questionnaire on discretionary decision-making processes to all of its members, whereby the questionnaire focused on discretionary decision-making processes which may have a material impact on the IORP as a whole. This section aims to collate all answers received and to draw some very preliminary conclusions from these collated responses. Responses are limited to national laws and practices only, cross-border situations have not been taken into account.

Brief overview of existing discretionary decision-making processes

Element	Number of countries*	Countries
Pure discretionary benefits	8 (38%)	BE, DE, FR, IE, IT, MT, NL, PT
Mixed benefits	8 (38%)	AT, BE, DE, DK, FR, IT, NL, SI
Non-legally enforceable sponsor support	9 (42%)	DE, DK, FI, IE, IT, NL, NO, PT, SE-PF
Ancillary own funds	4 (19%)	DE, FR, IE, SE-PF
Surplus funds	5 (24%)	DE, IE, IT, NL, SE-PF
Subordinated loans	10 (48%)	AT, BE, DE, DK, FR, IE, NL, NO, PT, SE-PF, SI
Other elements	3	BE, IE, PT

* Twenty member states have provided full responses to the survey on discretionary decision-making processes for a total of 21 types of IORPs. SE has provided separate responses for pension foundations (SE-FN) and for Article 4 insurance companies and pension funds (SE-PF).

3.2. The results of the survey show the importance of unambiguous definitions. Several responses from member states suggest that the borderlines between two or more elements that include discretionary decision-making processes are not clear without further clarification. The following typical characteristics can be identified for the various elements:

- The distinction between pure discretionary benefits and mixed benefits on the one hand, and pure conditional benefits on the other hand is the existence of a discretionary decision-making process. Where pure conditional benefits are granted solely on the basis of an objective measure (for example an ex-ante benefit adjustment mechanism²), the existence of a discretionary power to grant certain benefits or to deviate from an existing policy to grant benefits qualifies these benefits as either pure discretionary or mixed benefits (dependent on the next characteristic);

² See e.g. page 113 of EIOPA's Advice to the European Commission on the review of the IORP Directive 2003/41/EC.

- The distinction between pure discretionary benefits and mixed benefits lies in the availability or not of an objective measure (explicit policy), or of a series of historical decisions and/or communications from which a pattern can be derived (implicit policy), to assist in the discretionary decision-making process. In pure discretionary benefits there is no such explicit or implicit policy to assist the decision-maker and the benefit is granted in a one-off decision. In mixed benefits, the decision-maker can use an explicit or implicit policy in the (discretionary) decision-making process, as an indication of how many benefits could be granted based on the actual funding position;
- Pure discretionary benefits, mixed benefits and surplus funds are or can be related to profit-sharing. This may be a reason why there is sometimes no clear understanding of the differences of those three items. The differences can be clarified as follows:
 - o surplus funds are specific reserves which consist of non-distributed profits which are (more or less softly) ear-marked to be used to enhance the benefits of members and beneficiaries (by paying e.g. mixed or discretionary benefits), but could also be used for other purposes, e.g. to absorb losses;
 - o mixed benefits are not a type of reserves but a type of benefits which are granted as a result of an explicit or implicit profit-sharing policy. Mixed benefits could be financed from any source, including investment returns. A dedicated reserve, exclusively earmarked for profit-sharing to members and beneficiaries, that may not be used for any other purpose³, could also be formed to fund future mixed benefits; or
 - o pure discretionary benefits are also a type of benefits, not a type of reserves, which are granted as a result of a pure discretionary decision-making process, without any explicit or implicit profit-sharing policy, but possibly as a type of profit-sharing. As for mixed benefits, pure discretionary benefits may or may not be financed through a dedicated reserve.

3.2. Introduction

Background

3.3. EIOPA distributed a questionnaire on discretionary decision-making processes to all its members. This section aims to collate all answers received and to draw some very preliminary conclusions from these collated responses.

³ Note that such a specific, single-purpose reserve is not 'freely available' to the IORP and can therefore not be taken into account when calculating the funding position of the IORP.

Definition of discretionary decision-making processes

- 3.4. Discretionary decision-making processes exist where a party to a pension arrangement has the power to make a subjective decision regarding one of the elements of the holistic balance sheet. The party involved could be the IORP, the employer, the participant itself, the supervisory authority or a pension protection scheme.
- 3.5. Three situations can be identified that include discretionary powers:
- there is a specified policy, based on objective conditions (an 'explicit policy'), but a discretionary power is available to deviate from that policy;
 - there is no specified policy, but there is, under the existing discretionary power, a history of using the discretionary power that could be interpreted as some kind of pattern (an 'implicit policy'); or
 - there is only a discretionary power, without any explicit or implicit policy.
- 3.6. In terms of the holistic balance sheet and the QIS, unconditional benefits and pure conditional benefits are not subject to discretionary powers, as any element of discretion about the application of the conditionality would lead to qualification as 'mixed benefits'.

Responses received

- 3.7. Twenty member states provided full responses to the questionnaire. In addition, CZ responded that they do not have any IORPs active in their country.
- 3.8. The questionnaire allowed member states to send in separate responses if different sets of rules/practices applied to different types of IORPs/pension plans. The only member state to provide separate responses was SE, which provided separate responses for pension foundations and for Article 4 insurance companies and pension funds.

Structure of this note

- 3.9. The following six sections each discuss the results of the responses that were received on specific elements that contain discretionary decision-making processes. For each section, the results are presented first, followed by a description of the key issues arising from these results. Subsequently, comments of individual member states are provided.

3.3. Pure discretionary benefits

- 3.10. 'Pure discretionary benefits' are benefits which are only granted based on a "subjective" decision making process. The results of this process are not concluded beforehand, but the fact that there is such a process may be.

The granting of those benefits can be based upon financial or demographic developments, but does not have any a-priori link to these developments. They are typically granted by means of a periodical decision of the IORP, based on non-formalised criteria. In addition, there is no recurrent practice or expectation of granting those benefits.⁴

Results of the responses

3.11. Of the 21 responses, eight indicated that national legislation allows granting of pure discretionary benefits in occupational pension plans. This represents 38% of the responses received.

Pure discretionary benefits allowed	Not allowed
BE, DE, FR, IE, IT, MT, NL, PT	AT, DK*, ES, FI, GR, HR, LT, NO, PL, SE-FN, SE-PF, SI**, UK
<p>* DK reported that the only kind of existing discretionary benefits in DK IORPS are where a scheme offers bonus or the like as part of the agreement. This however, would always be "on top" of a "fixed" benefit, and they consider such products out of the scope for this question.</p> <p>** SI reported in their comment on mixed benefits that pure discretionary benefits are currently not regulated in legislation or in pension plan rules. Technically, this would probably qualify as allowing pure discretionary benefits, but without practical use (similar to the DE-response).</p>	

3.12. Most respondents indicate that the IORP is the only party that can grant pure discretionary benefits. Although BE commented that the employer is in general the decision taker in the IORP (as the employer representatives make up the majority of the IORP's board), this does not qualify as the employer being able to grant discretionary benefits. The decision is still for the IORP to make, and the employer involvement is limited to the capacity as board members (note that in other countries employers are also represented in an IORP board).

3.13. Two countries report that the employer can grant pure discretionary benefits: BE and PT. Here, the employer can provide indexation on top of pensions in payment or specific early retirement benefits for individual employees. In BE, given that the employer should not be able to decide on how to spend an IORP's money, the employer will have to put the necessary amount in the IORP to provide this type of pure discretionary benefits. In PT, these additional benefits can be financed via additional contributions from the employer or by the IORP, if the funding level allows it.

3.14. In general, pure discretionary benefits are not granted very often. BE, FR, NL and PT indicate they are granted 'sometimes', while DE, IE, IT and MT

⁴ See paragraph HBS.4.28 of European Commission, Quantitative Impact Study (QIS) on Institutions for Occupational Retirement Provision (IORPs) - Technical Specifications, Ares(2012)1182662, 8 October 2012.

indicate they are granted 'hardly ever'. When asked how many times pure discretionary benefits are granted in practice, it turns out to be difficult to provide figures. DE and MT report no actual pure discretionary benefits were granted between 2003 and 2013, while FR report all IORPs (which are insurance companies using Article 4 of the IORP Directive) granted pure discretionary benefits between 2008 and 2013. All other respondents, including FR for the period 2003-2008, were not able to provide actual figures.

3.15. Profit-sharing with policyholders is a common practice for (commercial) insurance companies. In addition, French Article 4 insurers are legally required to allocate at least 85% of financial profits to the policyholders. The distribution beyond the minimal legal (or contractual) requirement constitutes a pure discretionary benefit.

3.16. Members provided the following comments:

- BE - Some pension scheme rules contain allowances for discretionary indexation.
- DE - In practice, this is not relevant for German IORPs. However, pure discretionary benefits are not forbidden, which is the reason for answering the above questions.
- IE - The main use (close to the exclusive use) of any type of discretionary benefit in Ireland would be related to variable escalations of pensions in payment. These escalations, where granted, would be related to the financial experience of the IORP over a period of time.
- MT - This can arise in case of a transfer from one scheme to another. The actuary and the scheme administrator can establish whether and to what extent it is considered appropriate to make any addition for future discretionary increases to the accrued benefit or for any other benefits that may be granted on a discretionary basis.
- NL - Social partners have to agree on an indexation ambition. This ambition could be that they would like to grant indexation, but only if the IORP's funding position allows for it. The agreement could also be that there is no ambition at all to grant indexation, but that indexation would be allowed upon the IORP's discretion. In these cases, there is no connection to wage or price inflation or to a fixed indexation rate. It is then up to the IORP to decide if the current financial position allows it to grant indexation. If it is granted, it is a decision that is only taken now, without any consequences for the future.
- PT - For the purpose of this part of the questionnaire, pure discretionary benefits are considered to be:
 - the indexation of pensions in payment, when it is granted on a discretionary basis by the sponsor(s);

- early retirement benefits that are granted by agreement of the sponsor on a case-by-case basis.

3.4. Mixed benefits

3.17. 'Mixed benefits' are benefits that are based on "objective" conditions as part of a "subjective" decision-making process. As such, these benefits combine elements of pure conditional and pure discretionary benefits. Although they will either have an 'explicit' or an 'implicit policy' of adjusting the accrued benefits, they also have a realistic discretionary power to deviate from that policy. The realistic discretionary power is closely linked to the communication to members and beneficiaries, as it must be clear for them that that no legal rights can be derived from possible "objective" conditions (for example a specified or perceived policy of adjusting the accrued benefits) to obtain these benefits.⁵

Results of the responses

3.18. Of the 21 responses, nine indicated that national legislation allows granting of mixed benefits in occupational pension plans. This represents 43% of the responses received.

Yes	No
AT, BE, DE, DK, FR, IE*, IT, NL, SI	ES, FI, GR, HR, LT, MT, NO, PL, SE-FN, SE-PF, UK
* IE and PT commented to be unsure about whether to answer 'yes' or 'no'. Given the variety of rules used by schemes, some of what IE and PT classified as discretionary pension increases may in fact be mixed benefits.	

3.19. Most respondents indicate that the IORP is the only party that can grant mixed benefits. Although BE commented that the employer is in general the decision taker in the IORP (as the employer representatives make up the majority of the IORP's board), this does not qualify as the employer being able to grant mixed benefits. The decision is still for the IORP to make, and the employer involvement is limited to the capacity as board members (note that in other countries employers are also represented in an IORP board).

3.20. The only country that reported that the employer can grant mixed benefits is DK. Here, the employer can increase accrued benefits for individual employees, if the employer provides additional funding to fund this increase.

3.21. FR reports that the supervisory authority shall use its powers to modify an existing (discretionary) policy, in particular, in cases where such a policy would not be compliant with legal requirements. The supervisory authority

⁵ See paragraph HBS.4.29 of European Commission, Quantitative Impact Study (QIS) on Institutions for Occupational Retirement Provision (IORPs) - Technical Specifications, Ares(2012)1182662, 8 October 2012.

can also, when deemed necessary for prudential purposes, make a (non-binding) recommendation to the undertaking, with the objective of deviating from an existing policy.

- 3.22. SI reports that a change in legislation could be seen as a discretionary power. This is probably in relation to the current legislation, which prescribes a minimum guaranteed return on net premiums. Changing the regulation would then indeed force IORPs to change their existing policy with regard to the minimum return. However, it is uncertain if this is a specific power of the legislator. Considering that legislation always has the power to change scheme rules, one could be inclined to assume that this does not constitute a power towards mixed benefits.
- 3.23. The discretionary powers to deviate from existing policies appear to be used more or less regularly. AT, DE, FR and NL indicate they are used 'regularly', BE responds 'sometimes', while DK, IT and SI indicate they are 'hardly ever' used. When asked how many times the discretionary power to deviate from existing policies is used in practice, it turns out to be difficult to provide figures. SI reports no use at all between 2003 and 2013, while AT, DE and FR report that the discretionary power is used in all IORPs between 2003 and 2013. All other respondents were not able to provide actual figures.
- 3.24. Members provided the following qualitative description of the most commonly used policies that are applied in mixed benefits:
- DE - It is quite common that either a regulation or the pension plan/contract obliges the IORP to have members and beneficiaries participate in the profits of the IORP. However, pension plans/contracts without surplus sharing are possible and exist.
 - DK - Would be DB schemes with an agreed benefit and a set-up that:
 - o allows for the board of directors to decide on either raising the agreed benefit in situations with great surplus; or
 - o allows for a bonus, e.g. on paid-up policies and where the bonus is set by the board of supervisors; or
 - o allows for the employer to decide to raise the agreed benefit to an employee, provided that the employer pays the equivalent raise in the technical provisions to the IORP.
 - FR - Financial and/or technical profits can be "stored" in a dedicated provision and distributed by the IORP within eight years, following a subjective decision making process.
 - NL - Mixed benefits are used only in respect of indexation of nominal benefits. The IORP decides (on a discretionary basis) on the level of indexation that can be granted. Within mixed benefits, IORPs regularly use a policy ladder to assist them in their discretionary decision-making

process. These policy ladders are mostly linked to a pre-defined standard, often wage inflation or price inflation. The policy ladder then connects a percentage of the standard indexation (between 0 and 100%) to the actual funding position. The policy ladder typically starts at a funding level of 100% of technical provisions and an indexation of 0%. Full indexation (i.e. 100% of the standard indexation) is reached in the situation in which the IORP complies with all funding requirements (funding position $\geq \approx 125\%$ of technical provisions). The most common policy ladders either use a gliding scale or a stepped scale to get from 0% indexation to full indexation.

- SI - According to Slovenian legislation, the pension plan provider is obliged (until 2015) to promise plan members at least a minimum guaranteed return on the paid net premium. Pension funds can be organised as mutual pension funds (separate off-balance sheet assets) or as ring-fenced life insurance products (separate assets). In case that the pension scheme is similar to a life insurance product (with-profit product), all investment returns that belong to those separate assets also belong to the members (not the stakeholder), which are defined as pure conditional benefits (profit sharing mechanism).

All Slovenian pension plans organised as life insurance contracts have the rule, that each member can have a buffer on individual account, which is limited to 10% of the value of the member's account. In case that this buffer exceeds 10% of the member's account, the excess over the 10% must be attributed to the member's account. The revision of the buffer value can be done monthly or annually.

Pure discretionary benefits are not regulated by law or in pension schemes. Until now, no IORPs provided pure discretionary benefits over the pure conditional ones.

3.25. Members provided the following qualitative description of the use of discretionary powers in mixed benefits:

- AT - There are two parameters (interest rate, technical surplus) which directly influence the amount of benefits. The technical surplus is usually higher than the interest rate, or at least equal to the interest rate. If the yield is falling below the interest rate, the benefits have to be reduced. If the yield exceeds the technical surplus, the difference shall be allocated to the volatility reserve.

The difference between the technical surplus and the interest rate is used to valorise the benefits. An IORP can reduce the valorisation and allocate further benefits to the volatility reserve. This reduction can be made, if the IORP meets some criteria (e.g. the level of the volatility reserve or the capital market situation).

- BE - It is assumed that there are pension scheme rules that include some form of mixed benefits, but there is no certainty on that, as there is no specific reporting requirement on this issue.
- DE - The amount of the participation in profits of the IORP is not prescribed in all details in the respective regulation or pension plans/contracts. Therefore the IORP can partly decide in a discretionary way how to configure the participation.
- DK - See above. Would typically be in schemes where the board of supervisors or the employer in articles of association or the like are granted the powers to decide on extra benefits.
- NL - The IORP has the discretionary power to decide on the level of indexation that can be granted to members and beneficiaries. The policy ladder is only used for assistance and the plan members and beneficiaries cannot derive any rights from the policy ladder.
- SI - IORPs regularly check the value of the members account and value of the buffer. Depending on scheme rules, the buffer must be attributed to the member's account at least annually. Sometimes scheme rules are even more binding and the value of the buffer is checked monthly.

3.5. Non-legally enforceable sponsor support

3.26. Sponsor support is considered to be non-legally enforceable if there is no legal or contractual obligation on the plan sponsor to cover funding deficits of the plan sponsor's pension arrangement. If an IORP needs additional funding, the sponsor may be asked to provide (part of) this additional funding, but it is left to the discretion of the plan sponsor whether to provide the support requested. This means that non-legally enforceable sponsor support is fully dependent on a discretionary decision-making process.

Results of the responses

3.27. Of the 21 responses, nine indicated that national legislation allows non-legally enforceable sponsor support in occupational pension plans. This represents 43% of the responses received.

Yes	No
DE, DK, FI, IE, IT, NL, NO, PT, SE-PF	AT, BE*, ES, FR, GR, HR, LT, MT, PL, SE-FN, SI, UK
* BE commented that there could be cross-border IORPs where the foreign employer only provides limited sponsor support (Belgian employers are by law obliged to provide full sponsor support). As this mapping exercise does not deal with cross-border issues (as this would introduce significant complications), this practical possibility is not further reflected.	

3.28. Essentially, all respondents indicate that non-legally enforceable sponsor support, if possible, would be allowed irrespective of the number of plan

sponsors for a pension plan. That said, FI, IT and NO report that there are either no multi-sponsor IORPs, or the existing multi-sponsor IORPs are not covered with non-legally enforceable sponsor support. DK reported that IORPs by definition have only one sponsor, as multi-sponsor pension funds are treated as life insurance undertakings.

- 3.29. In most countries, supervisory approval is not necessary in order for a plan sponsor to provide non-legally enforceable sponsor support. The only exemption is NO, but that may be because Norwegian IORPs only use non-legally enforceable sponsor support if they want to take more risk (capital) or is short of own funds.
- 3.30. In most countries, a decision of one plan sponsor in a multi-sponsor IORP to provide non-legally enforceable sponsor support does not necessarily mean that all plan sponsors for this IORP need to provide this support. The only exception are pension funds and Article 4 insurers in SE, where this is dependent on the articles of association or bylaws of the company or the IORP.
- 3.31. The actual use of non-legally enforceable sponsor support is varies considerably. In some countries (DE, DK, NO and SE) non-legally enforceable sponsor support is not granted very often. Other countries (IE, IT, NL and PT) report – sometimes significantly – more frequent granting of non-legally enforceable sponsor support. The fact that some of these latter countries (IE, NL, PT) have recent experience with funding deficits and recovery plans may be an indication of the reasons for these differences. When asked how often non-legally sponsor support is provided in practice, it appears difficult to provide concrete figures. NO and SE report that (virtually) no non-legally enforceable sponsor support was granted between 2003 and 2013, while DK reports the same between 2008 and 2013. At the other end of the spectrum, IE reports close to 100% granting of non-legally enforceable sponsor support. All other respondents, including DK for the period 2003-2008, were not able to provide actual figures.
- 3.32. Members provided the following qualitative description of the use of non-legally enforceable sponsor support in case of single-sponsor IORPs:
- DE - In general sponsor support is legally enforceable in Germany as it is based on law or a contractual obligation of the employer. There are cases, though, where a sponsor makes additional contributions to the IORP on a voluntary basis before legally enforceable support applies. The answers above refer to those cases.
 - DK - Could be in case of an IORP with no sponsor guarantee where the sponsor decides to provide support in case of deficits despite the fact that there is no legal obligation to do so.

Moreover, some articles of association stipulate that the sponsor has an obligation to pay any deficits related to the technical provisions without clearly defining whether there is an obligation to provide support in case of other deficits. However, it is the impression that sponsor might feel an obligation towards the employees without being legally obligated to pay deficits.

Sponsor support exists in approximately half of the total Danish IORPs.

- FI - In Finland there is only one industry-wide pension fund (one sponsor) which has non-legally enforceable sponsor support. In that pension fund, the sponsor only pays nominal contributions and does not have an obligation to pay at all. Employee's contributions are also fixed. Investment returns play a massive role in running the pension fund.
- IE - There is no statutory requirement for a sponsoring employer to provide unconditional support to an IORP. Vanishingly few employers do provide unconditional support.
- IT - Non-legally enforceable sponsor support is usually based on an agreement, or at least on negotiations, with the trade unions.
- NL - Most company pension funds do not have automatic recourse to the plan sponsor to provide additional financial support in case of deficits. In those cases, the IORP can ask the plan sponsor to provide (non-legally enforceable) sponsor support. This type of sponsor support therefore only exists in the context of a recovery plan. Still, the sponsor can decide not to provide additional sponsor support, as there is no obligation to provide it.
- NO - If the IORP wants to take more risk (capital), or is short of own funds.
- PT - In case of underfunding, the pension fund management entity is responsible for proposing to the sponsor(s) the regularisation of the situation. If, within one year counted from the date of verification of the underfunding situation, a suitable recovery plan has not been established, the management entity shall wind up the pension fund or collective adhesion. Recovery plans are subject to ISP's approval.

Within 15 days counted from the date of verification of an underfunding situation of the present expected value of pensions in payment, the management entity shall advise the sponsor(s) to make the necessary additional contributions within the deadline of 180 days and communicate this situation to the ISP. If the contributions are not made, the pension fund or collective adhesion shall be wound up.

- SE-PF - Hypothetical. There are no legal restrictions to provide non-legally enforceable sponsor support, if there is no legally enforceable

sponsor support (some pension funds have legally enforceable sponsor support).

- 3.33. Members provide the following qualitative description of the use of non-legally enforceable sponsor support in case of multi-sponsor IORPs
- DE - See above.
 - IE - See above.
 - NL - Multi-sponsor IORPs (typically industry-wide pension funds) do not have automatic recourse to their plan sponsors to provide additional financial support in case of deficits, although there may be cases whereby the financing agreement allows the IORPs to increase the premiums in certain circumstances (and with specific limitations). The IORP can ask its plan sponsors to provide (non-legally enforceable) sponsor support. This type of sponsor support therefore only exists in the context of a recovery plan. Still, each sponsor can decide not to provide additional sponsor support, as there is no obligation to provide it.
 - PT - See above.
 - SE-PF - Hypothetical. There are no legal restrictions to provide non-legally enforceable sponsor support, if there is no legally enforceable sponsor support (some pension funds have legally enforceable sponsor support).

3.6. Ancillary own funds

- 3.34. Ancillary own funds are capital instruments, held outside of the balance sheet, that can be called up to absorb losses, specifically including unpaid share capital, letters of credit, guarantees and any other legally binding commitment received by the insurer. These can only be recognised with regulatory approval, and their valuation is also subject to regulatory approval. (Solvency II, articles 89 and 90)
- 3.35. There are no situations in which legal obligations require IORPs to call up ancillary own funds to absorb losses. Therefore, the decision to call up ancillary own funds to absorb losses is fully taken through a discretionary decision-making process.
- 3.36. Sponsor support may in some cases be considered as a 'legally binding commitment' from the plan sponsor 'received by the IORP'. However, the questions in this section do not aim to look at sponsor support. Therefore, when responding to the questions, sponsor support mechanisms had to be left aside.

Results of the responses

- 3.37. Of the 21 responses, four indicated that national legislation allows the use

of off-balance capital instruments, such as ancillary own funds, in occupational pension plans. This represents 19% of the responses received.

Yes	No
DE, FR, IE, SE-PF	AT, BE, DK, ES, FI, GR, HR, IT, LT, MT, NL, NO, PL, PT, SE-FN, SI, UK

- 3.38. The nature of available off-balance capital instruments differs. DE reports that the only possible off-balance capital instrument that can be called up is unpaid capital. FR reports that one potential off-balance capital instrument is the possibility that members of a mutual association provide additional contributions.
- 3.39. Most respondents indicate that ancillary own funds can in theory be called up in any situation. The only exception is IE, which reports that ancillary own funds are in practice only called up to absorb losses. The fact that they mention 'in practice' raises the issue whether or not ancillary own funds could theoretically be called up in any situation in IE as well. After all, the natural trigger to call up off-balance capital instruments would indeed be to absorb losses, as FR comments.
- 3.40. All respondents indicate that it is the exclusive competence of the IORP to call up the off-balance capital instruments, and that such a decision would not require supervisory approval.
- 3.41. Off-balance capital instruments are not called up very regularly. SE reports no use at all, IE reports a use of about 5% and DE reports they are used hardly ever, but is not able to provide figures to support this response. FR reports that off-balance capital instruments are used 'sometimes', but is also not able to provide figures to support that response.
- 3.42. Members provided the following qualitative description of the use of off-balance capital instruments and the incidence of them being called up:
- DE - In Germany the only form of ancillary own funds relevant for IORPs is unpaid capital. However, this instrument is hardly used.
 - FR - When this possibility is given by the statutes, some IORPs can call up extra contributions. They usually do so to absorb a loss.
 - IE - Use of ancillary own funds is in practice restricted to contingent assets that can be called upon in case the IORP closes/winds up in deficit.
 - SE-PF - No cases.

3.7. Surplus funds

3.43. Surplus funds⁶ are accumulated profits, identified on the balance sheet, which have not been made available for distribution to members (i.c. policy holders) and beneficiaries. As they have not been made available for distribution, they can be called up to absorb losses. It is possible that, even though the surplus funds have not been made available for distribution, members and beneficiaries have been informed about their existence and about the expected future distribution of them. There are no situations in which legal obligations require IORPs to call up surplus funds to absorb losses. Therefore, the decision to call up surplus funds to absorb losses is fully taken through a discretionary decision-making process. (Solvency II, article 91)

Results of the responses

3.44. Of the 21 responses, five indicated that national legislation allows the use of surplus funds in occupational pension plans. This represents 24% of the responses received.

Yes	No
DE, IE, IT, NL, SE-PF*	AT, BE, DK, ES, FI, FR, GR, HR, LT, MT, NO, PL, PT, SE-FN, SI, UK
* SE clarified that surplus funds are not allowed for all Article 4 IORPs, but only for non-participating Article 4 companies and pension funds.	

3.45. Most respondents indicate that surplus funds can in theory be called up in any situation. The only exemption is DE, which reports that surplus funds can only be called up to absorb losses. The comments respondents provided indicate that surplus funds may be used either to absorb losses or to enhance benefits.

3.46. All respondents indicate that it is the exclusive competence of the IORP to call up surplus funds. In most countries such a decision would not require supervisory approval, with DE being the exception where supervisory approval is required.

3.47. Estimates of how often surplus funds are being called up in practice vary significantly. Although none of the respondents are able to provide figures to support the responses, SE reports surplus funds being called up regularly, IT reports their being called up sometimes and DE, IE and NL report surplus funds are being called up hardly ever (which for IE and NL may be caused by the fact they are typically used to enhance benefits, which is not likely under current funding positions).

3.48. Members provided the following qualitative description of the use of

⁶ For the purposes of this questionnaire, the term 'surplus funds' is used in accordance with the Solvency II definition.

surplus funds and the incidence of them being called up:

- DE - Cases, in which IORPs draw on surplus funds, have been very rare in the past. The law requires prior approval by the supervisory authority.
- IE - Where they arise, surplus funds may be used to enhance benefits.
- IT - Surplus funds and excess profits made unavailable for distribution are sometimes placed in a specific balance sheet item from which they may be called up when needed, typically to absorb losses.
- NL - Sometimes, IORPs reserve a part of their investment returns for future indexation. This is nothing more than 'soft earmarking' of a part of their own capital. Members and beneficiaries have no right at all to these indexation reserves and the IORP can do anything with these reserves (hence 'soft' earmarking).
- SE-PF - As described in Art. 91 of Solvency II. There is uncertainty how to exactly interpret the concept of "calling up" in relation to surplus funds. It is an own funds item on the balance sheet, varying over time with profit or losses and bonuses made available for distribution. All non-participating Art 4 companies (10 of 30, 33 %) and all pension funds (11 of 11, 100 %) have surplus funds (in total 21 of 41, 51%).

3.8. Subordinated loans

3.49. Subordinated loans are loans that are ranked below other loans, securities and/or liabilities with regard to claims on assets or earnings. IORPs are allowed to take out a subordinated loan if the loan can be recognized as available solvency margin. To be recognised as such, the debt towards the issuer will be repayable only at the (contractually) agreed repayment date (in case of a subordinated loan with a fixed maturity) or at the discretion of the IORP. This means that the repayment of subordinated loans at a date other than the agreed repayment date is fully dependent on a discretionary decision-making process. (IORP Directive, article 17a)

Results of the responses

3.50. Of the 21 responses, ten indicated that national legislation allows IORPs to hold subordinated loans. This represents 48% of the responses received.

Yes	No
AT, BE***, DE, DK, FR, NL, NO, PT*, SE-PF**, SI	ES, FI, GR, HR, IE, IT, LT, MT, PL, SE-FN, UK
<p>* Because of the organisational set-up of its pension system, PT usually uses the term IORP to refer to the pension fund (i.e., the financing vehicle). For the purpose of this question, it is the pension fund management company (to which the IORP Directive also applies) who is allowed to hold subordinated loans as part of the available solvency margin.</p> <p>** SE clarified that surplus funds are not allowed for all Article 4 companies, but only for non-participating Article 4 companies and pension funds.</p> <p>*** BE IORPs are only allowed to borrow on a temporary basis and for liquidity purposes (cf. Directive 2003/41/EC Article 18.2)</p>	

- 3.51. All respondents indicate that it is the exclusive competence of the IORP to decide to repay the subordinated loan. For subordinated loans with a repayment date that is contractually agreed with the issuer, this refers to a decision to repay the loan at a date other than the agreed repayment date. For perpetual subordinated loans this refers to any decision to repay the loan.
- 3.52. In most countries supervisory approval is necessary before a perpetual subordinated loan can be repaid or a subordinated loan with an agreed repayment date can be repaid at a date other than the agreed repayment date. AT is the only country where supervisory approval is not required, but here repayment is only possible if the subordinated loan is replaced by other own funds.
- 3.53. Repayments of subordinated loans other than at an agreed repayment date do not often occur in practice. Given the recent crisis and the fact that voluntary repayments of subordinated loans will typically only occur in case of favourable funding positions, this seems to be logical. FR, NO and SE report that subordinated loans are sometimes repaid at a date other than the agreed repayment date, yet NO and SE both estimate that practical use is limited to less than 10% of IORPs. All other respondents report that such repayments are being made hardly ever (with BE reporting that subordinated loans only exist since 2008).
- 3.54. Members provided the following qualitative description of the use of subordinated loans and their repayment at a date other than the agreed repayment date:
- AT - The IORP can repay a subordinated loan on its own initiative as long as the amount is replaced by other own funds.
 - BE - It is important to note that due to the legal restrictions mentioned above subordinated loans have only been used by a couple of IORPs in the context of a recovery plan (to cover a deficit with respect to technical provisions) over a maximum period of 5 years. This 5 year period has ended for most of those IORPs, so they have repaid the loan to the employer.
 - DK - From the Act on supervision of company pension funds:
Subordinate loan capital may be included in the base capital, cf. section 45c(1) when the following conditions are met:
 - 1) The lender's claim against the pension fund must be subordinated all other non-subordinated debt.
 - 2) The amount is paid.
 - 3) Repayment before maturity may not take place on the initiative of the lender or without the authorisation of the Danish FSA.
 - 4) The amount may only fall due before the maturity date agreed if the financial undertaking enters into liquidation or is declared bankrupt.

5) The ultimate authority of the pension fund is permitted to reduce the subordinate loan capital and non-paid interests if the own funds is lost and the share capital, guarantee capital or cooperative capital has been written off.

6) Payment of interest may be postponed if the base capital does not exceed the capital requirement at maturity.

7) Non-paid interests that have been postponed under no. 6 may only fall due if the capital requirement is met again or if the loan matures.

8) Changes in the loan agreement are approved by the Danish FSA.

9) The original term is no less than five years.

(2) Authorisation under subsection (1), no. 3 shall be subject to the base capital after repayment not being smaller than the capital requirement.

(3) Write-down under subsection (1), no. 5 may only take place if new capital is subsequently injected into the pension fund so that the capital requirement is met, or if the financial undertaking closes down without losses for non-subordinated creditors. The subordinate loan capital and non-paid interest may only be written down by an amount that has been approved by the external auditors and the Danish FSA in advance.

- NL - Subordinated loans are not frequently used by IORPs in the Netherlands. Given the legal requirements on their use, the only party that will want to enter into a subordinated loan with an IORP will be an IORP's own plan sponsor. Therefore, subordinated loans are only used in the context of a recovery plan. In that context, the recovery plan will aim to repay the subordinated loan at the end of the recovery period, which will then also be the contractual repayment date of the loan.
- NO - The IORP often decides to repay the subordinated loan before the repayment date if it has a high solvency margin, and does not need the subordinated loan anymore.
- PT - Considering that usually the term "IORP" is used to refer to the pension fund (i.e., the financing vehicle), it is important to highlight that, for the purpose of this question, it is the pension fund management company (to which the IORP Directive also applies) who is allowed to hold subordinated loans as part of the available solvency margin (and not the pension fund).

Even though, subject to certain conditions, the regulatory framework allows pension fund management companies to hold subordinated loans, this is not done in practice.

Please note that:

- o pension funds have to comply with certain funding requirements with the aim of ensuring that there are sufficient and appropriate assets to cover an adequate amount of liabilities corresponding to the financial

commitments which arise out of the respective defined benefit and mixed pension schemes;

- o pension fund management entities have to comply with certain solvency margin requirements, with the aim of ensuring the existence of a buffer towards risks that are borne by the pension fund management entity itself (and not the sponsor(s)).
- SI - In case of an early repayment of a subordinated loan that covers the capital requirement, approval from the supervisory authority is needed. According to Slovenian legislation, any changes of the subordinated loan contract need to be approved by the supervisory authority in case the subordinated loan is recognised as capital to cover the solvency margin.

3.9. Other elements that include discretionary decision-making processes

3.55. It is possible that national frameworks allow for other (potential) elements of the holistic balance sheet that include discretionary decision-making processes.

Results of the responses and key issues

3.56. Three respondents report one other element that includes discretionary decision-making processes.

3.57. In BE, members reaching retirement have a choice between purchasing an annuity and obtaining a lump sum. BE reports that there are rare cases in which an annuity (that is in payment since the retirement date) can at a later stage be converted into a lump sum. Assuming that the (market) value of the annuity would be equal to the lump sum being paid out, this does not seem to change the funding position of the IORP. Accordingly, the fact that this discretionary power seems to exist can probably be ignored in the holistic balance sheet.

3.58. IE reports cases in which benefits are increased unilaterally, with an example mentioned where a newly hired or just retiring (senior) staff member is granted extra benefits over the standard. Further clarification was provided, indicating that these extra benefits could be funded by either specific additional contributions or by using available surpluses in the fund. At first sight, these unilateral increases of benefits for individual members appear to comply with all the characteristics of 'pure discretionary benefits'. Additional information would be needed to investigate if these benefits should be treated otherwise.

3.59. PT mentions discretionary decision-making powers in respect of the level of contributions in defined contribution schemes, from either the sponsor or the member.

3.60. Members mentioned the following elements that include discretionary decision-making processes:

- BE - Some (very limited though) IORPs have been observed during the last couple of years that have provided a (one shot) opportunity for pensioners to convert their annuity into a lump sum.
- IE - In the Irish system, it would be possible for IORPs to increase benefits unilaterally, but in practice this rarely happens, certainly not as a common or general occurrence. An infrequent example would be where a newly hired or just retiring (senior) staff member is granted extra benefits over the standard. These benefits would need to be funded, so the effect on the balance sheet would be quite neutral.
- PT - In relation to defined contribution schemes, discretionary decision-making processes may also exist in some cases, namely:
 - o the discretionary power of the sponsor(s) to make additional contributions;
 - o the discretionary power of the member(s) to set, on a periodical basis, the level of contributions that they want to make, subject to some pre-defined limits that are established in the pension schemes.

This might be particularly relevant when financial guarantees are in place.

4. Benefit reduction mechanisms

4.1. Summary

- 4.1. EIOPA distributed a questionnaire on benefit reduction mechanisms to all of its members, to which 23 member states⁷ responded. This section collates the responses received and draws some initial conclusions from those responses.
- 4.2. The objective is to provide information about and comparison of national provisions for benefit reductions in IORPs. It must be recognised that a survey of this nature can only deal with such a complex subject at a high level. This section does not provide specific information about the detailed operation of these provisions and must not be relied on for any decisions regarding IORPs.
- 4.3. Benefit reductions potentially apply only to defined benefit IORPs, or defined contribution IORPs where the IORP provides some degree of investment or biometric guarantee: they do not apply to 'pure DC' benefits.
- 4.4. For the purposes of the questionnaire, reductions were divided into three types:
 - Ex ante based on a contract or bylaws concluded beforehand;
 - Ex post benefit allowed by national law and regulation;
 - Reductions in the event of sponsor default/insolvency.

Brief overview of existing benefit reduction mechanisms

- 4.5. Of 23 responses, eight replied either that there were no IORPs in that country, that the IORPs were only pure DC, or that no benefit reduction mechanisms applied to IORPs.
- 4.6. Of the remaining 15 responses:
 - nine countries have ex ante reductions;
 - eleven have ex post reductions;
 - eleven have reductions on sponsor default.

Ex ante reductions

- 4.7. There is considerable variation among countries in who can decide that ex ante benefit reductions could be included, including three where the consent of the supervisor is required.
- 4.8. In no country are such reductions described as 'regular'.

⁷ For the purposes of this document, 'Member States' means members of the OPC, which includes both EU and EEA members.

4.9. In six countries, there is no limit to the amount of these reductions. In less than half of countries, there is an obligation to restore any reductions.

	Type of reduction allowed		
	Ex ante	Ex post	Sponsor default
Austria	Y	Y	Y
Belgium	N	N	Y
Denmark	Y	Y	Y
Finland *	N	N	Y
France	Y	Y	N
Germany	Y	Y	N
Greece	Y	Y	Y
Ireland	N	Y	Y
Italy	Y	Y	Y
Netherlands	Y	Y	N
Portugal	N	Y	Y
Slovenia	N	Y	N
Spain	Y	Y	Y
Sweden **	Y	N	Y
U.K.	N	N	Y
<p>* Finland noted that there has not been a case of benefit reduction for a long time and therefore this subject is merely theoretical. In Finland benefit reductions are an absolute measure of the last resort.</p> <p>** Sweden noted that ex ante benefit reductions are only applicable to participating/with profit Article 4 insurance companies.</p>			

Ex post reductions

4.10. There is considerable variation among countries in who can decide that ex post benefit reductions should be made, and in five countries, the consent of the supervisory authority is required.

4.11. In eight of the eleven countries concerned, there are restrictions on the circumstances in which these reductions can be made.

4.12. Only in two countries is there any limit on the amount of ex post reductions, and in no case is there an obligation to restore these reductions at a later date.

Reductions on sponsor default/insolvency

4.13. As for other types of benefit reduction, there is no common pattern in who decides that reductions should be made, and in many cases, more than one party is involved in the decision.

4.2. Introduction

Background

4.14. EIOPA distributed a questionnaire on benefit reduction mechanisms to all of its members. The objective of the questionnaire is to better understand how IORP benefit reduction mechanisms operate in those member states where they are permitted, with a view to achieving a consistent treatment of this mechanism in the holistic balance sheet. Benefit reductions potentially apply only to defined benefit IORPs, or defined contribution IORPs where the IORP provides some degree of investment or biometric guarantee. They do not apply to 'pure DC' benefits.

4.15. This section aims to collate all answers received and to draw some preliminary conclusions from these collated responses.

Categorisation of benefit reduction mechanisms

4.16. The questionnaire sought information on three types of benefit reduction mechanism – ex ante, ex post, and benefit reductions in the event of sponsor default/sponsor insolvency. These were defined in the questionnaire as follows:

- An ex ante benefit adjustment mechanism is a mechanism based on a contract/bylaws, concluded beforehand and which describes precisely under which conditions and to which extent adjustments will take place.^{8,9}
- Ex post benefit reductions are a measure of the last resort (i.e. the IORP is no longer able to provide the benefits it originally aimed for or promised), which may be allowed by national law and regulation.¹⁰
- Benefit reductions in the event of sponsor default/sponsor insolvency allow for the possibility to reduce pension benefits in the event of a default of the sponsor, in particular in cases when it provides unlimited support and/or when there are not enough assets to cover liabilities.

Responses received

4.17. Twenty-three member states responded to the questionnaire.

4.18. Of these responses, eight (BG, CZ, HR, LI, MT, RO, NO, PL) replied either that there were no IORPs in that country, that the IORPs were only pure DC, or that no benefit reduction mechanisms applied to IORPs.

⁸ HBS 4.27 of European Commission, Quantitative Impact Study (QIS) on Institutions for Occupational Retirement Provision (IORPs) – Technical Specifications, Ares(2012)1182662, 8 October 2012.

⁹ Section 10.6 (page 282) of EIOPA, EIOPA's Advice to the European Commission on the Review of the IORP Directive 2003/41/EC, EIOPA-BoS-12/015, 15 February.

¹⁰ HBS 4.51 of European Commission, Quantitative Impact Study (QIS) on Institutions for Occupational Retirement Provision (IORPs) – Technical Specifications, Ares(2012)1182662, 8 October 2012.

4.19. The remaining responses included completed questionnaires. The remainder of this section deals only with the responses from these fifteen member states.

Structure of this section

4.20. Each of the following three sections examines the responses for one of the types of reduction mechanisms: ex ante benefit reduction, ex post benefit reduction and reductions in case of sponsor default.

4.3. 'Ex ante' benefit reductions

4.21. An ex ante benefit adjustment mechanism is a mechanism based on a contract/bylaws, concluded beforehand and which describes precisely under which conditions and to which extent adjustments will take place. In other words, this mechanism is part of the terms under which the IORP operates, and is not imposed externally (though, as will be seen, the operation of the reduction may in some case require external consent).

Results of the responses

4.22. Of the 15 countries where benefit reductions are possible, nine reported that ex-ante reductions were possible as follows:

Ex ante reductions possible	Not allowed
AT, DE, DK, ES, FR, GR, IT, NL, SE	BE*, FI, IE, PT, SI, UK
* BE commented that there could be cross-border IORPs where ex-ante benefit reductions are possible based on the pension plan rules (ex ante benefit reduction is not allowed for Belgian pension plans since Belgian employers are by law obliged to provide full sponsor support). As this mapping exercise does not deal with cross-border issues (as this would introduce significant complications), this practical possibility is not further reflected.	

4.23. The remaining parts of this section are based on the nine member states' responses only.

4.24. In all but two of these responses, the reductions can apply to accrued and projected rights/promised benefits. In NL, a contract can include an agreement between social partners to lower the new accrual for a specific year, if the premium for that year is not sufficient to 'buy' the normal accrual, so that the premium is sufficient to cover the adjusted accrual. In SE, the reductions apply to allocated bonus payments (conditional benefits) above guaranteed benefits (only in non-mutual/with profit Art. 4 insurance companies).

4.25. There was considerable variation in response to the question of who could decide that ex ante benefit reductions could be included, as follows – note that more than one answer is possible:

	Breakdown of responses
The IORP	AT, DE, DK, FR, GR, IT, NL, SE
Employer/sponsor	AT, DE, DK, NL
Member	DK
Supervisor	FR
Other	NL

- DE and GR - The decision on the inclusion of ex ante benefit reduction mechanisms requires the consent of the supervisory authority.
 - IT - The decision is usually based on an agreement between the social partners (employer and trade unions).
 - NL - The pension scheme rules are decided in negotiations between the employer and (representatives of) employees. Whether or not ex ante benefit reductions are included in the pension scheme is up to them.
- 4.26. No member state stated that benefit reductions are processed in practice regularly: five of the eight countries concerned replied 'sometimes', the others 'hardly ever'. Given the subjectivity of these definitions, it is probably best not to rely too much on the distinctions between the two classes of response to this question.
- 4.27. In DE, DK, FR and SE, the application of the ex ante benefit reductions reduction is always fully automatic, whereas in AT, ES, GR and NL, some discretion applies.
- 4.28. In DE, FR and SE, the reduction amount is always fully automatic, whereas in the other six countries, some discretion applies.
- 4.29. In AT, DE, DK, ES, GR, there is no limit to the reductions that can be imposed. The situation in the other three member states is as follows:
- FR - The reduction must be proportional to the non-payment of contributions.
 - IT - The reduction mechanisms to be put in the by-laws are subject to approval from the national supervisory authority.
 - NL - There is a legal obligation that the financing rules of a pension plan should (in expectation) be sufficient to finance the plan in the long run under normal circumstances. The supervisor may consider that the expected use of ex ante benefit reductions would be so large that the contract can no longer be seen as a DB-arrangement. In that case, either the (maximum) premium should be increased, or the targeted annual accrual should be lowered.
 - SE - The reduction is limited to allocated, but not distributed bonuses (conditional benefits).

4.30. In DE, ES, FR and SE, there are obligations on the IORP to restore those reductions at a future date or in specified circumstances, but not in the other five member states:

- DE - There is no legal obligation, but when the economic situation of the IORP has improved after the benefit reduction, it is expected that future surpluses will be assigned to contracts which were affected by the reduction.
- ES - The amount of the reductions (because of a legal contribution limit) has to be included in an insurance product in the name of members. In the rest of cases, it depends on the contract.
- FR - It can be specified that if the missing contributions are paid in a certain limit of time then the guarantee is restored.
- SE - Benefits are restored only by future bonus payments.

4.31. Members provided the following examples of the conditions under which reductions can take place:

- AT - Change in mortality tables (that happens about every 10 years).
- DE - The bylaws contain for example the following regulation: If the funding would fall under a certain value the benefits have to be reduced to eliminate the deficit.
- ES - In case of sponsor contribution limit by law or by contract.
- FR - In theory, in a DB scheme, if the member does not pay the contributions he is committed to pay, the IORPs can reduce the benefits proportionately. However, there is no such product for the moment on the French market.
- GR - According to the results of an actuarial report and the terms of the statute.
- NL - The only existing example is where social partners agree on a pension contract whereby an annual accrual of a pension is 'promised' (it is therefore a DB-arrangement), but the premium is subject to a fixed maximum amount. If, because of the (extremely low) actual interest rates at the time of accrual, the premium would be insufficient to finance the targeted annual accrual, the pension contract includes a possibility for the IORP to lower the targeted annual accrual to the annual accrual that can be financed with the (maximum) premium.
- SE - Financial losses as defined in terms and conditions of the insurance contract.

4.32. Further details from member states where the application of the benefit reduction is not fully automatic are as follows:

- AT - Concerning the longevity, a change in mortality tables leads to a shortfall. The IORP can either reduce the benefit or distribute the shortfall over the next 10 years.
 - ES - In case of sponsor contribution limit (by law): automatic. In case of sponsor contribution limit (by contract): it depends on the contract.
 - GR - After considering the results of an actuarial report and the possibility of alternative ways of funding, i.e. an increase in contributions.
 - NL - The IORP may consider that its financial position allows for financing the full targeted annual accrual, even though the premium would not be sufficient to finance the full accrual.
- 4.33. Member states where discretion applies in the amount of the ex ante reduction have provided the following additional detail:
- AT - Any shortfall which arises due to a conversion of the mortality tables shall be made up no later than within ten years and at least by one tenth annually. If the shortfall was made up by more than one tenth in one financial year, it shall be possible to make up for the shortfall less that extent at the most in a later financial year.
 - ES - The amount of the reductions depends on actuarial valuations.
 - GR - After considering the results of an actuarial report and the possibility of alternative ways of funding, i.e. an increase in contributions.
 - NL - The IORP may consider that its financial position allows for financing part of the new accrual that would, under the 'automatic' rules of the ex ante benefit reductions, not be granted. The result of this decision would that not the full targeted annual accrual would take place, but more than the accrual that could be financed through the actual premium that is paid.
- 4.34. The following additional information was provided with regard to ex ante reductions:
- DK - Such mechanisms are not common in Danish IORPs.
 - FR - As there is currently no retirement products in France that would have such features allowing for ex ante reductions, the answers to questions 6 to 10 are mainly theoretical, and reflect the provisions included in the French law that would be applicable if such products existed.

4.4. 'Ex post' benefit reductions

- 4.35. Ex post benefit reductions are a measure of the last resort (i.e. the IORP is no longer able to provide the benefits it originally aimed for or promised), which may be allowed by national law and regulation. In other words, this

mechanism is imposed externally and does not depend on the rules or bylaws of the IORP.

Results of the responses

4.36. Of the 15 countries where benefit reductions are possible, 11 reported that ex post reductions were possible as follows:

Ex post reductions possible	Not allowed
AT, DE, DK, ES, FR, GR, IE, IT, NL, PT, SI	BE*, FI, SE, UK
* BE commented that there could be cross-border IORPs where ex post benefit reductions are possible on the basis of the pension plan rules (such reductions are not allowed for Belgian pension plans since Belgian employers are by law obliged to provide full sponsor support). As this mapping exercise does not deal with cross-border issues (as this would introduce significant complications), this practical possibility is not further reflected.	

4.37. The remaining parts of this section are based on the 11 member states' responses only.

4.38. In three of these member states (AT, GR and SI), these reductions are described as 'regular mechanisms', whereas in the other eight states (DE, DK, ES, FR, IE, IT, NL, and PT), the reductions are described as 'only as a last resort mechanism'.

4.39. In two states (FR and NL), the benefits affected are present accrued rights only. In the remaining nine states (AT, DE, DK, ES, GR, IE, IT, PT, and SI), accrued and projected rights/promised benefits are affected.

4.40. The following table shows who can decide that ex post benefit reductions must be processed – note that more than one answer is possible:

	Breakdown of responses
The IORP	AT, DK, FR, GR, IT, NL, SI
Employer/sponsor	ES, PT
Member	ES, FR,
Supervisor	DE, FR, IE, IT

4.41. In GR, IE, NL, PT and SI the decision to process ex post benefit reductions requires the consent of the supervisory authority.

4.42. No member state stated that ex post benefit reductions are processed in practice regularly: four countries concerned replied 'sometimes', the other seven 'hardly ever'. As before, it is probably best not to rely too much on the distinctions between the two classes of response to this question.

4.43. GR, PT and SI reported that ex post benefit reductions are not limited to specific circumstances, whereas the other eight countries stated that they were limited.

4.44. In AT and GR, the application of the ex post benefit reductions is always fully automatic, whereas in the other nine countries some discretion applies.

- 4.45. Similarly, in AT and GR, the amount of the ex post benefit reductions is always fully automatic, whereas in the other nine countries some discretion applies.
- 4.46. There is no limit in any member state to the amount of the reduction except in IE and PT. In IE there are restrictions on the reductions that can be applied to the benefits of retired members. In PT ex post reductions of accrued rights are allowed under certain circumstances, but only benefits of active members can be reduced and, even in relation to these, the vested rights have to be safeguarded.
- 4.47. There are no obligations in any member state to restore the reductions at a future date or in specified circumstances.
- 4.48. Details or examples of where ex post benefit reductions are limited to specific circumstances are as follows:
- AT - An ex post benefit reduction depends on the annual income (investment return and technical return). First of all, a loss has to be compensated by the volatility reserve. If that is not enough, the benefits have to be reduced.
 - DE - If an audit of the management and financial position of an undertaking finds that the undertaking will no longer be able to permanently meet its liabilities, but that it seems to be in the best interest of the insured to avoid insolvency proceedings, the supervisory authority may issue the necessary orders.
 - ES - Usually, benefits cannot be reduced. Nevertheless, sponsor and members could decide to reduce benefits by agreement in some circumstances.
 - FR - In case of insufficient funding, when no recovery can be expected by other ways.
 - IE - Reductions are only permitted where the IORP does not meet its solvency obligations and it cannot be fully resolved by a recovery plan.
 - NL - Ex post benefit reductions can only be processed if the funding position of the IORP is below a minimum funding position of approximately 105% of technical provisions, and if all other steering mechanisms (such as contribution increases, restriction of indexation granting, et cetera) fail to recover the funding position within the legally prescribed recovery period.
- 4.49. Where there is discretion about whether to apply benefit reductions, further details from a number of member states are as follows:
- DE - If an audit of the management and financial position of an undertaking finds that the undertaking will no longer be able to permanently meet its liabilities, but that it seems to be in the best

interest of the insured to avoid insolvency proceedings, the supervisory authority may issue the necessary orders.

- ES - It has to be an agreement between sponsor and members. In some cases, a sponsor could decide to suppress contributions (because the sponsor is experiencing economic difficulties). In these cases, reductions are automatic after the contribution is suppressed.
- FR - It is a decision of the IORP and its members to apply this reduction.
- IE - The supervisory authority has discretion about whether reductions will apply or not.
- NL - The IORP will have to assess whether it is still possible to timely recover the funding position. If the calculation shows that it is not possible to timely recover, it can ask the social partners of the scheme if they can provide additional funding (voluntarily). If they can, it may not be necessary to reduce benefits ex post after all.
- PT - The process usually implies some conversation between the supervisory authority, the pension fund management entity and the employer/sponsor.
- SI - The IORP can change the guaranteed return set in the pension plan, but prior approval from the supervisory authority is needed. Until now, the supervisory authority rejected all applications for lowering the guaranteed return. On 1 January 2013 a new law came into force, which gives more freedom to IORPs, and enables a lot of flexibility in pension plans, which will affect all members. In case of changing the guaranteed return specified in the pension plan, from the date of change onwards, the guaranteed lump sum will be changed.

4.50. The following further details have been provided by member states where there is discretion in the amount of the ex post benefit reduction:

- DE - If an audit of the management and financial position of an undertaking finds that the undertaking will no longer be able to permanently meet its liabilities, but that it seems to be in the best interest of the insured to avoid insolvency proceedings, the supervisory authority may issue the necessary orders.
- DK - Would depend on the financial situation.
- ES - The amount of the reductions depends on actuarial valuations.
- FR - The level of reduction is assessed by the IORP and validated by the members.
- IE - The reduction is often part of a recovery plan, and the split between reduction/additional contribution varies.

- NL - The IORP decides what the total value of the ex post benefit reductions must be, in order to achieve a timely recovery. The IORP also decides what the distribution of that total value is across types of participant (active, deferred, pensioners) and across age groups, taking into account the IORP's legal obligation to ensure that the burden of all recovery measures is shared between participants in a balanced way. Dependent on other recovery measures, this may mean that the accrued benefits of all groups will be reduced equally, or that the accrued benefits of some groups will be reduced more strongly than the accrued benefits of other groups.
- PT - The process usually implies some conversation between the supervisory authority, the pension fund management entity and the employer/sponsor.

4.51. The following additional information was provided with regard to ex post reductions:

- FR - There are very few cases of ex post benefit reductions and they are closely followed up by the authority.
- IE - Technically, reductions are the responsibility of the supervisor only, but in practice, all reductions to date have been at the request of the IORP.

4.5. Benefit reductions in case of sponsor default

4.52. These reductions occur where benefit reductions happen in the event of a default of the sponsor, in particular in cases when it provides unlimited support and/or when there are not enough assets to cover liabilities.

4.53. Two cases can be discerned:

- a) The sponsor provides unlimited support and a pension protection scheme is in place that guarantees a reduced amount of benefits;
- b) The sponsor provides unlimited support and there is no pension protection scheme in place.

4.54. In both cases, pensions may be reduced in the event of sponsor default when financial assets plus amounts recoverable from the sponsor are insufficient to provide full scheme benefits.

Results of the responses

4.55. Of the 15 countries where benefit reductions are possible, eleven reported that sponsor default reductions were possible as follows:

Sponsor default reductions possible	Not allowed
AT, BE, DK, ES, FI, GR, IE, IT, PT, SE, UK	DE, FR, NL, SI

4.56. The remaining parts of this section are based on the eleven member states' responses only. However, comments provided by member states about what occurs in the event of a sponsor default are included in the descriptions below.

4.57. In SE and the UK, only present accrued rights are affected in the case of insolvency. In the other eight member states, accrued and projected rights/promised benefits are affected.

4.58. The following table shows the basis for sponsor insolvency reductions – note that more than one category is possible:

	Breakdown of responses
Social and labour law	AT, BE, ES, PT, UK
Prudential law	AT, BE, FI, IE, PT, UK
Collective arrangement	ES
Insolvency law	BE, ES, SE, UK
Other	DK, FI

4.59. Members provided the following additional comments:

- DK - The specific articles of association are relevant.
- FI - The possibility for reductions is set in the prudential law, but the order of reductions is set in the rules of IORP.

4.60. The following table sets out who can decide or how benefit reductions must be processed in case of a sponsor default/insolvency – more than one answer is possible:

	Breakdown of responses
The IORP	AT, DK, FI, GR
Employer/sponsor	
Supervisor	
Pension protection scheme	UK
Social and labour law	AT, ES, UK
Other	BE, IE, PT, SE, UK

4.61. Members provided the following additional comments:

- BE - There is no decision. If plan assets are not sufficient, benefit reduction is an automatic consequence, unless a third party takes over the pension liabilities.
- IE - In the event of a sponsor default, where the IORP is wound up, the distribution of assets is set out in pension legislation.
- PT - In case a closed pension fund or a collective adhesion to an open pension fund is wound up, the respective assets shall be held liable, up to the limit of their financial capacity, for:
 - o management and custodian fees and other expenses relating to the

fund;

- o in the case of contributory plans, refund of members' own contributions;
- o pensions in payment;
- o payment of pensions related to members whose age is equal to or higher than the normal retirement age;
- o vested rights;
- o pensions is formation, for members that are not covered by the previous point;
- o indexation of pensions in payment, provided that it is specified in the scheme or by collective bargaining agreement.

In case of underfunding, the assets shall correspond preferentially to the liabilities identified in the previous paragraph and in the same order, with resource to a proportional ratio to the value of liabilities where it is deemed necessary.

- SE - The decision is made by the liquidator.
- UK - UK insolvency law also applies.

4.62. In FI and GR, the decision on benefit reductions also requires the approval of the supervisory authority.

4.63. Of the eleven countries, five reported that these benefit reductions occur in practice 'sometimes', and five 'hardly ever'.

4.64. The following descriptions were provided by member states of the use of benefit reductions in the case of sponsor default/insolvency:

- AT - A DB plan will be converted in a DC plan. The available capital (technical provision and volatility reserve) will be used for the pension payment. The beneficiary can sue the employer for payment of the outstanding amount.
- BE - 1. Application of art. 122 of the law of 26 October 2006 on the supervision of institutions for occupational retirement provision

Section V

Bankruptcy or dissolution of a sponsoring undertaking

Article 122

In the event of bankruptcy or of dissolution of a sponsoring undertaking, unless a third party takes over its pension obligations, the pension scheme of this sponsoring undertaking shall be terminated.

The accrued reserves of members other than pensioners shall be entered in individual accounts that are invariable except in relation to the returns on the institution's assets. These reserves shall, where

applicable, be increased in accordance with the applicable social or labour legislation.

The invested capital of pensions in payment shall be paid out to pensioners, calculated in accordance with the discounting rules provided for in the pension scheme.

If, at the time in question, the total reserves referred to in paragraph 2 and the capital referred to in paragraph 3 are not fully covered by the assets, the reserves and capital shall be reduced proportionately. Paragraphs 2 and 3 shall apply to the resulting amounts.

2. If benefits within the IORP are reduced according to art. 122

In case of insolvency the "Fonds d'indemnisation des travailleurs licenciés" (closing fund) will pay unpaid salaries for employees up to a ceiling. Moreover the employees have a priority for their salaries (e.g. non paid contributions) (also up to a ceiling) on the remaining assets of the employer. This priority right applies only on movable property.

- GR - The reductions of benefits are permitted in every case (default of the sponsor, sustainability of the fund et cetera). The reduction procedure (as well as for the increase) is described in the statute of the occupational fund. An actuarial study must be submitted for approval to the National Actuarial Authority and approved by the Minister of Labour, Social Security and Welfare.
- IE - There is no legal obligation on sponsors to contribute and therefore no separate process in Ireland for reductions in the case of sponsor default. It is in practice an example of ex post benefit reductions.
- SE - The most likely case would be a pension foundation without credit insurance. They are only partially supervised by Finansinspektionen, who have not been involved in any cases so far.
- UK - Assets of the IORP together with amounts recoverable from the sponsor (who is legally liable for the difference between the assets and the amount needed to insure the full accrued benefits) are used to insure the members' benefits.

If they are insufficient to provide the benefits equal to those of the pension protection scheme, the assets and the IORP are taken into the PPF.

To the extent that there is a shortfall in the assets relative to the full amount needed, the law sets out the "priority rule" for the use of the assets. Ignoring some detailed technical features, the assets are used:

- (i) firstly to insure the level of benefits which the pension protection scheme would provide
- (ii) secondly to buy for each member the same proportion of the benefits which the PPF does not provide.

4.65. The following qualitative descriptions were provided by member states of what occurs upon sponsor default/insolvency if financial assets plus amounts recoverable from the sponsor are insufficient to meet full scheme benefits but national law and regulation or collective arrangements do not allow benefit reductions in any situation:

- DE - In the case of Pensionskassen the paid-up entitlements should be fully funded. In the case of Pensionsfonds the pension protection scheme will take over assets and liabilities. So, benefit reductions because of sponsor default are not necessary.
- NL - First, it should be noted that there is a clear legal separation between IORP and plan sponsor. The financing of the pension plan is regulated through a 'financing agreement' between IORP and sponsor. In case of a sponsor insolvency, new accruals will stop, but the IORP will continue to exist and will still be responsible for the accrued benefits.

Dutch law allows ex post benefit reductions, be it as a measure of last resort. As national law ultimately allows benefit reductions, the question is not applicable for the Netherlands.
- SI - In the event of sponsor default/insolvency, or even before, no more premiums are paid to the pension plan. However, for already paid premiums, there is no effect on the accumulated value in members' accounts and also no effect on accrued lump sums.

5. Contract boundaries

5.1. Summary

- 5.1 As part of its further work on solvency of IORPs, EIOPA performed a stock-taking exercise on existing rules in member states with regard to contract boundaries for IORPs.

Basic idea of contract boundaries

- 5.2 The basic idea of contract boundaries, as used in the QIS on IORPs and also in Solvency II, is that cash-flows should be recognised in technical provisions when they cannot be rejected and when there is no possibility of adjustment of benefits and/or contributions to fully reflect the risks related to those cash-flows, which means that those cash-flows lead to risks building up in the IORP.
- 5.3 About half of member states indicated that a definition of contract boundaries according to the basic idea of contract boundaries would potentially lead to differences in comparison to the cash-flows which are currently recognized in technical provisions of IORPs, while the other half indicated it would not.

Legal definition of contract boundaries

- 5.4 In most members states there is currently no explicit legal definition of contract boundaries. In seven member states which indicated in the questionnaire that there is such a definition, the provided definitions are quite different. This means that a harmonised definition of contract boundaries for IORPs would probably lead to changes of rules regarding this issue in all or almost all member states.
- 5.5 Some member states provided (parts of) current legal definitions of how to calculate technical provisions, including in some cases rules determining a minimum amount of technical provisions. While any information about the current legal framework for calculating technical provisions is helpful, this also highlights that it is necessary to clarify what is meant by contract boundaries, because contract boundaries are not about determining minimum amounts of technical provisions.
- 5.6 Even though there is no explicit legal definition of contract boundaries in most member states, the cash-flows to be recognised in technical provisions of IORPs calculated for supervisory purposes are determined by national law. In nine member states those cash-flows for supervisory purposes are determined by a combination of at least two different areas of law.

Adequacy of the expression “contract boundaries”

- 5.7 The responses to the questionnaire show that for a number of member states the word “contract” does not fit or is even misleading in case of

IORPs. In some of these member states the expressions "agreement" (GR, IT), "statute" (SE), "set of rules" (BG) or "scheme" (IE, MT, PT) seem to be more suitable to describe the rules governing the provision of benefits to members and beneficiaries by an IORP.

- 5.8 Therefore, it could probably be helpful to find another, perhaps more general, expression to replace the expression "contract" in the context of IORPs.

Relation of contributions/benefits

- 5.9 The definition of contract boundaries in Solvency II is based on the assumption (among others) that there is only an obligation of the insurance undertaking to pay benefits if there is a premium paid as a basis for this obligation.
- 5.10 The responses to the questionnaire lead to the conclusion that in many member states there are cases where it is at least not always possible to find a direct relation between the benefits which an IORP grants and the contributions paid to an IORP in a way like it is typically the case in life insurance. There are even cases where an obligation of the IORP to pay benefits arises independent from a payment of contributions to the IORP. This issue may make it necessary to modify the definition of contract boundaries used in Solvency II to make it suitable for IORPs.

Unilateral rights

- 5.11 The definition of contract boundaries used in Solvency II refers to certain unilateral rights of an insurance undertaking. According to the responses to the questionnaire, in most member states such unilateral rights do not exist with regard to IORPs, neither for the IORP nor for other related parties.
- 5.12 This is not a general problem for the applicability of the definition of contract boundaries from Solvency II to IORPs, because the absence of such unilateral rights would just mean that all future cash-flows (in and out) related to obligations of the IORP related to members and beneficiaries would have to be recognised in technical provisions. But it shows that further work might be necessary on whether such rights would have to be unilateral rights of the IORP to be a basis for setting contract boundaries.

5.2. Introduction

- 5.13 As part of its further work on solvency for IORPs, EIOPA performed a stock-taking exercise on existing rules in member states with regard to contract boundaries for IORPs.
- 5.14 The key question to be answered here is "Which cash-flows shall be recognised in technical provisions within a possible future prudential

framework for IORPs?” In Solvency II this is termed “contract boundaries” and this expression is used at present also in the respective work with regard to IORPs.

- 5.15 The technical specifications of the QIS on IORPs prescribed that IORPs did not have to take into account future accrual and contributions when the IORP has the possibility to terminate these new accrual. QIS participants were required to include the unconditional, pure conditional and – depending on the scenario – mixed and pure discretionary benefits relating to these accrued benefits. A footnote specified that national supervisory authorities would clarify whether this was also allowed when the sponsor or social partners are able to end the pension scheme instead of the IORP. IORPs were required to include future accruals and contributions in technical provisions if it was not possible to end the scheme. Exploring the possibility of a European definition for contract boundaries for IORPs, with no need for clarification on a member state basis, was identified as an area of further work for EIOPA.
- 5.16 Twenty-one members responded the questionnaire. Most questions were answered by all or a large majority of respondents, but not all questions were answered by all respondents.
- 5.17 In most members states there is currently no explicit legal definition of contract boundaries. In the seven member states which indicated in the questionnaire that there is such a definition, the provided definitions are quite different. This means that a harmonised definition of contract boundaries for IORPs would probably lead to changes of rules regarding this issue in all or almost all member states.
- 5.18 The following text provides an overview of responses to the questionnaire.

5.3. Overview of responses

Q1) In the current prudential framework for IORPs in your Member State, is there an explicit legal definition of contract boundaries? Or in more general terms: Is there an explicit legal *definition* which cash-flows have to be recognised in technical provisions of IORPs calculated for supervisory purposes within this framework?

Yes	No
BE*, ES, FR, NL*,PT, SI, UK*	AT, BG, DE, DK, FI, IE, GR, HR, IE, IT, LT, MT, NO, PL, SE
* The technical provisions are based on the accrued benefits.	

- 5.19 In most members states there is currently no explicit legal definition of contract boundaries. In the seven member states which indicated in the questionnaire that there is such a definition, the provided definitions are quite different. This means that a harmonized definition of contract

boundaries for IORPs would probably lead to changes of rules regarding this issue in all or almost all member states.

5.20 Some member states provided (parts of) current legal definitions of how to calculate technical provisions, including in some cases rules determining a minimum amount of technical provisions. While any information about the current legal framework for calculating technical provisions is helpful, this also highlights that it is necessary to clarify what is meant by contract boundaries, because contract boundaries are not about determining minimum amounts of technical provisions.

5.21 Members provided the following specific comments:

- FR - The technical provisions are the difference between the present value of the future payments and the present value of the benefits. Because there are no known cases where future premiums are fixed, the contract boundaries under the current supervisory system are practically restricted to accrued benefits.
- PL - Only pure DC schemes exist which means the provisions are given by the value of investments.
- PT - For defined benefit and mixed schemes, the prudential rules regarding the calculation of the minimum funding requirement established by the ISP specify that each closed pension fund or collective adhesion should determine a minimum amount of liabilities equal to the sum of the following (without prejudice of other sector specific prudential rules that requires an higher amount):
 - a) Present expected value of pensions in payment, including any liabilities with deferred survivorship benefits;
 - b) Present expected value of liabilities related to past service of all members, calculated according to the:
 - o Guaranteed benefit at retirement age (as defined by the pension scheme rules), considering the salary at the valuation date;
 - o The ratio between the number of years of past service and the total number of years of service at retirement age.
- SI - The provisions are determined using the retrospective method which means that only the paid premiums are taken into account (note that in SI all schemes are DC schemes with a minimum investment return).

Q2) In the current prudential framework for IORPs in your Member State, are the cash-flows to be recognized in technical provisions of IORPs calculated for supervisory purposes determined by (multiple answers possible)

Cash-flows to be recognised in technical provisions determined by	Breakdown of responses
Social and labour law	BE, GR, NL, NO
Prudential law	BG, DE, DK, ES, FI, FR, HR, IE, MT, NL, NO, PL, PT, SI, UK
Other areas of law	DE
The contract	AT, BE, FR, ES, NO, SE
Other	AT, GR, PL

5.22 In nine member states the cash-flows for supervisory purposes are determined by a combination of at least two of the legal areas named above.

5.23 Members provided the following specific comments:

- AT - A collective agreement between sponsor and beneficiaries exists which defines the benefits and which is reflected by a contract between sponsor and IORP. The relevant provisions are calculated with actuarial methods.
- DE - The IORPs have to fulfil the relevant regulations of the national GAAP which gives a framework for the cash-flows to be recognized in the calculation of technical provisions.
- GR - Internationally accepted actuarial practices are taken into account for the determination of the provisions and the relevant cash-flows.
- IT - There are no specific rules regarding the exact determination of the cash-flows which have to be recognized in technical provisions for supervisory purposes.
- PL - The IORPs have an internal policy of accounting which is accessible to the national supervisory authority.

Q3) In your Member State, does the word "contract" adequately describe the characteristics of the set of rules and arrangements governing the provision of benefits to members and beneficiaries by an IORP?

Yes	No
AT, BE, DE, ES, DK, FI, FR, HR, LT, NO, PL	BG, GR, IE, IT, MT, NL, PT, SE, SI, UK

5.24 It is clear from the responses that for a number of member states the word "contract" does not fit or is misleading for IORPs. In some of these member states the expressions "agreement" (GR, IT), "statute" (SE), "set of rules" (BG) or "scheme" (IE, MT, PT) seem to be more suitable to

describe the rules governing the provision of benefits to members and beneficiaries by an IORP.

5.25 Therefore it could probably be helpful to find another, perhaps more general, expression to replace the expression “contract” in this context.

Q4) Contributions to an IORP can be determined in various ways. In your Member State, how is the level of contributions to an IORP determined (multiple answers possible)?

Contributions determined by	Breakdown of responses
The amounts necessary to finance the (accrual of) benefits of individual members	BE, DE, DK, ES, FR, HR, NO, SE, UK
The amounts necessary to finance the (accrual of) benefits of groups of members	BE, DE, ES, FI, FR, GR, IE, SE, UK
The amounts necessary to finance a certain level of funding of the IORP	BE, DE, FI, IE, UK
A combination of the above	BE, DE, MT, NL, PT, UK
Other	AT, BG, GR, LT, PL, PT, SE, SI

5.26 The responses lead to the conclusion that in many member states there are cases where it is at least not always possible to find a direct relation between the benefits which an IORP grants and the paid contribution in a way that is typically the case for life insurance.

5.27 Members provided the following specific comments:

- AT - The contributions are defined by the agreement between the IORP and the sponsor.
- BE - IORPs are free to determine the financing method. However, it must ensure that financing is enough to obtain the level of technical provisions and the annual increase of these technical provisions.
- DK and HU - The level of contributions is based on the amount necessary to finance the benefits of individual members.
- GR - In Greece the level of contributions can be chosen freely.
- PL - Due to the fact that only pure DC-schemes exist, the contributions are always defined first.
- SI - The level of contributions is agreed between members and sponsors without the participation of the IORP.

Q5) In your Member State, who typically decides that an IORP will take on additional obligations (e.g. additional members and beneficiaries, increases of benefits, additional benefits for existing members and beneficiaries)?

Decision made by	Breakdown of responses
The IORP (which has legal personality)	AT, DE, DK, FI, FR, GR, HR, IT, NL, SI
The IORP (which has no legal personality)	MT
The Pension Fund Management Entity	HR
The Sponsor	BE, FI, FR, IE, IT, NO, PL, PT, UK
Social Partners	BE, DE, FR, IT, PT
The Trustee	IE, UK
Members and Beneficiaries	DE, FR, PL
Other	AT, BG, ES, SE, SI

5.28 Just in four member states (DK, GR, MT, NL) only the IORP decides whether it will take on additional obligations or not.

5.29 In the other member states there is at least one party besides the IORP which can do this. Another five of these member states (IE, PL, PT, SE, UK) stated that the IORP is not involved in this decision in any way.

Q6) Are there in your Member State several (as opposed to only one) “typical types” of contracts provided by IORPs which would lead to different contract boundaries in a possible future prudential framework for IORPs in each respective type?

Yes	No
DE, FR, GR, HR, IE, MT, NO, SE	AT, BE, BG, DK, ES, FI, NL, PL, SI

Q7) In your Member State, does an IORP have the unilateral right to terminate a contract (according to law or based on a typical contract)?

Yes	No
MT, NL	AT, BE, BG, DE, DK, ES, FI, FR, GR, HR, IE, IT, LT, NO, PL, PT, SE, SI

Q8) If your answer to Q7 above is “No”: Is there a natural or legal person who has the unilateral right to terminate a contract (according to law or based on a typical contract)?

Yes	No
DE, DK, FI, FR, IE, NO, PL, PT	AT, BE*, BG, ES, GR, HR, IT, SE, SI

* The employer cannot terminate a contract related to past service years, only for future service years accrual. This means that the pension benefit will further increase with future salary increases (i.e. the salary component in the pension formulae will still be updated, not the years in service).

5.30 Members provided the following specific comments:

- DE - On contracts where continuous premiums are payable, the policyholder may terminate the contract at any time to the end of the current period of insurance. In case of vested benefits, the IORP will not be allowed to pay a surrender value, but will have to convert the vested rights into a fully paid-up insurance. DE mentioned that this was only reported for reasons of completeness. Since the described right to terminate the contract is not a right of the IORP, it should not be relevant for the determination of contract boundaries.
- DK - Contracts could be terminated in cases of demission/dismissal.
- FI - The sponsor can terminate the contract and the accrued benefits are then transferred to a life insurer.
- FR - There are some types of contracts which can be terminated by the member.
- IE - In the normal case the sponsoring employer has the right to cease contributions and this will terminate the scheme, and the regulator also has a wind-up power.
- IT - Decisions of terminating a scheme are based on negotiations between the social partners.
- NO - The sponsor of the IORP (as a employer) can decide to close the contract for new employees, to terminate the future accrual of benefits for all employees or to transfer the contract to another pension provider or insurance company.
- PL - The sponsor can change or close a scheme.
- PT - In general, sponsors can terminate pension schemes.

Q9) In your Member State, does the IORP have the unilateral right to reject contributions payable under a contract (according to law or based on a typical contract)?

Yes	No
ES	AT, BE, BG, DE, DK, FI, FR, GR, HR, IE, IT, LT, NO PL, PT, SE, SI

Q10) If your answer to Q9 above is "No": Is there a natural or legal person who has the unilateral right to reject contributions payable under a contract (according to law or based on a typical contract)?

Yes	No
DE*	AT, BE, BG, DK, FI, FR, GR, HR, IE, IT, NO, PL, PT, SE, SI

* The policy holder possesses the right to suspend the paying of contributions to a contract. DE mentioned that this was only reported for reasons of completeness. Since the described right to terminate the contract is not a right of the IORP, it should not be relevant for the determination of contract boundaries.

Q11) In your Member State, does an IORP have the unilateral right or obligation to amend the contributions and/or the benefits payable under the contract in such a way that the contributions fully reflect the risk (according to law or based on a typical contract)?

Yes	No
DK, ES, FI, FR, NL, NO	AT, BE, BG, DE, GR, HR, IE, IT, LT, PL, PT, SE, SI

Q12) If your answer to Q11 above is "No": Is there a natural or legal person who has the unilateral right or obligation to amend the contributions and/or the benefits payable under the contract in such a way that the contributions fully reflect the risk (according to law or based on a typical contract)?

Yes	No
IE, LT, PT	AT, BE, BG, DE, GR, HR, PL, SE, SI

5.31 The given answers to Q7 till Q12, especially the answers to Q7, Q9 and Q11, show that if the Solvency II definition of contract boundaries, as referred to in Q17, would be applied to the IORPs, (at least) in those member states answering with "No" a range of cash-flows would likely have to be taken into account for the calculation of technical provisions which would go beyond the scope of accrued benefits.

Q13) Do contracts of IORPs in your Member State typically include an obligation of the IORP to adjust benefits based on inflation and/or salary increases?

Yes	No
DK, ES, FI, IE, IT, NO, PT, SE	AT, BG, BE, DE, FR, GR, HR, MT, NL, PL, SI

Q14) If your answer to Q13 above is "Yes": Is the obligation of the IORP to adjust benefits based on inflation and/or salary increases contingent on (multiple answers possible)?

Contingent on	Breakdown of responses
The payment of additional contributions	DK, ES, NO, SE
The funding position of the IORP	DK
Other?	FI, IE, PT

5.32 Members made the following specific comments:

- DK - The obligation can be contingent on both the payment of additional contributions and the funding position of the IORP.
- FI - The obligation is contingent on the rules where the level of adjustments is set.
- IE - For deferred defined benefits schemes statutory revaluations are performed.
- SE - The obligation is contingent on the payment of contributions.

Q15) Do IORPs in your Member State provide Defined Contribution schemes which are not “pure”, which means they include certain types of guarantees (whether financial or any other type of guarantee)?

Yes	No
AT, BE, ES, FR, GR, IT, NL, PT, SE, SI	BG, DE, DK, FI, HR, IE, LT, NO, PL

5.33 Members made the following specific comments:

- AT - Guarantees at a very low level are foreseen but with a possibility to opt out. There are also schemes which guarantee the level of the first benefit payment as a minimum level for later payments.
- BE - There are some IORPs that manage DC plans with a guaranteed return (independently from the legal guarantee which social and labour law imposes on the sponsoring employer for every type of DC or cash balance plan and for employee contributions under any type of plan).
- DK - There are no DC schemes which are not pure (at the moment). However, they are possible.
- FR - There are DC schemes with financial guarantees (at least 0 % return) and also fixed annuities.
- IT - Some DC schemes offered by IORPs offer minimum return guarantees, which are usually supplied by the funds’ manager or an external insurance company.
- MT - There are currently no IORPs. However, a retirement scheme may also be any other type of scheme (apart from defined benefit or defined contribution) providing cover against biometrical or investment risks.
- NL - Schemes are usually DC during the working life but DB in the time of actually getting benefits in the way that most DC schemes offer the possibility to buy a DB-lifetime-pension within the IORP.
- PT - There are DC schemes with financial guarantees on the contribution made or a minimum rate of return.
- SI - All pension schemes are DC schemes with a minimum investment return. There are two possibilities: 1) life-cycle schemes where the

pension fund consists of three sub-funds where the last sub-fund (according to member age) must provide a minimum investment return based on the net paid premium; or 2) schemes with one fund which provides a minimum investment return based on the net paid premium (regardless of member age).

Q16) In case of IORPs in your Member State providing Defined Contribution schemes: Do members have the right to convert accumulated assets of the scheme into a lifetime pension (e.g. a guaranteed monthly payment) paid by the IORP?

Yes	No
AT, BE, ES, FR, GR, HR, IT, NL, PT, SE, SI	BG, DE, FI, IE, LT, MT, NO, PL

5.34 Members provided the following specific responses:

- AT - Benefit payments are paid by the IORP but without a guarantee.
- BE – Social and labour law imposes an obligation upon sponsors to arrange for a conversion of a lump sum into a lifetime pension upon request of the member.
- GR - In a certain occupational fund the beneficiary can choose between a lifetime payment and a lump sum.
- HU - IORPs which offer pension benefits on the basis of voluntarily paid contributions of an individual have to offer lifetime pensions. However, they can also offer temporary old-age pensions, floating pensions, partial lump-sum refunds and other pension benefits according to their scheme.
- IT - Usually at least half of the accrued benefits have to be converted in a lifetime pension. The payments itself are usually done by an insurance company.
- NL and SI - A conversion in a lifetime pension has to be done. However, such a lifetime payment has not to be offered within an IORP meaning that it can be possible to choose a life insurer for this, too. This depends on the scheme.
- PT - Pensions resulting from DC schemes are guaranteed via an insurance policy signed in the name of, and on behalf of the beneficiary. Nevertheless, they may be paid directly by the pension fund if the sponsor(s) assume the payment of any additional contributions in order to guarantee maintenance of its value and if there is compliance with the prudential requirements set for this purpose.

- SE - The accumulated assets can be turned into monthly disbursements over a period ranging from 5 years to lifetime.

Q17) The basic idea of contract boundaries, as used in the QIS for IORPs and also in Solvency II, is that cash-flows should be recognized in technical provisions when they cannot be rejected and when there is no possibility of adjustment of benefits and/or contributions to fully reflect the risks related to those cash-flows, which means that those cash-flows lead to risks building up in the IORP. If contract boundaries were set based on this basic idea: Would this potentially lead to differences in comparison to the cash-flows which are currently recognized in technical provisions in your Member State?

Yes	No
BG, DE, FR, IE, SE, SI	AT, BE, GR, HR, NO, PL

Q18) If contract boundaries were set based on the basic idea described above in Q17: Would this result in all IORPs in your Member State recognizing in technical provisions only cash-flows related to accrued benefits?

Yes	No
AT, BE, GR, HR, MT, NL, NO, PL	DE, DK, FR, IE, SE, SI

Q19) If your answer to Q18 above is "No": Are there different types of IORPs or contracts in your Member State, where for one type only cash-flows related to accrued benefits would have to be recognized in technical provisions, if contract boundaries were set based on the basic idea described above in Q17, while for another type also cash-flows beyond accrued benefits would have to be recognized?

Yes	No
FR, SE	BG, DE, HR, IE, SI

5.35 Members provided the following comments:

- FR - In most cases the IORP has the right to amend contributions in a way that "the risks are fully reflected". In these cases the cash flows recognised for the calculation of technical provisions would correspondent with the cash flows regarding the accrued benefits (plus eventually future benefits from profit sharing or indexation). However, there could be contracts where the IORP is committed to grant determined rights for a certain fixed contribution (this constraint could hold for a definite or indefinite period of time), in which case future

accruals (linked to future contributions) would also have to be integrated into technical provisions.

- SE - For many “unit-linked” contracts only cash flows regarding accrued benefits would be taken into account for the calculation of technical provisions.