

Regulation of Occupational Pension Schemes

Protections and Redress for Retired Workers in respect of Changes to Benefits Payable

Enquiry No. 2023/539

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Abstract

- A Questionnaire and Model Answer for Ireland were circulated by the L&RS via the ECPRD Network during May 2023 to the UK and EU member States concerning protections and redress for retired workers in respect of changes to benefits payable to them under occupational pension schemes.
- This briefing paper provides an overview of the responses received to the ECPRD Questionnaire.
- It also includes the ECPRD Questionnaire and Model Answer for Ireland. The latter provides an overview of the relevant existing legal framework in Ireland.



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Scope Agreed Concerning Research Enquiry No. 2023/539.

This briefing paper is provided pursuant to a research enquiry received on 2 May 2023 from Deputy Bríd Smith. The research enquiry relates to a Private Members Bill, which Deputy Smith has introduced before Dáil Éireann called the [Industrial Relations \(Provisions in Respect of Pension Entitlements of Retired Workers\) Bill 2021](#) (the “Bill”). The Bill seeks to:

“amend and extend certain rights and protections of retired persons and certain representative associations in relation to industrial relations and trade disputes and for that purpose to amend the Trade Union Acts 1871 to 1990 and the Industrial Relations Acts 1946 to 2019, to make provision for enhanced representation of retired workers in relation to the administration of certain pension schemes, to amend the Pensions Act 1990 and to provide for related matters.”¹

In particular, the Bill seeks to afford retired former employees and their representative organisations access to the industrial relations machinery of the State where changes are proposed to the benefits payable to them under occupational pension schemes.

The Bill has completed the second stage of the legislative review process before Dáil Éireann. Some of the relevant parliamentary debates to date are available to access [here](#), [here](#), [here](#) and [here](#).

During the Committee stage debate, questions have arisen regarding the protections and forms of redress, statutory or otherwise, available to retired former employees in other jurisdictions where changes are proposed/imposed, which impact the benefits payable to them under occupational pension schemes where the employer is a contributor. These queries formed the basis of the research enquiry submitted by Deputy Smith.

As the research enquiry required an examination of the situation in multiple jurisdictions, it was agreed during a reference interview convened with the Deputy on 4 May 2023 to submit a request for information to the European Centre for Parliamentary Research and Documentation (ECPRD) for dissemination to EU member states and the UK. The Deputy indicated that she was particularly interested in receiving responses from the UK, Spain, France, Belgium, the Netherlands, Finland and Portugal.

The questions, which formed the basis of the ECPRD request, and a model answer were prepared by the author and circulated to EU member states and the UK on 16 May 2023 by the Oireachtas Library and Research Service (L&RS). The deadline for receipt of responses to the ECPRD Questionnaire was set for 30 May 2023 so as to allow sufficient time for receipt of late responses and the compilation of the responses into a briefing paper. It was agreed that the briefing paper would be provided by close of business on 12 June 2023, if possible, and that extra time would be requested, if necessary, for example, to incorporate any late responses.

¹ See the Oireachtas website, available [here](#).

In completing this briefing paper, the author relied primarily upon:

- responses received to the ECPRD request;
- relevant primary sources of law [unofficial translations had to be relied upon in the case of legislation from non-English speaking jurisdictions];
- relevant textbooks;
- country profiles prepared by the [Organisation for Economic Cooperation and Development](#) (OECD) and the [International Organisation of Pension Supervisors](#) (IOPS);
- briefing notes prepared by industry experts; and
- websites of relevant regulatory bodies, for example, the [Pensions Authority](#), and of reputable sources such as the European Commission.

Please note that this briefing paper is not intended as legal advice and does not purport to offer an exhaustive overview of the subject matter area.

Summary

As noted above, a Questionnaire was circulated by the L&RS to the parliaments of EU member States and the UK via the ECPRD network on 16 May 2023. The Questionnaire sought information regarding the protections and redress available in those jurisdictions for retired workers in respect of changes to benefits payable to them under occupational pension schemes in which the employer is a contributor. A Model Answer for Ireland was circulated together with the Questionnaire to assist with the formulation of responses.

Substantive responses were received on behalf of Parliaments in the following 16 States: Austria, Bulgaria, the Czech Republic (Czechia), Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, the Netherlands and the UK. No substantive response was received on behalf of the parliaments of Belgium, Croatia, Cyprus, Denmark, France, Germany, Greece, Italy, Malta or Sweden. Accordingly, the systems for occupational pension provision in these States are not considered in the briefing paper.

In terms of content, this briefing paper includes a summary of tentative core findings, the relevant ECPRD Questionnaire and the Model Answer for Ireland, an overview of the information received from each individual State that provided a substantive response, and a Glossary of some technical terms (Annex I). The responses received for the Czech Republic, Estonia, Lithuania and Slovakia are only briefly considered as these responses indicated that either no occupational pension scheme or no occupational pension scheme where the employer is a contributor, currently operates in these States.

The Questionnaire and Model Answer are included in the briefing paper as they afford an overview of the existing legislative framework in Ireland, which the Deputy may find useful as a starting point for informed debate. A Summary Table was also prepared and is included at the end of the Summary section to help the Deputy to quickly assess the existing legal framework governing proposed reductions to benefits payable to retired workers under relevant occupational pension schemes in Ireland. The Summary Table should be read in conjunction with the Model Answer, as the more detailed information contained in the latter should aid understanding of the abbreviated content of the former.

It should be noted at the outset that the subject matter area is very complex and technical. In addition, the research request spans multiple jurisdictions with different languages and their own particular systems, which do not always lend themselves easily to comparison. The content of this briefing paper is based primarily on the information contained in the individual responses received to the ECPRD Questionnaire. However, at times, the information contained in these responses was incomplete and unclear. At times, the information did not appear to be directly relevant to the questions asked and some of the replies provided a combined general response rather than answering the individual questions asked.

On occasion, the author supplements the information included in the ECPRD responses with information obtained from the author's own research. This supplementary content is included in order to provide background information regarding the pension system in the relevant State and to highlight/clarify some of the safeguards in place to promote and protect the interests of members and beneficiaries of occupational pension schemes. However, it should be cautioned that this supplementary information is sometimes derived from unofficial translations of relevant primary legislation in the State concerned. Unofficial translations of legislation are for guidance/information purposes only, are not legally binding, and do not always capture nuances in the original primary text disseminated in the first language of the State concerned. It should also be noted that some of the pension systems in the relevant States have undergone considerable changes in recent years or are currently undergoing transformation. Hence, at times it proved difficult to secure accurate, up-to-date information, particularly in the limited timeframe available to respond to the enquiry.

For all the above reasons, it is difficult to draw firm conclusions regarding the occupational pension systems in the States concerned. That said, a summary of some of the most relevant tentative findings, organised by category, is outlined below. More comprehensive information is included in the more detailed discussions of the situations in individual States later on in the briefing paper.

Capacity to reduce benefits payable to retired workers and related safeguards, where applicable

Austria: the second pillar of Austria's pension system is comprised of occupational pensions offered by private companies, which often involve privately operated pension funds (*Pensionskasse*). Private occupational pensions play a secondary role to state pensions (the first pillar) in Austria.² Contributions to pension funds are pooled and administered in a separate legal entity known as an "investment and risk sharing group" (IRG).³ According to the website of the Financial Market Authority, the relevant supervisory body, the IRG's assets "are protected in the event that the pension fund files for bankruptcy, which means that beneficiaries' claims are not forfeited".⁴ In Austria, the employer and the employees decide via a works agreement,⁵ a collective labour agreement or an individual agreement based on a pro forma contract, on their respective obligations concerning the occupational pension scheme, for example, with regard to contributions to the pension fund.⁶ Article 3 of the [Company Pensions Act](#) identifies certain issues that must be addressed in this agreement, including the conditions and legal effects of the

² Austrian Economic Chambers (WKO), 'Pension Funds in Austria', available [here](#).

³ Financial Market Authority website, available [here](#).

⁴ *Ibid*.

⁵ A works agreement is an agreement between a works council (a representative organisation for employees) and an employer.

⁶ Company Pensions Act, Article 3; see unofficial English translation, [available here](#).

dissolution of a single-employer pension fund.⁷ It stipulates that, in such circumstances, securing the beneficiaries' claims must take precedence over other pension fund benefits.

It should also be noted that Article 8(6) of Austria's [Company Pensions Act](#) provides that, subject to any standards of collective law or individual agreements concluded prior to the Act's entry into force that specify otherwise, the employer may only suspend or restrict the acquisition of future pension expectancies where and for as long as:

1. this has been stipulated in the standards of collective law or agreed in writing;
2. compelling economic reasons exist; and
3. in businesses that have a competent works council, the works council was consulted at least three months prior to the suspension or restriction.

Article 9 of Austria's [Company Pensions Act](#), concerning the suspension and restriction of benefits, provides that, subject to any standards of collective law or individual agreements concluded prior to the Act's entry into force that specify otherwise, benefits may only be suspended or restricted where, and for as long as, the conditions of paragraphs 1 and 2 of Article 8(6) are met and where the employer *used the right* granted to them to discontinue, suspend or restrict the acquisition of future pension expectancies. It further provides that where benefits are covered by securities in accordance with Article 11, they must not be suspended or restricted and the relevant securities must not be pledged [i.e., used to secure a debt] or sold.

Finland: the reply to the ECPRD Questionnaire received on behalf of the Parliament of Finland advises that Finland has a mandatory earnings-related employment pension scheme, which is provided for under statute and has almost universal coverage. It indicates that under the statutory earnings-related pension system, assets such as accrued pension rights are protected under the Constitution. It stipulates that, "as a rule, changes are made only to future accruals". It adds that where significant changes are made, which impact those not yet retired, transition periods are typically used. This means that individuals close to the retirement age are protected against any potential negative effects of the changes.

The reply advises that voluntary, supplementary occupational pension schemes, both collective industry and employer-specific, are also available in Finland, but play a very secondary role in the overall pension system. It indicates that these supplementary schemes may be provided by pension funds or life insurance companies. It states that "[t]he laws regulating pension funds state that benefits of those already retired cannot be deteriorated if they are arranged in a pension fund". The reply indicates that insurance contract law doesn't specify whether changes can be made to pension insurance in payment taken from a life insurance company. However, it notes that according to the Finnish [Financial Ombudsman Bureau](#), "there have been no complaints concerning the changing of the benefits in payment". The reply indicates that in cases of insolvency, the benefits payable can change and that future indexation rules can also be changed.

The Netherlands: the reply to the ECPRD Questionnaire received on behalf of the Dutch Parliament advises that most employees in the Netherlands, in addition to contributing to the State pension, contribute to a supplementary employment-related pension, which is typically

⁷ A single-employer pension fund is a fund that pools the assets of a pension plan/pension plans established by a single employer/sponsor. OECD, 'Private Pensions Outlook 2008 (OECD 2009) ISBN 978-92-64-04438-8, Glossary, available [here](#).

administered by a pension fund. It indicates that currently, pension funds can reduce benefits payable under employment-related pensions if the funding ratio is too low. (The “funding ratio” is explained in more detail in the section below concerning the Netherlands). The reply indicates that the exact rules and limits concerning the reduction of benefits under employment-related pensions can differ from one pension fund to the next and are laid down in the recovery plan of the relevant fund. It advises that the reduction of pensions is subject to strict rules. It indicates that the financial requirements for pension funds are laid down in the Financial Assessment Framework (FTK)⁸, which is part of the Pensions Act.

The reply advises that the [Future Pensions Act](#) will enter into force in the Netherlands on 1 July 2023, subject to a transition period in operation until 2027. It indicates that this Act will revise the existing system of employment-related pensions. It states that the changes being introduced seek to ensure that pensions can be increased more rapidly during upturns and reduced during downturns, subject to applicable safeguards. For example, it advises that under the new system, employers and employees can decide to set apart a specific share of the collective pension capital as a buffer for setbacks.

United Kingdom: the reply to the ECPRD Questionnaire received from the UK House of Commons Library refers to sections 67 to 67i of the [Pensions Act 1995, as amended](#) (the “subsisting rights provisions”). These provisions contain complex rules regarding modifications to occupational pension schemes that impact benefits, which members have already built up, known as members’ subsisting rights. The Pensions Regulator has prepared a Code of Practice in this regard, ‘[Code 10: Modification of subsisting rights](#)’ (“Code 10”).

Code 10 notes that the rules of individual pension schemes will usually permit the trustees and/or the employer to modify the benefits payable under the scheme. However, certain safeguards apply where a proposed modification is a regulated modification that affects subsisting rights. A regulated modification is a modification which is a protected modification and/or a detrimental modification.⁹ A protected modification is a modification, which on taking effect would or might change the nature of the subsisting rights of a member or survivor “from being other than money purchase to being money purchase, or replace a non-money purchase right with a money purchase right, or which would or might reduce the current rate of a pension being paid under the scheme, or is a modification of a prescribed description”.¹⁰ A protected modification can only be made with the informed consent of each affected member.¹¹ A detrimental modification is a modification which “on taking effect would or might adversely affect any subsisting right of a member or survivor of a member of the scheme”.¹² A detrimental modification which is not a protected modification can be made either with the informed consent of each affected member or by the trustees ensuring the actuarial equivalence requirements are satisfied in the case of each

⁸ [wetten.nl - Regeling - Wet aanpassing financieel toetsingskader - BWBR0036084 \(overheid.nl\)](#).

⁹ Section 67A(2) of the [Pensions Act 1995, as amended](#).

¹⁰ The Pensions Regulator, ‘Code 10: Modification of Subsisting Rights’, Glossary, available [here](#). A money-purchase scheme is another name for a defined contribution scheme. A defined contribution scheme is an occupational pension scheme “where your own contributions and your employer’s contributions are both invested, and the proceeds used to buy a pension and/or other benefits at retirement. The value of the ultimate benefits payable from the DC scheme depends on the amount of contributions paid, the investment return achieved less any fees and charges, and the cost of buying the benefits”. See Pensions Authority, available [here](#).

¹¹ Code 10, at para. 26 and see also paras 32-40, available [here](#)

¹² Ibid, Glossary, available [here](#)

affected member.¹³ These technical requirements are discussed in more detail below in the section concerning the situation in the UK.

The reply notes that collective defined contribution (CDC) schemes were introduced under the [Pension Schemes Act 2021](#). Under a CDC scheme, both the employer and employee contribute to a collective fund which provides an income in retirement. The reply indicates that CDC schemes provide a target pension and that if the scheme is under (or over) funded then the pensions it pays can be decreased (or increased accordingly), including for retired members.

The reply also includes information regarding the [Pension Protection Fund](#) (PPF), a statutory fund in the UK that seeks to protect members of defined benefit schemes in circumstances where the scheme's sponsor becomes insolvent.¹⁴ The reply advises that, in such circumstances, having been assessed by the PPF, the scheme would either enter the PPF with pension payments to members typically being reduced or, if it had sufficient assets, members' pension benefits could be secured at a level above that offered by the PPF.¹⁵

Luxembourg: three types of pension fund exist for company pensions in Luxembourg, which must be established as independent legal entities and hold pension assets separately from the sponsoring employer: a SEPCAV (Pensions Savings Company with Variable Capital), an ASSEP (Pension Savings Association), and an ASBL (Association Sans But Lucrative).¹⁶ Article 71 of the Law of July 13, 2005, as amended, which regulates SEPCAVs and ASSEPs, indicates that any amendment to the articles of association, pension regulations or technical memorandum of a SEPCAV or ASSEP, which is likely to increase the obligations or reduce the benefits of actors who accepted those documents, is subject to those actors' unanimous agreement.¹⁷

Spain: the reply to the ECPRD Questionnaire received on behalf of the Spanish Parliament indicates that statutory provisions do exist in Spain, which allow for changes to be made to benefits payable under occupational pension schemes. In terms of safeguards, it indicates that the recently introduced [Act 21/2021, of 28 December, on guaranteeing the purchasing power of pensions and other measures to reinforce the financial and social sustainability of the public pension system](#) seeks to maintain and guarantee the purchasing power of pensions through a new revaluation criterion, which requires that the annual revaluation of pensions, previously based on the Consumer Price Index, also take inflation into account.¹⁸

Poland: two replies to the ECPRD Questionnaire were received on behalf of Poland's Parliament, which contain different information leading to some ambiguity. A reply received on behalf of Poland's Senat (Upper House of Parliament) states that: "[The Act of April 20, 2004 on](#)

¹³ Ibid., at para. 27.

¹⁴ [Pensions Act 2004](#) and Gov.uk, [Pension Protection Fund](#) [accessed 12 August 2022]. Defined benefit schemes are occupational pension schemes that offer a fixed income upon retirement, which is typically based upon: years of service and salary at retirement or in the years preceding retirement (although sometimes they can be based on a "career average" salary) and may be adjusted in line with inflation. See: Danielle Barron, 'Defined-benefit pensions: Perhaps most valuable asset you own' (The Irish Times, 23 October 2020) available [here](#); and The Pensions Authority, 'Final Salary Defined Benefit Schemes', see [here](#).

¹⁵ Pension Protection Fund, [An overview of the assessment process](#) [accessed 12 August 2022]

¹⁶ Pension Funds Online, 'Pension System in Luxembourg', see [here](#).

¹⁷ See unofficial translation of the consolidated text of the Law of July 13, 2005, as amended up to 15 December 2019, available via the [CSSF website](#)

¹⁸ For more information, see Rosa Zarza Jimeno, 'Measures for financial and social sustainability of public pensions system approved' (*Lexology*, 30 December 2021) available [here](#).

occupational pension schemes, which specifies the rules for the establishment and operation of pension schemes, does not provide for changes to the scheme at the benefit payment stage.” However, a second reply received on behalf of Poland’s Sejm (Lower House of Parliament) indicates that it is possible to introduce changes to occupational pension schemes pursuant to the Occupational Pension Schemes Act 2004, including: in the event of the liquidation of the scheme, in the cases explicitly provided for in the company agreement between the employer and the employees’ representatives (which forms the basis for the occupational pension scheme), or where the parties to the company agreement (employers and employees’ representatives) agree the amendments. The reply also indicates that there are no regulations guaranteeing the payment and amount of pensions from occupational pension schemes subject to one exception: programs in the form of a group life insurance contract for employees with an insurance company.

Hungary: the reply received to the ECPRD Questionnaire on behalf of the Hungarian Parliament indicates that institutions for occupational retirement provision (IORPs) in Hungary are regulated under Act CXVII of 2007 on Occupational Retirement Pension and Institutions for Occupational Retirement Provision (the “2007 Act”). It advises that any employer may join an IORP by entering into a contract (sponsorship agreement) with the IORP which, pursuant to Article 8 of the 2007 Act, outlines the rules of the pension scheme. The reply indicates that the pension scheme rules could potentially permit a reduction in the level of benefits payable according to the 2007 Act. However, it advises that employers, members and beneficiaries, and the IORP are not allowed to make unilateral amendments to the sponsorship agreement. Nevertheless, it notes that, according to the principle of freedom of contract, the parties may depart from the provisions relating to their rights and obligations based upon mutual consent, unless prohibited by the Civil Code.

The reply indicates that there are a number of principles, which seek to protect members’ and beneficiaries’ rights. For example, it notes that members’ entitlements, as shown in the register of entitlements, membership accounts and the related reserves, must serve exclusively for the satisfaction of the claims of members and beneficiaries, and may not be confiscated for covering other liabilities of the IORP or the members, nor may they be frozen.

The reply indicates that where the pension scheme rules permit a reduction in the level of benefits, the IORP must inform the beneficiaries concerned at least ninety days prior to the disbursement of the reduced benefits (Art. 28/E. § of the 2007 Act).

The reply draws attention to Article 34/A. (2) of the 2007 Act. It advises that IORPS must have in place a risk assessment policy that should include, amongst other things, an assessment of the risks to members and beneficiaries, a description of indexation mechanisms, and an assessment of the effectiveness of benefit reduction mechanisms in the case of defined benefit pension schemes, including the extent to which accrued pension benefits can be reduced.

Slovenia: the reply to the ECPRD Questionnaire received on behalf of the Parliament of Slovenia advises that voluntary supplementary pension insurance in Slovenia is implemented within the framework of pension funds managed by insurance companies, pension companies and banks. It indicates that these schemes are established as defined contribution schemes.¹⁹ It advises that the payment of pension annuities is carried out based on the concluded insurance contract, in the framework of which no changes to the agreed rights between the contracting parties are

¹⁹ For a definition of defined contribution schemes, see footnote 10 or the Glossary at Annex I.

possible.²⁰ It indicates that under the system of supplementary pension insurance, it is not possible to subsequently change the rights of recipients of pension annuities.

Capacity of retired workers to access the industrial relations machinery and avenues for participation in negotiations/decision-making

The replies received to the ECPRD Questionnaire did not provide sufficient evidence to demonstrate that retired workers who are currently in receipt of benefits under an occupational pension scheme where the employer is a contributor, or the representative organisations of such retired workers, have a statutory right to access the industrial relations machinery in any of these States in situations where changes are proposed to their occupational pension schemes that could result in a reduction in the benefits payable to them thereunder.

It should be noted in this regard that the reply received on behalf of the **Spanish Parliament** provided a “Yes” response to **Question 3[a], [b] and [c]** of the ECPRD Questionnaire concerning the ability of retired workers to access the industrial relations machinery of the State where a dispute arises regarding proposed changes to their occupational pension schemes that could result in reductions to the benefits payable to them thereunder. However, whilst the reply provides an initial “Yes” answer to these questions, the substantive responses themselves discuss the rights of *workers*, as opposed to *retired workers*, to engage in collective bargaining with employers (see discussion of the situation in Spain below). Accordingly, it cannot be definitively concluded that *retired workers* have a right to access the industrial relations machinery of the State in Spain in such circumstances.

Some of the replies included some information concerning the question of whether mechanisms exist that afford retired workers and their representative organisations an opportunity to participate in discussions regarding proposed changes to their occupational schemes that could affect the benefits payable to them thereunder. It also included some information that may be of interest regarding opportunities for retired workers and their representative organisations to participate more generally in the decision-making of occupational pension schemes of which they are members/beneficiaries.

Austria: Article 3 of Austria’s [Company Pensions Act](#) indicates that the agreement between the employer and the employees concerning the obligations of both parties with regard to the occupational pension scheme concerned must address the participation of beneficiaries in the administration of the pension fund. On the matter of participation, the website of the [Financial Market Authority \(FMA\)](#), the regulatory body for pension funds in Austria, indicates that the involvement of beneficiaries (both those currently in receipt of pensions and those entitled to future benefits) is a central objective of the [Company Pensions Act](#). It suggests that beneficiaries generally enjoy rights of participation in the pension fund’s supervisory board, advisory committee and general meeting.²¹

Finland: the reply received on behalf of the Parliament of Finland indicates that an employer cannot unilaterally change the rules governing supplementary occupational pensions if the pension

²⁰ An annuity is “a series of pension payments, normally monthly, until a particular event occurs”. See the Pensions Authority, available [here](#).

²¹ Financial Market Authority website, available [here](#). Presumably, these rights of participation are afforded under the relevant agreement between the employer and employees.

arrangement was considered to form a part of the employment contract. It indicates that in such circumstances, changing the rules would require negotiations between the employer and the employees. However, it does not make any reference to the participation of retired former employees in these negotiations.

The Netherlands: the reply to the ECPRD Questionnaire provided on behalf of the Dutch Parliament advises that the [Social and Economic Council of the Netherlands](#) (SER) is an advisory body in which employers, employees and independent experts work together to reach agreement on key social and economic issues. It states that older people's organisations participate in the drawing up of the pension agreement (predecessor of the new pension act) through a sounding board group of which they and youth organizations are members. It indicates that SER also invites organisations for the elderly to provide advice on subjects that concern them. Regarding the participation of retired workers and their representative organisations in the administration of occupational pension funds more generally, the reply advises that the elderly are represented on the boards of most pension funds. It notes that where pension funds have a joint governance model, Article 100 of the current [Pensions Act](#) prescribes that representatives of employees (associations), together with representatives of pension beneficiaries, occupy at least as many seats as representatives of employers (associations). It confirms that this rule is also included in the new [Future Pensions Act](#).

Portugal: the reply to the ECPRD Questionnaire received on behalf of the Parliament of Portugal offers some information regarding participation, which may be of relevance. It notes that [Article 18.º of Executive-Law n.º 187/2007, of May 5th](#) (consolidated text), which concerns the protection regime for beneficiaries of the general social security system on the basis of old age and disability, provides a definition of the principle of participation whereby relevant stakeholders are involved in the definition, planning, and management of the social and security system, as well as in monitoring and evaluating its functioning. It doesn't clarify who those relevant stakeholders are.

The reply concerning Portugal also refers to the role of the [Social and Economic Council \(CES\)](#), a constitutional body for consultation and social concertation. According to its [website](#), CES's main goals are "to promote the participation of economic and social agents in the decision-making process of organs of sovereignty, mainly within the scope of social and economic issues. It is the prime space for dialogue between the Government, the Social Partners, and the remaining representatives of an organised civil society". It is unclear from the reply what role CES plays, if any, when changes are being proposed to occupational pension schemes.

The reply advises that CES's social concertation role aims to promote social dialogue and negotiation between the Government and Social Partners, the latter being trade unions and employers' representatives, including via tripartite negotiations with representatives of such bodies. It further advises that during these negotiations, legislative proposals are appraised, especially in so far as they impact social and labour issues, and social concertation agreements are negotiated. The reply advises that [Article 3.º of Law n.º 108/91, of August 17th](#) provides that CES shall include in its membership two representatives from organisations representing retirees, pensioners, and the elderly, within the framework of its mission on the pronouncement on economic and social policies, as well as their implementation.

Poland: the reply received on behalf of Poland's Sejm (Lower House of Parliament) states "Yes" in response to **Question 2 [b]** of the ECPRD Questionnaire regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and to

make submissions concerning proposed changes to occupational pension schemes that could affect them. However, it should be noted that the ensuing discussion concerns procedures providing for negotiations between employers and *trade unions/representatives of employees*, as opposed to representatives of *retired workers*.

Spain: the reply received on behalf of the Spanish Parliament indicates that where it is considered that proposed changes to occupational pension schemes might violate the principles of legality or fairness, those changes can be addressed through collective negotiations and non-judicial systems for the resolution of labour conflicts (such as conciliation, mediation, and arbitration). However, it doesn't clarify which of these avenues, if any, are available to retired workers and their representative organisations when changes are proposed to their occupational pension schemes.

Right of access to an independent and impartial adjudicative body

The following replies are of relevance to **Question 4** of the ECPRD Questionnaire (concerning the right of access to an independent and impartial adjudicative body in situations where changes are proposed/imposed that could impact benefits payable to retired workers under occupational pension schemes).

Austria: the [Financial Market Authority](#) can receive complaints concerning companies that it supervises. More information is available [here](#). In performing its tasks, the FMA is required to consider "the interests of the Austrian economy in a functioning pension company system as well as the interests of persons entitled to receive benefits from a *Pensionskasse* in future or already receiving such benefits".²²

Finland: [the Financial Ombudsman Bureau \(FINE\)](#) provides advice to consumers of relevant financial products and offers a dispute resolution procedure in respect of disputes between consumers and relevant service providers, including insurance companies, banks, investment firms, fund management companies, pension funds and employee benefit funds.

UK: the reply indicates that disputes concerning pension scheme rules and changes to those rules can be brought to a number of bodies, including the [Pensions Ombudsman](#), an independent statutory body, which offers a free dispute resolution mechanism for handling pensions-related complaints. However, the answer indicates that it is more likely that proceedings will be initiated before the courts and notes some relevant caselaw, for example, *Briggs v Gleeds* [2014] EWHC 1178 (Ch), as discussed below.

Portugal: the reply makes reference to the Exercise of the Right of Petition, approved by [Law n.º 43/90, of 10 August 1990](#), which regulates and guarantees the exercise of the right of petition to entities that exercise sovereignty, or any public authority save for the courts, with a view to defending citizens' rights, the Constitution, the law or the general interest. It also makes reference to article 21.º of Law n.º 4/2007, of 16 January 2007, regarding the principle of judicial guarantee, which ensures that stakeholders have timely access to courts to assert their right to benefits.

Spain: the reply indicates that where it is considered that proposed changes might violate the principles of legality or fairness, those changes can be addressed/challenged through: collective negotiations, non-judicial systems for the resolution of labour conflicts (such as conciliation,

²² Ibid.

mediation, and arbitration) or the jurisdictional system. However, it doesn't clarify which of these avenues, if any, are available to retired workers and their representative organisations when changes are proposed to their occupational pension schemes.

Poland: the reply provided on behalf of the Sejm indicates that disputes arising from legal relations between the parties to the company contract (i.e., the employer and the employees' representatives) are resolved by common courts of law competent for the employer's registered office (Article 12 of the Occupational Pension Schemes Act 2004).

Hungary: the reply refers to the right to:

- initiate proceedings with the supervisory authority for the protection of consumers' interests for any infringement of consumer regulations under Act CXXXIX of 2013;
- initiate an action in a court of law in connection with any dispute relating to the conclusion, validity, legal aspects and termination of contracts, including potential breaches of contract and the related legal effects; or
- seek a remedy at the [Financial Arbitration Board](#) (see Article 28/A of the 2007 Act).

Summary table of the existing legal framework in Ireland concerning reductions to benefits payable to retired workers under relevant occupational pension schemes²³

Direction /Measure and Scheme	Criteria	Safeguards to minimise impact	General safeguards/ safeguards to ensure direction/ measure is necessary/ appropriate	Notification requirements when direction under consideration	Capacity to make submissions	Access to industrial relations machinery	Notification rules on issuance of direction	Access to other redress & dispute resolution mechanism
On application by the trustees, PA can make a s.50 Direction to trustees to reduce the benefits payable under a defined benefit scheme to members who are retired workers.	PA can only make the direction where necessary to enable the scheme to satisfy the funding standard or the funding standard reserve and continue to operate. (See s.50 and PA website)	There is a monetary limit on the reductions that can be imposed on benefits already being paid to retired workers under the scheme. (See s.50 (1C) and (1D))	Before making an application, trustees must: comprehensively review the scheme and its long-term stability and sustainability; request contributions from employer; acquire legal and actuarial advice; and ensure the application will enable the fund to satisfy the funding standard and ensure that it sets out the contribution rate (see PA's Prescribed Guidance on s.50). Trustees must possess certain qualifications and have statutory obligations (see Part VI). Part VII prohibits any direct or indirect discrimination (age ground subject to some exceptions).	Before making an application, trustees must notify the retired workers and their authorised representative groups of the circumstances, the proposed reductions, the reasons for treating categories of members differently, the projected impact on benefits, and the fact that contributions were requested from the employer (see PA's Prescribed Guidance on s.50).	Retired workers receiving benefits must be afforded at least one month to make written observations to the trustees and the trustees must have regard to these obs. before making an application for a s.50 Direction (see PA's Prescribed Guidance on s.50).	A retired former worker can refer a dispute concerning proposed reductions to the WRC for conciliation, but only if the dispute arises within 6 months of the date their employment ceased or within 6 months of the date on which the dispute relates occurred, whichever is earlier. The period may be extended by 6 months by the WRC or Labour Court where reasonable cause exists. WRC/Labour Court cannot consider a complaint also under investigation by FSPO (See: s. 26A (3) of the Industrial Relations Act 1990, as amended).	Upon issuing a s.50 Direction, the PA must advise retired workers of the reduction to their benefits without delay and not later than one month from the date on which the final decision was taken, and not later than 3 months before the final decision is implemented (see s.50(2C).	The FSPO can consider complaints by a consumer of a pension product regarding the conduct of the pension provider in the administration of the pension scheme. FSPO decisions can be appealed to the High Court. Either party may seek leave to appeal the High Court's decision to the Court of Appeal on a question of law. The lawfulness of reductions to pension benefits can be challenged before the courts.

²³ This table was prepared by the author based on relevant legislation as well as information and Guidance available on the website of the Pensions Authority. Any references to sections or Parts in the table are references to sections and Parts of the *Pensions Act 1990, as amended*, unless otherwise stated. Any references to the "PA" are references to the Pensions Authority and any references to the "WRC" are references to the Workplace Relations Commission.

<p>Other than on application by trustees, PA can make a s.50 Direction to Trustees to reduce the benefits payable from a defined benefit scheme.</p>	<p>PA can only make the Direction where necessary to enable the scheme to satisfy the funding standard or the funding standard reserve and continue to operate (See s.50 and PA website)</p>	<p>Monetary limit on the reductions that can be imposed on benefits already being paid to retired workers under the scheme (see s.50 (1C) and (1D)).</p>	<p>Before making a direction, PA may require certain persons to provide it with information e.g., trustees may be required to provide information regarding the scheme's long-term stability and sustainability (see Art. 3, <i>Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015</i>)</p> <p>Trustees must possess certain qualifications and have statutory obligations under Part VI. Part VII prohibits any direct or indirect discrimination (age ground subject to some exceptions).</p>	<p>PA may require the trustees to notify retired workers in writing and their authorised representative groups, outlining the funding position, the effect of the Direction on their benefits, and their right to make written submissions to the PA (see Art. 4, <i>Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015</i>)</p>	<p>Retired workers and their authorised representative groups can make written submissions to the PA regarding the proposed Direction within six weeks of being notified of it. PA must consider these submissions before making a Direction (see art..5. <i>Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015</i>).</p>	<p>Retired workers can submit a dispute to the WRC w/n 6 months of ceasing employment or w/n 6 months of the relevant event (with a potential for a 6-month extension where reasonable cause exists) provided the dispute is not already under investigation by the FSPO (see: s. 26A (3) of the Industrial Relations Act 1990, as amended).</p>	<p>Upon issuing a s.50 Direction, the PA must advise retired workers of the reduction within a month of the final decision, and not later than 3 months before that final decision is implemented (see s.50(2C).</p> <p>Trustees must notify prescribed persons (including retired workers and their representative organisations) within a month of the Direction, the relevant measures, and their right to make an appeal to the High Court on a point of law (see s.50(2B).</p>	<p>Prescribed persons (including retired workers and their representative organisations) can submit an appeal to the High Court on a point of law against the S.50 Direction within 21 days of being notified of it (See s. 50(6)).</p> <p>The FSPO may receive complaints regarding the conduct of pension providers from consumers of pension products in administering pension schemes. FSPO decisions can be appealed to the High Court. Leave may be sought to appeal the High Court's decision to the Court of Appeal on a question of law.</p> <p>The lawfulness of reductions to pension benefits can be challenged before the courts.</p>
<p>Trustees can amend an</p>	<p>Trustees can only make</p>	<p>Monetary limit applies in respect of any</p>	<p>The PA's consent is required before any amendments</p>	<p>Where a s.50 Direction is required,</p>	<p>Where a s.50 Direction is required,</p>	<p>Retired workers can submit a</p>	<p>Where a s.50 Direction is required and</p>	<p>The FSPO can consider complaints</p>

<p>occupational pension scheme [as defined under s.2] pursuant to s.50A..</p>	<p>appropriate amendments to ensure that the winding up of the scheme is not required solely because it does not have sufficient resources to meet its liabilities.</p> <p>The exercise of the trustees' amendment power under s. 50A is subject to s.50.</p>	<p>amendment involving a reduction of benefits payable to retired workers under a defined benefit scheme (See s.50 (1C) and (1D))</p>	<p>can be made pursuant to s.50A (see s.50A(1)).</p> <p>S.50 Direction required before reductions can be made to benefits payable to retired workers under a defined benefit scheme. (See s.50A(1)).</p> <p>Under s. 50A(2), the Minister for Social Protection may make Regs. requiring trustees to notify members of a proposal to amend the scheme pursuant to section 50A and allow them to make representations.</p> <p>Trustees must possess qualifications and have statutory obligations under Part VI. Part VII prohibits any direct or indirect discrimination (age ground subject to exceptions).</p>	<p>before making an application for a Direction that will reduce the benefits payable to retired workers, trustees must notify those retired workers and their representative groups (see above and PA's Prescribed Guidance on s.50).</p>	<p>retired workers must be afforded at least one month to make written observations to the trustees and the trustees must have regard to those obs. before making an application for a s.50 Direction (see PA's Prescribed Guidance on s.50).</p>	<p>dispute to the WRC w/n 6 months of ceasing employment or w/n 6 months of the relevant event (with a potential for a 6-month extension where reasonable cause exists) provided the dispute is not already under investigation by the FSPO (see: s. 26A (3) of the Industrial Relations Act 1990, as amended).</p>	<p>granted, upon issuing the s.50 Direction, the PA must advise retired workers of the reduction to their benefits without delay and not later than one month from the date on which the final decision was taken, and not later than 3 months before that final decision is implemented (see s.50(2C).</p>	<p>from consumers of pension products regarding the conduct of pension providers in administering pension schemes. FSPO decisions can be appealed to the High Court. Either party may seek leave to appeal the High Court's decision to the Court of Appeal on a question of law.</p> <p>The lawfulness of reductions to pension benefits can be challenged before the courts.</p>
<p>PA can direct the trustees to wind up a defined benefit scheme under s.50B (1).</p>	<p>Can only do so where the scheme does not satisfy the funding standard or the funding standard reserve or where the trustees have failed to comply with a direction made under s.50(1), (1A) or (1B) (see s.50.B(1)).</p>		<p>Before making a direction, the PA may require certain persons to provide it with information e.g., trustees may be required to provide information regarding the scheme's long-term stability and sustainability (see Art. 3 <i>Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015</i>)</p> <p>Trustees must possess certain qualifications and have statutory obligations under</p>	<p>PA may require the trustees to notify in writing retired workers and their representative organisations of the funding position, the effect of the Direction on their benefits, and their right to make written submissions to the PA (see Art. 4, <i>Occupational Pension Schemes (Sections 50 and 50B)</i>)</p>	<p>Retired workers and their authorised representative groups can make written submissions to the PA in respect of the proposed Direction within six weeks of being notified of it. The PA must consider any such submissions before making a Direction under s.50B (see art.5. <i>Occupational Pension</i>)</p>	<p>Retired workers can submit a dispute to the WRC within 6 months of ceasing employment or within 6 months of the relevant event (with a potential for a 6-month extension where reasonable cause exists) provided the dispute is not already under investigation by the FSPO (see: s. 26A (3) of the</p>	<p>PA must publish particulars of the Direction in a daily newspaper in State within 21 days of making the Direction (see s.50B(9)).</p>	<p>Prescribed persons (including retired workers and their representative organisations can submit an appeal to the High Court on a point of law against a Direction within 21 days of the publication of the newspaper notice (See s.50B(10)).</p> <p>Retired workers can</p>

			Part VI. Part VII prohibits any direct or indirect discrimination the (age ground is subject to some exceptions).	<i>Regulations, 2014 to 2015)</i>	<i>Schemes (Sections 50 and 50B) Regulations, 2014 to 2015).</i>	Industrial Relations Act 1990, as amended).		submit a complaint to the FSPO whose decisions can be appealed to the High Court. Either party may seek leave to appeal the High Court's decision to the Court of Appeal on a question of law.
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ECPRD Questionnaire and Model Answer for Ireland

The Questionnaire and Model Answer for Ireland circulated by the L&RS to the Parliaments of EU member States and the UK on 16 May 2023 via the ECPRD network are outlined below.²⁴

Questions* and Model Answer

* These questions relate to occupational pension schemes where the employer is a contributor.

Introduction to occupational pension schemes in Ireland

In Ireland, occupational pensions are typically established as trusts. A trust “is a legal arrangement under which trustees hold the assets of the pension scheme in a trust fund for the benefit of the members of the scheme and their dependants, and for the main purpose of providing income in retirement.”²⁵ These assets are held separately from the employer’s business assets so as to ensure that they will be available to pay members’ pensions irrespective of whether or not the employer stays in business.²⁶ Pension trustees enjoy some discretion in terms of decision-making.²⁷ However, they must adhere to the provisions of the pension-scheme documentation, which constitutes the main source of rights and obligations.²⁸ They must also adhere to the provisions of applicable law, in particular, the [Pensions Act 1990, as amended](#), which imposes fiduciary duties on trustees to act in good faith, ensure equal treatment of members and beneficiaries (subject to some permissible exceptions), and safeguard pension assets. The [European Union \(Occupational Pension Schemes\) Regulations, 2021](#), transpose the [IORP II](#)

²⁴ The Model Answer below includes some additional detail, as compared with the Model Answer circulated via the ECPRD network, so as to present a more comprehensive overview for the Deputy of the existing legal framework.

²⁵ The Pensions Authority, see [here](#).

²⁶ Ibid.

²⁷ Keith Blizzard and Patrick Ambrose, ‘Feathering the Egg Nest’ (The Law Society Gazette, 21 October 2022) available [here](#).

²⁸ Ibid.

[Directive](#) into Irish law and enhance the obligations imposed on trustees of occupational pension schemes.²⁹

In Ireland, the High Court has determined that contributions to an occupational pension fund constitute deferred remuneration.³⁰ That said, pension entitlements may be subject to conditions, including a minimum retirement age and/or a required minimum number of contributions. For private occupational pension schemes, retirement age is not prescribed under legislation.³¹ Membership of a pension fund gives rise legal rights. However, Keith Blizzard and Patrick Ambrose, both lawyers, observed in a recent Law Society Gazette article that the question of whether a pension entitlement is a Constitutionally protected 'property right' has yet to be definitively answered.³²

Question 1: Do statutory provisions exist in your jurisdiction, which allow for changes to be made to occupational pension schemes that impact the benefits payable to retired former employees who are members of those schemes? If so, please provide an overview of those provisions.

Statutory provisions exist in Ireland, which allow for changes to be made to occupational pension schemes³³ that impact the benefits payable to retired former employees who are members of those schemes. These include sections 50, 50A and 50B of the *Pensions Act 1990, as amended*, which are discussed below.

[Section 50 of the Pensions Act 1990, as amended](#), permits the [Pensions Authority](#),³⁴ by notice in writing, to direct the trustees of a relevant scheme (other than a regulatory own funds scheme) to implement measures reducing the benefits that are/would be payable to, or in respect of, members of the scheme including:

- I. employees in relevant employment who have not reached normal pensionable age;
- II. former employees whose service in relevant employment has ceased who have not reached normal pensionable age and are entitled to a preserved or other benefit; and
- III. retired former employees receiving benefits from the scheme or persons who have reached normal pensionable age.

Of particular relevance, *section 50 (1A) and (1B)*, authorise the Pensions Authority to direct the trustees of a relevant scheme to impose measures reducing the benefits, and/or reducing future increases in the benefits, which are payable to, or in respect of, persons receiving benefits from the scheme or persons who have reached normal pensionable age.

²⁹ IORPs are "financial institutions that manage collective retirement schemes for employers to provide retirement benefits to their employees (i.e., pension scheme members and beneficiaries)". See European Insurance and Occupational Pensions Authority website, available [here](#).

³⁰ *In the matter of Central Remedial Clinic Pension and Death Benefits Plan* [2005] IEHC 87 per Kelly J.

³¹ Keith Blizzard and Patrick Ambrose, 'Feathering the Egg Nest' (The Law Society Gazette, 21 October 2022) available [here](#).

³² Ibid.

³³ Occupational pension schemes are "generally set up under trust by employers and run by trustees and specialist pension consultants and life assurance companies" (See: [Pensions Authority](#) and [here](#)).

³⁴ The [Pensions Authority](#) is a statutory body, established under the *Pensions Act, 1990, as amended*, to regulate occupational pension schemes, trust RACs and Personal Retirement Savings Accounts.

The Pensions Authority website clarifies that *section 50* applies to funded defined benefit schemes.³⁵ *Section 50* permits the Pensions Authority to make a direction under the section, either following an application from the trustees of a relevant scheme OR otherwise than upon receipt of such an application, where necessary to enable the scheme to satisfy the funding standard or the funding standard reserve and continue to operate.

The funding standard is “a set of regulations that require funded defined benefit pension schemes to build up and maintain enough funds to pay members their pension entitlements were the fund to be wound up”.³⁶ The funding standard reserve is a requirement under [section 44 \(2\)](#) of the *Pensions Act, 1990, as amended*. It requires “funded defined benefit schemes to hold a funding standard reserve from 1 January 2016. The funding standard reserve is broadly calculated as 10% of ‘unmatched’ funding standard liabilities plus the net effect of a 0.5% fall in interest rates”.³⁷

[Section 50A \(1\) of the Pensions Act 1990, as amended](#), provides that, subject to *sections 50A* and *50*, the trustees of an [occupational pension scheme](#) (other than a regulatory own funds scheme) may make such amendments to the scheme as they consider appropriate:

- a) for the purpose of ensuring that the winding up of the scheme will not be required by reason only of the scheme not having sufficient resources to enable the liabilities of the scheme be discharged,
- b) after compliance with any Regulations made under the section, and
- c) with the consent of the Pensions Authority,

Section 50A (4) stipulates that the consent of the scheme members to the amendment shall not be required. The trustees’ exercise of their amendment powers under *section 50A* is subject to *section 50* and, accordingly, an application would need to be made to the Pensions Authority for a *section 50* direction before any reductions could be made to benefits payable under defined benefit schemes. *Section 50A* applies to occupational pension schemes (other than a regulatory own funds scheme), as defined [here](#).

[Section 50B \(1\) of the Pensions Act 1990, as amended](#), provides that: subject to the provisions of the section, the Pensions Authority may, by notice in writing, direct the trustees of a relevant scheme (other than a regulatory own funds scheme) to wind up the scheme. The circumstances in which such a direction may be issued are specified in *section 50B (1)* and include: where the scheme does not satisfy the funding standard or the funding standard reserve or where the trustees of the scheme have failed to comply with a direction made under [subsection \(1\), \(1A\) or \(1B\)](#) of *section 50* within the period specified in [subsection \(3\)\(a\)\(i\)](#) of that section. *Section 50B (1)* applies to defined benefit schemes.

Question 2: If you provided an affirmative answer to question 1:

³⁵ A funded defined benefit scheme is a type of occupational pension scheme whereby: “employees and employers usually pay regular monthly payments into a pension scheme and the money gathered is set aside in the scheme’s trust fund. This fund is kept separate from the employer’s business accounts, ensuring that existing funds will be available to pay members’ pensions even if the employer goes out of business”; see: the Pensions Authority website, available [here](#).

³⁶ See: the Pensions Authority website, available [here](#).

³⁷ See: the Pensions Authority, ‘FAQs on the funding standard reserve’, available [here](#).

- a. ***what statutory and other protections are in place to ensure fairness when restructuring occurs and to protect retired former employees against a significant reduction in the benefits payable to them under their occupational pension schemes?***
- b. ***Do any statutory or other mechanisms exist, which guarantee retired former employees and their representative organisations a right to be consulted and to make submissions prior to the implementation of changes to their occupational pension schemes?***

This answer examines the protections afforded under:

- A. *The Pensions Act 1990, as amended;*
- B. *The Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015;*
- C. *The Pensions Authority's Prescribed Guidance in relation to Section 50; and*
- D. *The European Union (Occupational Pension Schemes) Regulations, 2021*

A. Protections afforded under *the Pensions Act 1990, as amended*

Special safeguards for retired former employees/pensioners

[*Section 50 \(1C\) and \(1D\) of the Pensions Act 1990, as amended*](#), impose the following limits on the reductions that may be imposed, pursuant to a *section 50* order, on benefits payable from a defined benefit scheme to, or in respect of, persons receiving benefits under the scheme or persons who have reached normal pensionable age:

- no reduction may be made where the annual amount of the pension is €12,000 or less, and no reduction may be made which reduces an annual pension to below €12,000;
- where the annual amount of the pension exceeds €12,000 but is less than €60,000, the reduction may not be greater than 10% of that annual amount and must not reduce the annual pension payable to an amount which is less than €12,000; and
- where the annual amount of the pension is €60,000 or more, the reduction may not be greater than 20% of that annual amount and must not reduce the annual pension payable to an amount which is less than €54,000.

[*Section 50 \(2C\)*](#) provides that where the Pensions Authority gives a direction under *section 50* to reduce the benefits payable from a defined benefit scheme to, or in respect of, persons receiving benefits under the scheme or persons who have reached normal pensionable age, whether following an application by the scheme's trustees or otherwise, the trustees shall inform those persons:

- (i) of the reduction in benefits without delay and not later than one month from the date on which that final decision was taken, and
- (ii) 3 months before that final decision is implemented.

[*Section 50 \(2D\)*](#) clarifies that the date of the final decision for the purposes of *section 50 (2C)* is:

- the date of the notification of the direction, where the measures to be taken are specified in the direction; or
- where the measures to be taken are not specified in the direction, the date of the decision taken by the trustees of the scheme in respect of the measures that are necessary to reduce the benefits.

Safeguards for all members and persons receiving/entitled to benefits

[Section 50 \(4\) of the Pension Act 1990, as amended](#), permits the Minister for Social Protection to make Regulations requiring the trustees of a relevant scheme (funded defined benefit schemes) to comply with guidance issued by the Minister or the Pensions Authority regarding requirements to be met in relation to a *section 50* application. The Pensions Authority has issued Guidance pursuant to Ministerial Regulations made under this section, which is discussed below.

Safeguards where a section 50 direction is issued otherwise than upon receipt of an application by the trustees

[Section 50 \(2B\)](#) provides that where the Pensions Authority issues a direction under *section 50*, other than upon receipt of an application by the trustees, the trustees must:

- a) within one month of the date of the direction, notify in writing such persons as may be prescribed by Regulations made by the Minister Social Protection of:
 - i. the direction,
 - ii. the measures to be implemented to reduce the benefits payable under the defined benefit scheme, and
 - iii. the right of prescribed persons to bring an appeal to the High Court under subsection (6); and
- b) submit a copy of the notification made under paragraph (a) to the Pensions Authority within 10 days of the date of the notification.

[Section 50 \(6\)](#) permits such persons as may be prescribed by Regulations made by the Minister for Social Protection, to submit an appeal to the High Court on a point of law against a *section 50* direction by the Pensions Authority, which was issued other than upon application by the trustees. The appeal must be submitted within 21 days of a notification under *section 50 (2B)* or *50 (2C)*.

[Section 50 \(5\)](#) permits the Minister for Social Protection to make Regulations regarding situations where the Pensions Authority proposes to make a direction under *section 50*, otherwise than upon receipt of an application by the trustees of the scheme. The Regulations may include requirements: to notify and provide information to such persons as may be prescribed by the Minister, to ensure that prescribed persons are permitted to make submissions to the Pensions Authority in respect of the proposed direction, and to require the Pensions Authority to consider any submissions received from prescribed persons.

Article 6 of the Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015, discussed below, clarifies that the prescribed persons for the purposes of *section 50 (2B)*, *section 50 (6)* and *section 50B (10)* of the *Pensions Act 1990, as amended*, are the members of the relevant scheme and other persons who are receiving benefits under the scheme or who have

reached normal pensionable age and any authorised trade union or any representative group representing those members or persons.³⁸

Protections in respect of proposed amendments to schemes pursuant to section 50A

[Section 50A \(2\) of the Pensions Act 1990, as amended](#), provides that the Minister for Social Protection may make Regulations requiring the trustees of an [occupational pension scheme](#) (other than a regulatory own funds scheme) to give notice to the scheme's members of any proposal to amend the scheme pursuant to *section 50A* and to give those members an opportunity to make representations to the trustees in relation to the proposal before any amendment to the scheme is made. As noted previously, *section 50A* concerns amendments for the purpose of ensuring that the winding up of the scheme will not be required by reason only of the scheme not having sufficient resources to enable the liabilities of the scheme be discharged.

Protections in respect of proposed Direction to wind up a Scheme pursuant to section 50B

[Section 50B \(6\)](#) of the *Pensions Act 1990, as amended*, provides that the Minister for Social Protection may make Regulations requiring the following actions before the Pension Authority can issue a direction to wind up a defined benefit scheme pursuant to *section 50B*:

- a) the Pensions Authority may, by notice in writing, require a specified person to provide it with such information and by such a time as the Authority may specify;
- b) the trustees of the scheme and the employer to whom it relates must notify and provide information to such persons as may be prescribed by the Minister in the Regulations, when and in such manner as the Pensions Authority may specify;
- c) that such persons as may be prescribed by the Minister in the Regulations be permitted to make submissions to the Pensions Authority in respect of the proposed direction within such period as may be prescribed; and
- d) the Pensions Authority must consider any submissions received.

[Section 50B \(9\)](#) requires the Pensions Authority within 21 days of making the direction to publish a notice in a daily newspaper in the State, setting out the particulars of the direction. [Section 50B \(10\)](#) allows for such persons as may be prescribed by the Minister under Regulations to submit an appeal to the High Court on a point of law against a direction under *section 50B* within 21 days of the date of publication of the notice under subsection (9).

The *Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015*, discussed below, were made pursuant to *section 50B* and *section 50* of the *Pensions Act 1990, as amended*.

Other Safeguards under the Pensions Act 1990, as amended

[Part VI of the Pensions Act 1990, as amended](#), requires trustees of occupational pension schemes to possess certain qualifications and imposes obligations on them. [Part VII](#) prohibits any direct or indirect discrimination in relation to occupational pensions based on nine protected grounds, including age. There are some exceptions whereby differing treatment on the age ground is permissible. As explained by the Irish Human Rights and Equality Commission:

³⁸ The Regulations are available [here](#) and [here](#).

“Differing treatment on the Age Ground is permissible in certain circumstances and may not constitute a breach of the principle of equal pension treatment.

Provided there is no discrimination on the Gender Ground, a scheme can treat persons with different ages or lengths of service differently when deciding to fix ages for admission under an occupational benefit scheme or for entitlement to benefits under the scheme, including fixing different ages for employees or groups of categories of employees.”³⁹

B. Protections afforded under the *Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015*

The *Occupational Pension Schemes (Sections 50 and 50B) Regulations, 2014 to 2015* (the “*Regulations*”)⁴⁰ outline additional requirements and safeguards that apply with respect to: (i) directions made by the Pensions Authority under *section 50*, other than on application by the trustees, to reduce benefits payable from funded defined benefit schemes; and (ii) directions made by the Pensions Authority under *section 50B* of the *Pensions Act 1990, as amended*, to wind up a defined benefit scheme.

Article 3 of the *Regulations* provides that where the Pensions Authority proposes to make a direction under *section 50*, other than on application by the trustees of the scheme, or a direction to wind up a scheme under *section 50B* (a “direction”), it may, by notice in writing, require certain persons to provide it with certain forms of information within a particular time limit. For example, it may require trustees of the relevant defined benefit scheme to provide information regarding the scheme’s long-term stability and sustainability.

Article 4 (1) provides that where the Pensions Authority proposes to make a direction, it may require the trustees to notify in writing:

- a) the members of the scheme and other persons who are receiving benefits under the scheme or who have reached normal pensionable age, and
- b) any authorised trade union or any representative group representing those members or persons.⁴¹

Article 4 (2) stipulates that the written notification must:

³⁹ Irish Human Rights and Equality Commission, ‘Exemptions to the Age Ground in relation to Pensions’, available [here](#).

⁴⁰ The *Regulations* are available [here](#) and [here](#).

⁴¹ A “representative group” is defined under *Article 2 (1)* of the *Regulations* as a group which:

- (a) represents at least 50% of members of a scheme -
 - (i) whose service in relevant employment has ceased, who have not reached normal pensionable age and who have an entitlement to a preserved benefit or any other benefit under the scheme, or
 - (ii) who are receiving benefits under a scheme or who have reached normal pensionable age; and
- (b) has notified the trustees that they represent those members.

- a) outline the funding position of the defined benefit scheme and the circumstances under *section 50* or *section 50B*, as relevant, which permit the Pensions Authority to make a direction,
- b) outline the effect a direction may have on the benefits of scheme members and other persons receiving benefits under the scheme or who have reached normal pensionable age, and
- c) inform the recipients of the notification (see *Article 4 (1)* above) of their right to make written submissions to the Pensions Authority under *Article 5*.

Article 4 (4) requires the trustees of the scheme to provide the Pensions Authority with a copy of the written notification no later than 10 days after sending it.

Article 5 stipulates that, for the purposes of *section 50 (5)(c)* and *section 50B (6)(c)* of the *Pensions Act 1990, as amended*, the members of the scheme and other persons receiving benefits under the scheme or who have reached normal pensionable age and any authorised trade union or any representative group representing those members or persons, can make written submissions to the Pensions Authority in respect of the proposed direction within six weeks of the date of the notification made to them under *Article 4*. *Article 5* requires the Pensions Authority to consider any such submissions before making a direction.

Article 6 stipulates that the prescribed persons for the purposes of *section 50 (2B)*, *section 50 (6)* and *section 50B (10)* of the *Pensions Act 1990, as amended*, are the members of the relevant scheme and other persons who are receiving benefits under the scheme or who have reached normal pensionable age and any authorised trade union or any representative group representing those members or persons.

C. Protections afforded under the Pensions Authority's Prescribed Guidance in relation to Section 50

[Section 50 \(4\) of the Pensions Act 1990, as amended](#), provides that the Minister for Social Protection may make Regulations requiring trustees of funded defined benefit schemes to comply with Guidance issued by the Pensions Authority when making an application for a direction under *section 50*. The Pensions Authority issued [Guidance \(2015 version\)](#) in relation to *section 50 (4)*, which was prescribed under the *Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2013 (as amended or replaced)*. The Guidance requires trustees to do the following.

First, before making the application, the Trustees must undertake a comprehensive review of the scheme with a view to ascertaining its long-term stability and sustainability. Where appropriate and possible, the review should be performed in consultation with the employer. The Guidance identifies certain areas, which the review must, at a minimum, cover, for example, the benefits payable under the scheme, and the options available for reductions in benefit and their impact on the different categories of member and other persons.

Second, the trustees must have requested from the employer contributions sufficient to ensure the long-term stability and sustainability of the scheme without the reductions sought in the application, and the employer must have declined to pay those contributions.

Third, the application must be such that the scheme satisfies the funding standard reserve set out in *Section 44(2)* of the *Pensions Act 1990 as amended*.

Fourth, as part of their application, trustees must set out the required contribution rate, on the assumption that the application is successful, which should be calculated using a long-term gilt yield basis and the most recent mortality projections of the Society of Actuaries in Ireland. Where the proposed contribution rate is less than this, the trustees must provide a detailed explanation of how the proposed contribution rate supports the long-term stability and sustainability of the scheme.

Fifth, the trustees must have obtained legal advice concerning: their powers and duties, the obligations on employers to contribute to the scheme, and the manner in which the benefit reductions envisaged will be affected.

Sixth, the trustees must have obtained actuarial advice on the funding position of the scheme, on the available options considered to address the scheme deficit, and on the requirements related to the funding standard reserve and required contribution rate.

Seventh, before making an application, the trustees must notify in writing, the scheme members, any other person in receipt of benefits under the scheme, and any authorised trade union or representative group. The notification must outline:

- the circumstances giving rise to the proposed application,
- the reasons why the trustees believe an application is in compliance with their fiduciary duties,
- the proposed benefit reductions and the reasons for treating one or more categories of member or other person differently to others,
- that the trustees have requested additional contributions from the employers to avoid the necessity for a *section 50* direction and the response of the employers,
- the projected impact of the reduction(s) on members using such assumptions as the actuary deems appropriate in the circumstances,
- where the application is made under *section 50(1A)*, general examples of the projected impact of the reduction in future increases on the benefits payable using such assumptions as the actuary deems appropriate in the circumstances, and
- where the application is made under *section 50(1B)*, general examples of the projected impact of the reduction(s) on members/other persons in receipt of benefits using such assumptions as the actuary deems appropriate in the circumstances.

Eighth, the trustees must give members and other persons receiving the notification at least one month to make written observations to the trustees on the proposed application.

Ninth, the trustees must not make a decision on whether or not to make the application until the expiry of the period for making observations, and they must give due consideration to those observations before making a decision on whether or not to make the application.

D. Protections afforded under the *European Union (Occupational Pension Schemes) Regulations, 2021*

The [European Union \(Occupational Pension Schemes\) Regulations, 2021](#), transpose the [IORP II Directive](#) into Irish law.⁴² They enhance the obligations imposed on trustees of occupational pension schemes and in this regard strengthen the protections afforded to scheme members. See [here](#) for the Pension Authority's Guidance on the Regulations.

Question 3: Where changes are proposed to occupational pension schemes, which would impact the benefits payable to retired former employees under those schemes, do those retired former employees and their representative organisations have recourse to the industrial relations machinery of the State?

- a. Can they submit a complaint/refer a dispute, individually or collectively, to the statutory body responsible for dealing with industrial relations disputes concerning proposed changes to occupational pension schemes?**
- b. Are they entitled to be represented at any industrial relations negotiations/discussions involving employers, trade unions, workers' representative organisations and other relevant actors regarding proposed changes to benefits payable to them under occupational pension schemes?**
- c. If retired former employees and their representative organisations do not have recourse to the industrial relations machinery of the State in circumstances where changes to their occupational pension schemes are being considered, which could impact the benefits payable to them under those schemes, are there alternative mechanisms in place for ensuring that they and their representative organisations can participate in any negotiations surrounding the proposed changes.**

In Ireland, the [Workplace Relations Commission](#) (WRC) is the statutory body with responsibility for the resolution of workplace related disputes between employers and workers, and certain industrial relations disputes. The WRC was established under the [Workplace Relations Act 2015 as amended](#). It offers conciliation, advisory, mediation and ad hoc facilitation services to employers, workers and representative organisations for workers involved in industrial relations disputes. If a resolution cannot be achieved through these means, the dispute may be referred to an adjudication officer of the WRC for resolution. Decisions of adjudication officers may be appealed to the Labour Court.

Industrial relations disputes in Ireland are primarily regulated by the *Industrial Relations Acts 1946 to 2019*. In Ireland, access to the industrial relations machinery of the State and the WRC is generally restricted to workers, as defined under [section 23 of the Industrial Relations Act 1990, as amended](#), and organisations that represent workers. This means, for example, that retired former employees who are receiving benefits under a funded defined benefit scheme are generally precluded from accessing the WRC and the industrial relations machinery of the State, when they are notified that the trustees of the scheme intend to make an application to the Pensions Authority for a direction

⁴² IORPs are "financial institutions that manage collective retirement schemes for employers to provide retirement benefits to their employees (i.e., pension scheme members and beneficiaries)". See European Insurance and Occupational Pensions Authority website, available [here](#).

under *section 50 of the Pensions Act 1990, as amended*, which would result in a reduction in the benefits payable to them under the scheme.

However, [section 26A \(1\) of the Industrial Relations Act 1990, as amended](#), permits an adjudication officer of the WRC or the Labour Court to investigate a trade dispute involving a retired worker where:

- a) the dispute was referred to the WRC for conciliation within a period of 6 months from the date on which the worker's employment ceased, or the date on which the event to which the dispute relates occurred, whichever is the earlier; or
- b) the dispute was referred to an adjudication officer of the WRC or the Labour Court within 6 months of the date on which the worker's employment ceased, or the date on which the event to which the dispute relates occurred, whichever is the earlier.

[Section 26A \(2\) of the Industrial Relations Act 1990, as amended](#), permits an adjudication officer or, as the case may be, the Labour Court to extend the period in which the WRC or the Labour Court may investigate a trade dispute involving a retired worker by up to an additional 6 months where they are satisfied that the failure to refer the dispute within the initial six month period was due to reasonable cause.

[Section 26A \(3\) of the Industrial Relations Act 1990, as amended](#), prohibits the WRC or the Labour Court from investigating a trade dispute involving a retired worker where the dispute is subject to investigation by the Financial Services and Pensions Ombudsman.

4. Where changes are being considered or have been made to an occupational pension scheme, which could result, or have resulted, in changes to the benefits payable to retired former employees under the scheme, do those members have access to an independent and impartial adjudicative body, which can adjudicate upon the lawfulness and fairness of the changes proposed/imposed?

In Ireland, where a member of an occupational pension scheme has a complaint about their pension, which they are unable to resolve with their employer, the administrator of the scheme, or the trustees of the scheme, they can contact the Pensions Authority or submit a complaint directly to the [Financial Services and Pensions Ombudsman](#).

[The Pensions Authority](#) is a statutory body established under the *Pensions Act 1990, as amended*, whose functions include the regulation of occupational pension schemes. It can:

- advise scheme members of their rights and direct them to the appropriate person or organisation for help;
- in some circumstances, act on behalf of members who have concerns about their pensions;
- investigate the status and conduct of an occupational pension scheme; and
- prosecute breaches of the *Pensions Act 1990, as amended*.

The [Financial Services and Pensions Ombudsman](#) (FSPO/Ombudsman) is a statutory body established under the [Financial Services and Pensions Ombudsman Act 2017 \(as amended\)](#) (the '2017 Act'). [Section 12 \(1\)](#) of the 2017 Act stipulates that the principal function of the FSPO is to

investigate complaints concerning the conduct of financial service providers or pension providers in an appropriate manner proportionate to the nature of the complaint by:

- a) informal means,
- b) mediation,
- c) formal investigations, including oral hearings if necessary, or
- d) a combination of the above.

Parts 5 and 6 of the 2017 Act outline the complaints procedure. Complaints may be submitted by:

- i. a consumer of a financial service or a consumer of a pension product,
- ii. an actual or potential beneficiary or someone acting on their behalf, or
- iii. a person belonging to a class of persons, which the Minister for Finance has specified in regulations adopted under the *2017 Act* as being entitled to make a complaint.⁴³

[Section 44 \(1\) \(b\)](#) permits the FSPO to consider complaints concerning the conduct of pension providers involving:

- the alleged financial loss occasioned to a complainant by an act of maladministration done by or on behalf of the pension provider, or
- any dispute of fact or law that arises in relation to conduct by or on behalf of the pension provider.

[Section 51](#) provides that where the complaint concerns the conduct of a pension provider, the complaint may be submitted either: within six years of the relevant conduct; or within three years of the date the complainant became aware of, or should reasonably have become aware of, the conduct.⁴⁴ The Ombudsman may use his or her discretion to grant an extension where reasonable grounds exist, and it is just and equitable in all the circumstances to do so. For a complaint to be admissible, complainants must have first attempted to resolve the complaint using the internal dispute resolution process of the pension provider whose conduct is the subject of the complaint.⁴⁵ Furthermore, the Ombudsman cannot address complaints relating to conduct which is, or was, the subject of legal proceedings before a court or tribunal; or conduct which is within the jurisdiction of the WRC, the Pensions Authority, or an alternative forum or tribunal.⁴⁶

Where the complaint concerns the conduct of pension providers, [section 61](#) permits the Ombudsman to order such redress as he or she considers appropriate, including financial redress provided that it doesn't exceed any actual loss of benefit under the scheme concerned. The Ombudsman may not direct a pension provider to pay compensation.⁴⁷

[Section 64](#) of the *2017 Act* permits either of the parties to appeal a decision or direction of the Ombudsman to the High Court within 35 days of the date of notification of the Ombudsman's decision or within such further period as the court considers just and equitable in all the circumstances.

⁴³ For a definition of a consumer of a pension product and an intended beneficiary, see *section 2(1)* of the *2017 Act*.

⁴⁴ The FSPO must consider additional requirements when applying time limits, [section 51](#) and on the [FSPO webpage](#).

⁴⁵ [Sections 54 and 55](#) of the *2017 Act*.

⁴⁶ [Section 44 \(2\)](#) of the *2017 Act*.

⁴⁷ FSPO, 'Annual Report for 2021' (2022) p. 11, available [here](#).

Subsection (3) permits the High Court to make various orders, including an order setting aside the Ombudsman's decision or direction, amending it, or affirming it either with or without modifications. The High Court may also make an order remitting the decision or direction to the Ombudsman for review with the High Court's opinion on the matter; an order concerning costs; and/or any such other order as it considers just in all the circumstances. Either party may seek leave to appeal the High Court's decision to the Court of Appeal on a question of law. Otherwise, the decision of the High Court on appeal is final.

[Section 65](#) concerns the enforcement of the Ombudsman's decisions. It stipulates that where a pension provider fails to implement a decision of the Ombudsman within the relevant timeframe specified in the decision, and the decision is not the subject of an appeal before the High Court, the Ombudsman or the successful complainant may apply to the Circuit Court for an order requiring the pension provider to comply with the decision within a set period. The Circuit Court, where satisfied that the Ombudsman had the relevant power to make the decision concerned, must grant the order unless, due to lapse of time, compliance is not possible. In such circumstances, the court must make an order providing for such redress as it considers appropriate having regard to *Part 7* of the *2017 Act* and all the circumstances.

The FSPO is subject to judicial review. The High Court has previously considered the jurisdiction of the Pensions Ombudsman, one of the predecessor bodies to the FSPO,⁴⁸ to investigate complaints concerning a reduction of pension entitlements.⁴⁹

In the aftermath of the 2008 financial crash, there were a number of cases in which reductions to present or future pension payments were challenged before the courts in Ireland.⁵⁰

Breakdown of Responses

25 responses were received to the ECPRD Questionnaire as of 16 June 2023. Of these, 17 were substantive and provided information regarding conditions in the following 16 States: Austria, Bulgaria, the Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, the Netherlands and the UK. Two responses were received concerning conditions in Poland. Four of the responses constituted a standard response indicating that, for various reasons, a decision was taken not to reply. The entities that submitted this response were Belgium - Chambre Des Representants, UK Parliament – House of Lords (although a response was received from the UK House of Commons Library), France - Senat, and Denmark – Folketinget. Two responses indicated that a response had already been provided by another entity for the same State. Representatives of Sweden's Riksdag and Germany's Parliamentary Research Section indicated that, due to a heavy workload, they would be unable to provide a reply before the deadline; but, offered to provide one at a later date. These offers were accepted, and the relevant information will be provided to the Deputy upon receipt of same.

⁴⁸ In 2017, as part of its 2011 programme of public sector reform, the Government decided to merge the Financial Services Ombudsman's Bureau and the Pensions Ombudsman to form the Office of the FSPO.

⁴⁹ See, e.g., *Minister for Public Expenditure v Pensions Ombudsman* [2015] IEHC 183; and *Willis v Pensions Ombudsman* [2013] IEHC 352, discussed in Keith Blizzard and Patrick Ambrose, 'Feathering the Egg Nest' (The Law Society Gazette, 21 October 2022) available [here](#).

⁵⁰ See, e.g., *Unite the Union and Paul Gallagher v Minister of Finance, Ireland and the Attorney* [2010] IEHC 354; and discussion of caselaw in *ibid*.

16 entities declined to submit any response. This number includes Ireland as the questionnaire was also sent to Ireland as an EU member state. In some cases where no substantive response was provided, this was because a response had already been provided by another entity in the same State. The Deputy indicated that she was particularly interested in receiving responses from the UK, Spain, France, Belgium, the Netherlands, Finland and Portugal. Of these States, no response was received from France or Belgium. In addition, no substantive response was received from Croatia, Cyprus, Denmark, Germany, Greece, Italy, Malta or Sweden. The situation in States that did not provide substantive responses is not considered in the briefing paper.

The screenshot shows the ECPRD website interface. On the left is a dark blue navigation menu with the ECPRD logo and links for Home/News, Requests (highlighted), Meetings/Seminars, Areas of Interest/Projects, Parliaments, Internal organisation, Search, Contact, and Legal notice. The main content area is white and displays 'Request 5465' with a search bar and user profile icon. Below the request title, there are tabs for 'Request details', 'Replies', and 'Comments'. The request details section shows the title '5465 Protectons and redress for retired workers in respect of changes to benefits payable under occupational pension schemes', the country 'IRELAND' with the Irish flag, and the organization 'HOUSES OF THE OIREACHTAS'. It also lists 'Subject Areas' as '28.15 Pensions, retirement' and shows '25 replies (out of 40)'. A 'Get all files' button is visible in the bottom right corner. A logo for 'Houses of the Oireachtas' is also present.

Responses regarding the situation in individual States

The information included in the ECPRD responses is outlined below. As noted previously, at times, the information provided was somewhat incomplete, unclear and/or did not appear to be directly related to the questions asked. On occasion, the author supplements the information received in the ECPRD responses with information obtained from the author's own research. The information below does not purport to be in any way exhaustive.

Austria

Introduction to Austria's Pension System

Austria uses a "Three Pillar Model" for securing retirement provision entailing a public (state) pillar financed by tax contributions (20%) and social insurance contributions (80%), an occupational pillar (discussed below), and a private pillar entailing private saving for retirement provision.⁵¹ The latter two pillars play a secondary role to state pensions.⁵² State pensions are "based on the 80/45/65 rule: an 80% gross replacement rate for people who have paid 45 years of social security contributions and who retire at 65".⁵³ Self-employed workers are required to make compulsory

⁵¹ Austrian Economic Chambers (WKO), 'Pension Funds in Austria', available [here](#).

⁵² Ibid.

⁵³ Florian Blank et. al. 'Why Is Austria's Pension System So Much Better Than Germany's?' (2016) *Intereconomics* 118-125, available [here](#). The replacement rate is: "the percentage of a worker's pre-

contributions to the state pension system and civil servants' pensions have also been brought into line with this system, meaning that it encompasses virtually the entire working population.⁵⁴

Many occupational pension schemes offered by private companies in Austria involve privately operated pension funds (*Pensionskasse*), which can either be for a large single employer or for multiple employers.⁵⁵ Employers make regular voluntary contributions for employees and employees can make additional voluntary contributions.⁵⁶ Pension funds can be established as defined benefit schemes, defined contribution schemes or a combination of the two.⁵⁷

The employer and employees decide via an agreement on the specific contributions to be made and the obligations of the parties.⁵⁸ This will take the form of a works agreement, a collective labour agreement or an individual agreement based on a pro forma contract.⁵⁹ Article 3 of the [Company Pensions Act](#) identifies certain issues that must be addressed in this agreement, including the participation of beneficiaries in the administration of the pension fund, the entitlement of beneficiaries to benefits, the amount of employer contributions, and the conditions and legal effects of the dissolution of a single-employer pension fund. The website of the [Financial Market Authority \(FMA\)](#) suggests that beneficiaries (both those currently in receipt of pensions and those entitled to future benefits) would generally be afforded rights of participation, presumably under this agreement, in the Pensionskasse's supervisory board, advisory committee and general meeting. This employer/employee agreement forms the basis for the pension fund contract between the employer and the pension fund.⁶⁰

The [FMA](#) supervises providers of pension funds in Austria pursuant to the [Financial Market Authority Act](#). Its tasks include the granting of licences for pension fund activities and monitoring the adherence of pension funds to their obligations under the Pensionskassen Act.⁶¹ In terms of general safeguards, before granting a licence to a pension fund, the FMA must ensure that certain requirements are satisfied. For example, the fund must be established as a joint stock company; there must be sufficient equity capital; the fund must have an approved business plan, and members of the management board must have the necessary skills and experience.⁶²

In terms of safeguards, contributions to the pension fund are pooled and administered in a separate legal entity known as an "investment and risk sharing group" (IRG).⁶³ This allows for the balancing of technical risks and joint investment.⁶⁴ According to the FMA website, the IRG's assets "are protected in the event that the pension fund files for bankruptcy, which means that

retirement income that is paid out by a pension program after the worker retires". See: Julia Kagan, 'Replacement Rate' (*Investopedia*, 23 September 2021) available [here](#).

⁵⁴ Florian Blank et. al. 'Why Is Austria's Pension System So Much Better Than Germany's?' (2016) *Intereconomics* 118-125, available [here](#).

⁵⁵ *Ibid.*

⁵⁶ Financial Market Authority website, available [here](#).

⁵⁷ *Ibid.*

⁵⁸ Company Pensions Act, Article 3; see unofficial English translation, [available here](#).

⁵⁹ Financial Market Authority website, available [here](#).

⁶⁰ Austrian Economic Chambers (WKO), 'Pension Funds in Austria', available [here](#).

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Financial Market Authority website, available [here](#).

⁶⁴ *Ibid.*

beneficiaries' claims are not forfeited".⁶⁵ Pension benefits are paid out by the pension fund as: old-age pensions, survivors' pensions and invalidity pensions.

The Pensionskassen Act provides the legal framework for establishing and operating a pension fund. The [Company Pensions Act](#) regulates the securing of benefits and pension expectancies arising from commitments made by private employers to pay contributions to pension funds, to pay benefits directly to employees and their survivors, and to pay premiums for life assurance for the benefit of employees and their survivors.⁶⁶ Both the Pensionskassen Act and the Company Pensions Act are effective from 1 July 1990.⁶⁷

Reply to ECPRD Questionnaire concerning the Situation in Austria

A reply to the ECPRD Questionnaire was received from the Legal, Legislative and Research Service of the Austrian Parliamentary Administration. It indicates that the information contained in the reply was provided by the Federal Ministry of Labour and Economy.

With regard to **Question 1** (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme) and **Question 2[a]** (concerning the existence of statutory and other protections aimed at ensuring fairness when restructuring occurs), the reply refers to protections included in Article 5 of the [Company Pensions Act](#). Article 5 provides that if the employment relationship is terminated before the benefit event occurs, the entitlement to any old-age or survivors' pension acquired thus far from contributions becomes vested [subject to the expiration of a minimum mandatory period of at least three years of employer contributions, where applicable].

Whilst not explicitly mentioned in the reply to the ECPRD Questionnaire, the additional provisions of the Company Pensions Act, outlined below, are relevant in relation to **Questions 1 and 2[a]**.

Article 3 provides that the conditions and legal effects of the dissolution of a single-employer pension fund must be addressed in the collective agreement or individual contract between employers and employees and it stipulates that the securing of the beneficiaries' claims must take precedence over other pension fund benefits. It also provides that the conditions for the termination by the employer of the contract between the employer and the pension fund, pursuant to Article 17 of the Pensionskassen Act, and the legal effects of such termination with regard to beneficiaries' claims, must be addressed in the agreement between employers and employees.

Article 8(6) provides that, subject to any standards of collective law or individual agreements concluded prior to the Act's entry into force that specify otherwise, the employer may only suspend or restrict the acquisition of future pension expectancies where and for as long as:

4. this has been stipulated in the standards of collective law or agreed in writing;
5. compelling economic reasons exist; and
6. in businesses that have a competent works council, the works council was consulted at least three months prior to the suspension or restriction.

⁶⁵ Ibid.

⁶⁶ Company Pensions Act, Articles 1 and 2; see [unofficial English translation](#).

⁶⁷ Austrian Economic Chambers (WKO), 'Pension Funds in Austria', available [here](#).

Article 9, concerning the suspension and restriction of benefits, provides that, subject to any standards of collective law or individual agreements concluded prior to the Act's entry into force that specify otherwise, benefits may only be suspended or restricted where, and for as long as, the conditions of paragraphs 1 and 2 of Article 8(6) are met and where the employer used the right granted to them to discontinue, suspend or restrict the acquisition of future pension expectancies. It further provides that where benefits are covered by securities in accordance with Article 11, they must not be suspended or restricted and the relevant securities must not be pledged [i.e., used to secure a debt] or sold.

Article 10 stipulates that, provided a value adjustment was not excluded and no other agreements were made, the employer must annually appreciate benefits from direct guarantees by the adjustment factor pursuant to Article 108f ASVG, Federal Law Gazette No. 189/1955. It indicates that the adjustment may be omitted where the economic situation of the undertaking does not allow a value adjustment and works council, where one exists, was consulted.

Article 18 obliges employers to uphold the principle of equal treatment in accordance with labour legislation. It stipulates that in the case of any restriction or revocation of rights pursuant to the Act, the employer must treat beneficiaries according to balanced principles that rule out any arbitrary or inappropriate distinctions between employees or groups of employees.

Article 17 obliges the employer, the Pensionskasse or the insurance undertaking (where relevant) to disclose information annually about the extent of the pension expectancy and the extent of the benefits that may be claimed where the benefit event occurs, at the request of the beneficiary, the former employee or the survivor.

No response was provided to **Question 3** of the ECPRD Questionnaire (concerning the ability of retired workers to access the industrial relations machinery of the State).

Of relevance to **Question 4** of the ECPRD Questionnaire (concerning the right of access to an independent and impartial adjudicative body where changes are proposed/imposed), it should be noted that the [Financial Market Authority](#) can receive complaints concerning companies that it supervises. More information is available [here](#). It should also be noted that in performing its tasks, the FMA is required to consider "the interests of the Austrian economy in a functioning pension company system as well as the interests of persons entitled to receive benefits from a *Pensionskasse* in future or already receiving such benefits".⁶⁸

A response to **Question 4** is included in the reply to the ECPRD Questionnaire; however, it appears to address a situation whereby an amendment to the legislation regulating the operation of occupational pension schemes is proposed, as opposed to situations whereby changes are proposed/imposed in respect of individual occupational pension schemes. The reply indicates that where changes are proposed, "this would be with the legal interest groups and the ministries concerned with regard to the associated legal issues" (in particular, the right to property and the protection of rights acquired under individual contracts). It notes that the interests of former employees and current recipients of a company old-age pension would be represented by the Chamber of Labour as the statutory interest group for employees. It states that a "corresponding working draft would have to be subjected to an assessment procedure before parliamentary

⁶⁸ Ibid.

treatment, in which - in addition to a large number of other institutions involved and the statutory interest groups - the interest groups of pension fund beneficiaries, which are based on voluntary associations, could also comment.” It advises that any proposed legislative changes would have to conform to the Constitution and European law, and that any provisions enacted would be subject to review by the Austrian Constitutional Court. It further indicates that where legislative amendments are made which impact upon benefits payable, the affected beneficiaries would have the option of initiating proceedings before the labour and social courts in the event of a dispute.

Finland

Introduction to Finland’s Pension System

Finland’s pension system has been described as “rather unique, with a high coverage and a dominant role of the public mandatory pension provision”.⁶⁹ In Finland, pension provision is divided into three pillars: (1) statutory pensions in the form of a national pension scheme and a mandatory earnings-related employment pension scheme; (2) collective industry or employer-specific pension schemes, including group pension insurance arranged by the employer; and (3) voluntary pensions, which may take the form of individual pensions or long-term saving accounts.⁷⁰

In Finland, the first pillar is comprised primarily of a mandatory earnings-related employment pension scheme for the employed/self-employed and a national pension scheme, which provides basic security for those who have no pension income or whose earnings-related income is not high enough to meet the minimum income standard.⁷¹ Mandatory earnings-related pensions are managed by private pension companies and funds, and labour market organisations of employees and employers play a key role in their administration.⁷² Funds are financed primarily on a pay as you go basis, and are also partly funded.⁷³ Both employees and employers make contributions.⁷⁴ The pensions are defined-benefit.⁷⁵ The earnings-related pension is uprated on an annual basis with the earnings-related pension index.⁷⁶ Until 2005, the index used to convert annual wages to determine the level of pension was weighted at 50% wages and 50% consumer prices. However, the index was adjusted in 2005 so that the split was 80% wages to 20% consumer prices prompting citizens’ initiatives on indexing in recent years.⁷⁷

Employers can arrange occupational pension provision for employees on a group basis or for specific employees.⁷⁸ However, voluntary supplementary pensions, both occupational pensions and private pensions, do not play a very significant role in Finland.⁷⁹ This is because the statutory earnings-related pension scheme covers practically all types of employment, doesn’t place any

⁶⁹ Susan Kuivalainen and Kati Kuitto, ‘Finland: Pension reforms in Finland’, in Kolaczkowski, Maher and Stevens (eds), *The Evolution of Supplementary Pensions: 25 Years of Pension Reform* (Edward Elgar Publishing 2022) 77-98, at p. 77.

⁷⁰ Finnish Centre for Pensions, ‘Supplementary Pensions’, available [here](#).

⁷¹ Susan Kuivalainen and Kati Kuitto, ‘Finland: Pension reforms in Finland’, in Kolaczkowski, Maher and Stevens (eds), *The Evolution of Supplementary Pensions: 25 Years of Pension Reform* (Edward Elgar Publishing 2022) 77-98, at p. 77.

⁷² *Ibid.*, at p. 80.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, at pp. 80-81.

⁷⁶ *Ibid.*, at p. 81.

⁷⁷ *Ibid.*, at pp 86 and 88.

⁷⁸ *Ibid.*, at p. 82.

⁷⁹ *Ibid.*, at pp 77-98.

ceilings on pensionable earnings or the pension amount, and provides a reasonably high replacement rate.⁸⁰ It has some of the features of second pillar supplementary pensions.⁸¹

More information on the Finnish pension system is available on the website of the Finnish Centre for Pensions (see [here](#) and [here](#)). See also: www.fine.fi.

Reply to ECPRD Questionnaire concerning the Situation in Finland

A general reply to the ECPRD Questionnaire was received from the Research Service of the Parliament of Finland. It reiterates the dominant role of the first pillar in Finland's pension system. It indicates that presently the majority of new supplementary collective occupational pensions are "arranged as defined contribution unit-linked systems, where the benefits are accrued based on the contributions paid and the investment income received, and the level of the benefits is not defined beforehand."

The general reply includes information of relevance in respect of **Question 1** (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme) and **Question 2[a]** (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs). This information is outlined below.

The reply advises that reductions were made to the basic flat-rate pension system during the 1990s in response to an economic depression. It explains that previously, a small fixed basic pension was paid to all retirees as well as a pensions-tested part where the earnings-related pension was low. During the early 1990s, the fixed part was merged into the pension-tested part and, consequently, only those with a low earnings-related pension could receive the basic pension. The reply advises that the basic pension isn't considered to constitute protected property.

The reply indicates that under the statutory earnings-related pension system, assets such as accrued pension rights are protected under the Constitution. It stipulates that, "as a rule, changes are made only to future accruals". It adds that where significant changes are made, which impact those not yet retired, transition periods are typically used. This means that individuals close to the retirement age are protected against any potential negative effects of the changes.

Commenting on supplementary voluntary occupational pension schemes, the reply indicates that when the earnings-related system was initially introduced, the levels of statutory pension were quite low and consequently, some employers had their own pension arrangements, which were integrated into the statutory system quite closely. These were called registered supplementary pensions under TEL (the Employees' Pensions Act). However, they were closed to new members in 2001 and terminated on 31 December 2016. The reply explains that the amount of any supplementary pension already accrued under these schemes was saved and will be paid along with the statutory pension. It adds that employers have replaced these arrangements with free-form supplementary benefits or paid out the missing part of the future benefit as a lump-sum. The reply confirms that there were no changes to benefits in payment.

⁸⁰ Ibid., at p. 78; and Finnish Centre for Pensions, 'Supplementary Pensions', available [here](#).

⁸¹ Susan Kuivalainen and Kati Kuitto, 'Finland: Pension reforms in Finland', in Kolaczkowski, Maher and Stevens (eds), *The Evolution of Supplementary Pensions: 25 Years of Pension Reform* (Edward Elgar Publishing 2022) 77-98, at p. 80.

The reply advises that supplementary voluntary occupational pensions may be provided by pension funds or life insurance companies, which are regulated by law. It clarifies that “[t]he laws regulating pension funds state that benefits of those already retired cannot be deteriorated if they are arranged in a pension fund”. The reply indicates that insurance contract law doesn’t specify whether changes can be made to pension insurance in payment taken from a life insurance company. However, it notes that according to the Finnish [Financial Ombudsman Bureau](#), “there have been no complaints concerning the changing of the benefits in payment”. The reply indicates that in cases of insolvency, the benefits payable can change. It adds that future indexation rules can also be changed.

Of relevance to **Question 2[b]** of the ECPRD Questionnaire (regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and to make submissions concerning proposed changes), the reply clarifies that an employer cannot unilaterally change the supplementary pension rules if the pension arrangement was considered to form a part of the employment contract. It indicates that in such circumstances, changing the rules would require negotiations between the employer and the employees. It does not make any reference to the participation of retired former employees in these negotiations.

The reply does not explicitly address **Question 3** (concerning the ability of retired workers to access the industrial relations machinery of the State).

Of relevance to **Question 4** (concerning the right of access to an independent and impartial adjudicative body where changes are proposed/imposed), [the Financial Ombudsman Bureau \(FINE\)](#) provides advice to consumers of relevant financial products and offers a dispute resolution procedure in respect of disputes between consumers and relevant service providers, including insurance companies, banks, investment firms, fund management companies, pension funds and employee benefit funds.

The Netherlands

A reply to the ECPRD Questionnaire was provided on behalf of the House of Representatives of the Netherlands. It provides both general information regarding the pension system in the Netherlands and individualised responses. It indicates that the latter are based on the current pension system and, as far as possible, on an anticipated new system.

Introduction to the Pension system in the Netherlands

The reply to the ECPRD Questionnaire indicates that currently the Dutch pension system is based on the following three pillars: (1) a General (State) Old Age Pension (AOW) regulated by the General Old Age Pensions Act; (2) an employment-related pension; and (3) an individual supplementary pension, which people build up through life insurance or a bank savings scheme.

The reply indicates that every person living or working in the Netherlands automatically builds up a General Old Age Pension under the state pension scheme. It advises that the government adjusts the AOW level in line with the development of the minimum wage on an annual basis. It explains that currently, the statutory retirement age is connected to the life expectancy of Dutch pensioners.

The reply states that most employees also build up a supplementary pension through the second pillar. It notes that both the employer and the employee contribute to this pension, which is typically administered by a pension fund being either a pension fund for all businesses in a particular

industry, a fund that works for one specific company, or a fund for a group of people working in certain (often medical) professions. It advises that the pension fund invests the contributions received from employers and employees.

The reply advises that the [Future Pensions Act](#) will enter into force on 1 July 2023 and will revise the second pillar of the system (employment-related pensions). It indicates that a transition period will operate until 2027 to enable employers and pension providers to implement the changes in consultation with employees and/or their representatives. It advises that the changes seek to ensure that the pension system can adapt to changes in the performance of the overall economy.

The reply advises that the new pension system will be contribution-based, and pension funds will not promise to pay out a defined amount of benefits in the future. It indicates that the pension fund will invest the pension scheme contributions and employees will build up an individual pension capital based on their contribution instead of a guaranteed annual fixed benefit. It notes that this means that the level of the pension will depend on the investment results and the interest rate at the time of payment. It notes that since pension contributions apply the same percentage for all ages, pension costs under the new scheme will more stable and will not increase as workers age.

The reply advises that the new scheme will allow pension providers to take more account of differences between groups of members when investing contributions. For example, it indicates that a pension fund will be able to take higher risks when investing on behalf of younger groups who are far off the age of retirement. It advises that under the new system, employers and employees can decide to set apart a specific share of the collective pension capital as a buffer for setbacks.

Reply to Individual Questions in ECPRD Questionnaire concerning the Netherlands

In response to **Question 1** of the ECPRD Questionnaire (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme), the reply advises that pension funds can reduce pensions if the funding ratio is too low. It explains that a pension fund's funding ratio indicates whether the fund holds enough reserves to pay out pension benefits, now and in the future. It advises that pension funds use the actuarial interest rate to calculate the funding ratio. It notes that: the higher the actuarial interest rate, the less reserves pension funds are required to hold; the lower the actuarial interest rate, the more reserves they need. It indicates that the changes to employment-related pensions being introduced under the [Future Pensions Act](#) seek to ensure that pensions can be increased more rapidly during upturns and reduced during downturns, subject to safeguards.

In response to **Question 2[a]** of the ECPRD Questionnaire (regarding the existence of statutory and other protections to ensure fairness when restructuring occurs), the reply indicates that the exact rules and limits for reducing pensions can differ depending on the pension fund and are laid down in the recovery plan of the relevant fund.

The reply advises that the Central Bank of the Netherlands (De Nederlandsche Bank (DNB)) supervises the financial position of pension funds and whether they comply with statutory financial laws and regulations, for example, when increasing or decreasing pension benefits.

The reply advises that the reduction of pensions is subject to strict rules. It indicates that the financial requirements for pension funds are laid down in the Financial Assessment Framework

(FTK)⁸², which is part of the Pensions Act. It states that the FTK sets conditions for the financial health of a pension fund.

It states that, in order to prevent pension funds from having to reduce pensions in the run-up to the new pension system, a transition-ftk⁸³ was introduced in 2019, which contains adjusted rules for increasing and decreasing pensions. It notes that a condition for being allowed to use the transition-ftk is that the pension fund intends to enter the transition (invaren), which is the internal collective value transfer of existing pension entitlements to the new scheme.⁸⁴

The reply indicates that the [Future Pensions Act](#) contains safeguards aimed at protecting against the possibility of reductions during downturns. It advises that under the new system, employers and employees can decide to set apart a specific share of the collective pension capital as a buffer for setbacks. It explains that there will be a solidarity reserve for losses, and it indicates that reductions can be spread over several years. It advises that the rules for this buffer will have to be laid down in advance so as to enable everyone to see how it is built up, for example, by setting apart a share of the pension contributions or by using a share of the investment returns.

In response to **Question 2[b]** of the ECPRD Questionnaire (regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and make submissions concerning proposed changes to occupational pension schemes) the reply answers “No”.

In response to **Questions 3, 3[a] and 3[b]** of the ECPRD Questionnaire (concerning the ability of retired workers to access the industrial relations machinery of the State), the reply provides “No” answers.

In response to **Question 3[c]** of the ECPRD Questionnaire (regarding alternative mechanisms for ensuring that retired workers and their representative organisations can participate in any negotiations surrounding proposed changes to their occupational pension schemes), the reply advises that the [Social and Economic Council of the Netherlands](#) (SER) is an advisory body in which employers, employees and independent experts (Crown-appointed members) work together to reach agreement on key social and economic issues. It states that older people's organisations participate in the drawing up of the pension agreement (predecessor of the new pension act) through a sounding board group of which they and youth organizations are members. It indicates that SER also invites organisations for the elderly to provide advice on subjects that concern them. It adds that the elderly are represented on the boards of most pension funds. It notes that where pension funds have a joint governance model, Article 100 of the current [Pensions Act](#) prescribes that representatives of employees (associations), together with representatives of pension beneficiaries, occupy at least as many seats as representatives of employers (associations). It confirms that this rule is also included in the new Future Pensions Act. The reply adds that the pension sector has imposed a diversity standard on itself through the Pension Fund Code⁸⁵

⁸² [wetten.nl - Regeling - Wet aanpassing financieel toetsingskader - BWBR0036084 \(overheid.nl\)](#).

⁸³ [Kaders transitie FTK | Invaren | Werken aan ons Pensioen](#).

⁸⁴ The transition-ftk is published every year as an Order in Council (i.e. a decision by the government in which rules from a law are further elaborated [Staatsblad 2023, 130 | Overheid.nl > Officiële bekendmakingen \(officielebekendmakingen.nl\)](#)).

⁸⁵ [Staatscourant 2018, 55140 | Overheid.nl > Officiële bekendmakingen \(officielebekendmakingen.nl\)](#).

whereby at least one woman and one man must have a seat on every pension fund board. It adds that people both above and below 40 years of age must also be represented on the board.

In response to **Question 4** of the ECPRD Questionnaire (concerning the right of access to an independent and impartial adjudicative body where changes are proposed/imposed), the reply answers “No”.

The United Kingdom

Introduction to the Pension System in the UK

The UK introduced a new flat rate public pension system in April 2016.⁸⁶ Prior to this, the public scheme had two tiers: a flat-rate basic State pension and a State earnings-related pension. Both were supplemented by a large voluntary private pension sector encompassing employer-sponsored occupational pension schemes that were principally established on a defined benefit basis, and personal pensions in the form of individual pension contracts established on a defined contribution basis and provided through insurance companies and unit trusts.⁸⁷

The Pensions Act 2008 provided for auto-enrolment obligations to be introduced over a six-year period starting with the largest employers in October 2012.⁸⁸ UK employers are now obliged under statute to ensure that nearly all workers are afforded access to a minimum level of pension provision. Reporting by the Pensions Regulator indicates that, as a result, overall employee membership of supplementary pension schemes increased from 55% in 2012 to 87% in 2018.⁸⁹ Auto-enrolment provisions require employers to make a minimum contribution of 3% of the worker’s eligible earnings with the worker paying 5%.⁹⁰

Indexation rules apply in respect of schemes established as defined benefit schemes and schemes established as defined contribution schemes.⁹¹ Defined contribution schemes must have a payment schedule outlining what contributions are due and when.⁹²

Of relevance in terms of general safeguards, occupational pension schemes are established as trusts in the UK whereby assets are held separately by trustees for the benefit of members.⁹³ In order to satisfy enhanced governance requirements, many employers are now opting for defined contribution master trusts (which operate on a collective basis).⁹⁴ According to the [Pensions Regulator’s website](#), a master trust is an occupational pension scheme that provides money purchase benefits; is used, or intended to be used, by two or more employers which are not connected with each other; and is not a public service pension scheme. Master trusts are authorised by the [Pensions Regulator](#) and must operate in accordance with minimum statutory

⁸⁶ OECD, ‘Pensions at a Glance 2021: Country Profile for the United Kingdom’ (2021).

⁸⁷ Bryn Davies and James Kolaczowski, ‘The United Kingdom: Political and Labour Market Influences’ in Kolaczowski, Maher and Stevens (eds), *The Evolution of Supplementary Pensions: 25 Years of Pension Reform* (Edward Elgar Publishing 2022) 348-369, at p. 350.

⁸⁸ *Ibid.*, at p. 355.

⁸⁹ *Ibid.*, at p. 356.

⁹⁰ Penny Cogher, ‘Q&A: occupational pension schemes in United Kingdom’ (*Lexology*, 3 March 2023) available [here](#)

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

requirements. The Pensions Regulator is a statutory body whose objectives, as provided for under the Pensions Act 2004, include protecting the benefits of members of occupational pension schemes. Some defined benefit master trusts have been established to act as consolidators of defined benefit plans.⁹⁵

Most defined benefit schemes must satisfy a statutory funding objective, which assesses the required levels of funding for a scheme.⁹⁶ There must be sufficient assets to satisfy the funding requirements of the scheme.⁹⁷ Where there is a shortfall, the employer must agree a recovery plan together with the trustees identifying the steps/contributions required to address the shortfall and the relevant timeframe.⁹⁸ The employer will also need to agree a valuation with the trustees within 15 months of the effective date, i.e. the date on which the actuary measures the scheme's assets and accrued liabilities.⁹⁹ Failure to submit a valuation to the Pensions Regulator within the relevant time limit may result in the Pensions Regulator initiating enforcement action.¹⁰⁰

Collective defined contribution (CDC) schemes were introduced under the Pension Schemes Act 2021. Under a CDC scheme, both the employer and employee contribute to a collective fund which provides an income in retirement. The first CDC scheme was authorised in April 2023.¹⁰¹ In terms of safeguards, the Pension Schemes Act 2021 requires CDC schemes to satisfy stringent criteria in order to achieve authorisation, for example, criteria surrounding the financial sustainability of the scheme, the robustness of member communications and the fitness and propriety of those responsible for operating the scheme.¹⁰² The Pensions Regulator oversees the operation of CDCs and may intervene, where necessary.¹⁰³ Currently, CDC schemes can only be established for single employers or for employers in the same group of companies; however, the 2021 Act envisages the future creation of schemes for groups of employers, which are not legally connected.¹⁰⁴ It is argued that CDCs provide employers with more predictable costs than traditional defined benefit schemes whereas the pooling of longevity and investment risks under CDC schemes makes them more resilient to market shocks.¹⁰⁵ External modelling suggests that CDC schemes may provide, on average, better returns for members than traditional defined contribution schemes.¹⁰⁶

Reply to ECPRD Questionnaire concerning the Situation in the UK

A general reply to the ECPRD Questionnaire was received from the House of Commons Library.

The general reply includes information of relevance in respect of **Question 1** (concerning the existence of statutory provisions allowing for changes to occupational pension schemes); **Question 2[a]** (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs); and **Question 2[b]** (regarding the existence of mechanisms that afford

⁹⁵ Ibid.

⁹⁶ Pensions Regulator, 'Funding your DB Scheme', available [here](#).

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Pensions Regulator, 'TPR authorises the UK's first CDC pension scheme' (13 April 2023) available [here](#).

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

retired workers and their representative organisations the right to be consulted and to make submissions concerning proposed changes). This information is considered together below.

The reply advises that complex statutory provisions exist in the UK allowing for changes to benefits payable under occupational pension schemes. It advises that the Pensions Regulator has provided a Code of Practice to assist actors, including trustees and employers, seeking to modify an occupational pension scheme, 'Code 10: Modification of subsisting rights' ("Code 10"). Code 10 is not a statement of law; however, when determining whether relevant legal requirements have been met, a court or tribunal must take the Code into account.¹⁰⁷

Paragraph 19 of Code 10 indicates that most modifications to occupational pension schemes impact the way benefits will accrue in the future. However, occasionally, modifications impact benefits that members have already built up, known as members' subsisting rights. The Code deals with modifications to subsisting rights and the statutory provisions governing such modifications, namely, sections 67 to 67i of the Pensions Act 1995, as amended (the "subsisting rights provisions"). Code 10 indicates that the subsisting rights provisions do not apply to: public service schemes, schemes which are not registered for the purposes of Part 4 of the Finance Act 2004, or schemes with fewer than two members.¹⁰⁸ Modifications for a purpose connected with debits in respect of pension sharing orders [section 67(3)(a) of the Pensions Act 1995, as amended] and other prescribed modifications¹⁰⁹ are also exempt.¹¹⁰

Paragraph 17 of Code 10 indicates that the rules of individual trust-based pension schemes will often contain specific powers allowing for amendments to the rules. These powers can be vested in either the trustees or the employer, or may require agreement between these actors before the rules can be modified.¹¹¹ Where the scheme rules include powers to modify benefits, the trustees and the employer must determine whether or not the subsisting rights provisions apply and, if they do, whether the proposed modification is a regulated modification.¹¹² A regulated modification is a modification which is a protected modification and/or a detrimental modification.¹¹³ A protected modification is a modification, which on taking effect would or might change the nature of the subsisting rights of a member or survivor "from being other than money purchase to being money purchase, or replace a non-money purchase right with a money purchase right, or which would or might reduce the current rate of a pension being paid under the scheme, or is a modification of a prescribed description".¹¹⁴ A detrimental modification is a modification which "on taking effect would or might adversely affect any subsisting right of a member or survivor of a member of the scheme".¹¹⁵

If the proposed modification is a regulated modification, the trustees must determine whether it is a protected modification or a detrimental modification which is not a protected modification.¹¹⁶ They

¹⁰⁷ See: The Pensions Regulator, 'Code 10: Modification of Subsisting Rights', para. 5, available [here](#).

¹⁰⁸ See also *ibid.*, para. 10.

¹⁰⁹ See: the Occupational Pension Schemes (Modification of Schemes) Regulations 2006, Regulation 3.

¹¹⁰ The Pensions Regulator, 'Code 10: Modification of Subsisting Rights', para. 11, available [here](#).

¹¹¹ *Ibid.*, para. 17.

¹¹² *Ibid.*, at paras 22-23.

¹¹³ Section 67A(2) of the Pensions Act 1995, as amended.

¹¹⁴ The Pensions Regulatory, 'Code 10: Modification of Subsisting Rights', Glossary, available [here](#).

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*, at para. 25.

must also identify all affected members.¹¹⁷ A protected modification can only be made with the informed consent of each affected member.¹¹⁸ A detrimental modification which is not a protected modification can be made either with the informed consent of each affected member or by the trustees ensuring the actuarial equivalence requirements are satisfied in the case of each affected member.¹¹⁹

Paragraph 30 of Code 10 provides that trustees should consider obtaining professional advice on any proposal to make a regulated modification. Paragraph 31 stipulates that regulated modifications to members' subsisting rights cannot be made unless they are formally approved by the trustees, even if the scheme documents give the employer or some other body the exclusive power to make amendments to the rules.

Paragraph 35 of Code 10 provides that the consent requirement consists of: the informed consent requirement (paragraphs 36 to 40 of the Code); and the timing requirement (paragraphs 48 to 50 of the Code). Paragraph 36 of Code 10 provides that when seeking the consent of an affected member, trustees must ensure the member is provided with adequate information so that any consent given is informed consent. In accordance with paragraph 37 of the Code, the information must be provided in writing and must clearly explain:

- the nature of the proposed modification and its effect of on the member's benefits;
- that the member may make representations to the trustees about the proposed modification;
- the reasonable opportunity the member has to make such representation; and
- that the consent requirements apply in the case of the member.

Paragraph 42 of Code 10 indicates that a period of at least four weeks would normally be provided for members to make representations, although it is accepted that this will vary depending on the complexity of the amendments proposed and the number and location of the members. Paragraph 44 requires the trustees to afford due consideration to any representations received. Paragraph 46 indicates that members' consent to a modification must be provided in writing. Paragraph 47 stipulates that where a member does not give consent to a modification, then their subsisting rights must remain unchanged unless the actuarial equivalence route is also available. It indicates that a member's consent cannot be deemed or assumed, and a lack of response cannot be taken as consent. It further states that where some members do not consent to a modification, the modification can only proceed under the consent route for those members who have consented.

Paragraphs 48 and 49 of Code 10 indicate that where a modification requires the consent of affected members and that consent is provided, the modification must be implemented within a reasonable period, normally within seven months of the date that consent was received.

If the proposed modification is a detrimental modification which is not a protected modification, it can be made if either the consent requirement or the actuarial equivalence requirement is satisfied in respect of the affected member.¹²⁰ The "actuarial equivalence requirement" consists of: the information requirement; the actuarial value requirement; and the actuarial equivalence statement

¹¹⁷ Ibid.

¹¹⁸ Ibid., at para. 26 and see also paras 32-40.

¹¹⁹ Ibid., at para. 27.

¹²⁰ Ibid., at para. 52.

requirement.¹²¹ Actuarial equivalence requires that the “value of the totality of a member's subsisting rights immediately after the modification must be no less than the value of those rights immediately before the modification for the actuarial equivalence requirements to be met.”¹²² In order to achieve actuarial equivalence, any adverse modification to a subsisting right must be offset by one or more favourable modifications to other subsisting rights, so as to ensure that the overall actuarial value of the rights is not reduced.¹²³

Before making a detrimental modification which is not a protected modification, the trustees must take all reasonable steps to notify members in writing of: the nature of the modification; its effect on the members; the right of members to make representations to the trustees concerning the modification; and the fact that the actuarial equivalence requirements apply to all members.¹²⁴ The trustees must also provide members with: a brief explanation of actuarial equivalence and how it has been achieved for the modification in question; in the case of a detrimental modification, a clear explanation that the modification will apply to them regardless of whether or not they consent; and a statement indicating that affected members should consider obtaining independent financial advice.¹²⁵ Reasonable steps to notify retired former employees may require the use of post or, where contact details have been lost and the changes are potentially material, the use of relevant local newspapers.¹²⁶ Should members ask for clarification regarding a proposed modification, the trustees should provide this clarification as soon as reasonably practicable.¹²⁷ Trustees should also consider whether it would be practicable and cost effective to provide members with the name of an individual(s) with whom they may discuss the proposed modification.¹²⁸

Members must be given a reasonable opportunity to make representations to the trustees about a proposed detrimental modification which is not a protected modification, usually approximately four weeks.¹²⁹ The trustee should give due consideration to any representations received.¹³⁰ The trustees should allow sufficient time for members to obtain advice, where necessary; and to have discussions with employers regarding any potential amendments to proposed modifications in response to representations received.¹³¹ Before deciding to approve the modification, the trustees must have made adequate arrangements to ensure that the actuarial value will be maintained.¹³² The actuarial value of an affected member's subsisting rights constitutes the monetary value of the future benefits stemming from those rights as calculated by the scheme's actuary in accordance with the method prescribed by Regulation 5 of the Occupational Pension Schemes (Modification of Schemes) Regulations 2006 and any up-to-date actuarial guidance.¹³³ Within a reasonable period after the effective date of the modification (typically a month), the trustees must obtain an actuarial equivalence statement, namely, a statement produced by an actuary, which certifies that the

¹²¹ *Ibid.*, at para. 53

¹²² *Ibid.*, Glossary.

¹²³ *Ibid.*

¹²⁴ *Ibid.*, at para. 54

¹²⁵ *Ibid.*, at para. 55.

¹²⁶ *Ibid.*, at para. 58.

¹²⁷ *Ibid.*, at para. 56.

¹²⁸ *Ibid.*, at para. 57.

¹²⁹ *Ibid.*, at paras 59-61.

¹³⁰ *Ibid.*, at para. 62.

¹³¹ *Ibid.*, at para. 63.

¹³² *Ibid.*, at para. 67.

¹³³ *Ibid.*, Glossary.

actuarial value of each affected member's subsisting rights immediately after the change was no less than the actuarial value of that member's subsisting rights immediately before the change.¹³⁴

Paragraph 74 of [Code 10](#) indicates that once the trustees have decided to proceed with a modification, or have given approval for someone else to do so, they must satisfy the reporting requirement (a requirement to notify affected members).

Paragraph 84 of [Code 10](#) notes that the Pensions Regulator has the statutory power to make an order declaring the extent to which a regulated modification is void. It indicates that the Pensions Regulator may intervene to direct a person to:

- not make a regulated modification;
- satisfy the consent requirements or the actuarial equivalent requirements;
- satisfy the approval requirements; or
- satisfy the reporting requirements.

In accordance with section 68 of the Pensions Act 1995, as amended, in some situations trustees can modify an occupational scheme by way of a resolution with a view to achieving one of the purposes outlined in the section. Subsection (3) provides that no such modification may be made without the consent of the employer. Subsection (6) provides that Regulations may prescribe that the section does not apply to trust schemes falling within a prescribed class or description.

Section 69 of the Pensions Act 1995, as amended, permits the Pensions Regulator, upon receipt of an application from competent persons as defined under the section (including trustees), to make an order authorising the modification of an occupational pension scheme. This power does not apply to certain schemes, including public sector schemes.

Section 70 of the Pensions Act 1995, as amended, precludes the Pensions Regulator from making an order under section 69 unless it is satisfied that the purposes for which the application was made:

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained or can only be obtained with undue delay or difficulty.

It should also be noted that the reply to the ECPRD Questionnaire indicates that collective defined contribution (CDC) schemes provide a target pension, and that if the scheme is under (or over) funded then the pensions it pays can be decreased (or increased accordingly) – including for retired members. The [Pension Schemes Act 2021](#) updated the subsisting rights provisions of the Pensions Act 1995, as amended, to take account of the introduction of CDC schemes and provides for specific rules concerning modifications to these schemes (see [section 24](#)). However, the consolidated version of the, [Pensions Act 1995, as amended](#) currently only reflects amendments up to 2019. It appears that [Code 10](#) has also yet to reflect these developments.

¹³⁴ Ibid., paras 68-70.

In addition to discussing [Code 10](#), the reply to the ECPRD Questionnaire also includes information regarding the [Pension Protection Fund](#) (PPF), a statutory fund that seeks to protect members of defined benefit schemes in circumstances where the scheme's sponsor becomes insolvent.¹³⁵ The reply advises that, in such circumstances, having been assessed by the PPF, the scheme would either enter the PPF with pension payments to members typically being reduced or, if it had sufficient assets, members' pension benefits could be secured at a level above that offered by the PPF.¹³⁶ The reply to the ECPRD Questionnaire indicates that the level of compensation someone receives from the PPF depends on whether or not they had already passed their normal pension age when the sponsoring employer became insolvent. It states that PPF members receive:

- 100% of the scheme pension at the insolvency date if the person is at or above normal pension age or if they retired through ill-health before the insolvency date. However, the increases paid by the PPF may be lower than those received from the scheme before insolvency; and
- 90% of the scheme pension in other cases.¹³⁷

The reply doesn't explicitly address **Question 3** (concerning the ability of retired workers to access the industrial relations machinery of the State).

In relation to **Question 4** of the ECPRD Questionnaire (concerning the right of access to an independent and impartial adjudicative body where changes are proposed/imposed), the reply indicates that disputes concerning pension scheme rules and changes to those rules can be brought to a number of bodies, including the [Pensions Ombudsman](#), an independent statutory body, which offers a free dispute resolution mechanism for handling pensions-related complaints. However, the answer indicates that it is more likely that proceedings will be initiated before the courts. By way of example, it notes that in *Briggs v Gleeds* [2014] EWHC 1178 (Ch), the Court decided that 30 amendments to a scheme did not comply with the applicable statutory requirements. Elsewhere, the reply indicates that there have been examples where schemes have been required, as a result of legislation or court decisions, to change the pension benefits of retired members in a way that is beneficial for those members, for example, the requirement to equalise guaranteed minimum pensions.¹³⁸

Portugal

Introduction to the Pension System in Portugal

Portugal has an earnings-related public pension scheme, which covers employed persons and self-employed persons who satisfy certain minimum earnings requirements.¹³⁹ Supplementary pensions represent a small portion of overall pension provision in Portugal.¹⁴⁰ Occupational funded

¹³⁵ [Pensions Act 2004](#) and Gov.uk, [Pension Protection Fund](#) [accessed 12 August 2022]

¹³⁶ Pension Protection Fund, [An overview of the assessment process](#) [accessed 12 August 2022]

¹³⁷ Pension Protection Fund, [What being a PPF member means](#) [accessed 12 August 2022]

¹³⁸ For further detail see [GMP equalisation - House of Commons Library](#) (parliament.uk)

¹³⁹ IOPS, Country Profile for Portugal (2018), prepared using data from 2017 or the latest available year; see [IOPS website](#).

¹⁴⁰ Maria Clara Mureira, 'The development of supplementary pensions in Portugal: influenced by ideas, the process of European integration and national idiosyncrasies', in Kolaczowski, Maher and Stevens (eds), *The Evolution of Supplementary Pensions: 25 Years of Pension Reform* (Edward Elgar Publishing 2022) 257-278, at p. 257.

schemes were introduced in the late 1980s and expanded up until the late 2000s.¹⁴¹ The total assets of occupational funded schemes reportedly decreased from 12.7% of Gross Domestic Product (GDP) in 2009 to 9.1% of GDP in 2017.¹⁴² During the same period, the coverage of these schemes declined from approximately 3.5% of the labour force to approximately 3.2%.¹⁴³ Many occupational schemes operate as a substitute for the public pension.¹⁴⁴ The majority of these schemes are sponsored by employers and established by collective labour agreements negotiated between employers and trade unions, mainly in the banking and insurance sectors.¹⁴⁵

Reply to ECPRD Questionnaire concerning the Situation in Portugal

A reply to the ECPRD Questionnaire was received from the Legislative and Parliamentary Information Division of the Information and Culture Division of the Assembly of Portugal.

In response to **Question 1** (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme), the reply states that [Law No. 4/2007 of 16 January 2007](#) (consolidated text) provides the legal foundations for the social security system in Portugal. The answer is not entirely clear and focuses on the situation of a number of workers who have contributed to both the social security general pension scheme (the private workers scheme) and a special civil servants pension scheme managed by [Caixa Geral de Aposentações](#) (CGA). It explains that historically, civil servants and public sector agents employed by State administrations and local authorities and certain other actors, were required to be [CGA scheme members](#). It adds that civil servants appointed after 31 December 2005 were no longer eligible to join the CGA pension scheme and had to join the general pension scheme. It confirms that civil servants appointed before 2006 maintained their CGA pension scheme membership, provided that they remained in the civil service. The reply notes that [Executive-Law n.º 187/2007, of May 5th](#), which concerns the protection regime for beneficiaries of the general social security system on the basis of old age and disability, includes in [Chapter V](#) provisions on the accumulation and coordination of pension schemes and regarding the minimum guarantee when accumulating with other pensions schemes ([article 55.º](#)). The reply indicates that additional information is available in the [Retirement and survivor pensions schemes – Explanatory booklet](#).

In response to **Question 2[a]** (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs), the reply indicates that [Article 18.º](#) of [Law No. 4/2007 of 16 January 2007](#) (consolidated text) provides a definition for the principle of participation whereby relevant stakeholders are involved in the definition, planning, and management of the social and security system, as well as in monitoring and evaluating its functioning. It doesn't clarify who these relevant stakeholders are. The reply adds that [Executive-Law n.º 187/2007, of May 5th](#) provides in its [article 11.º](#) that the totalisation of contribution periods, which have been fulfilled under other social protection schemes is a condition for the attribution of pensions.

In response to **Question 2[b]** (regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and to make submissions concerning proposed changes to occupational pension schemes), the reply indicates that articles [71.º](#) and [74.º](#) of Law n.º 4/2007 of 16 January 2007 contain a set of guarantees concerning the

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

provision of periodic information regarding acquired and developing rights. It further indicates, that in accordance with these articles, any individual or entity, which has obligations towards social security institutions may request, at any time, the issuance of a certificate proving the regular fulfilment of these obligations.

The reply also highlights the role of the [Social and Economic Council \(CES\)](#), a constitutional body for consultation and social concertation. According to its [website](#), the main goals of CES are “to promote the participation of economic and social agents in the decision-making process of organs of sovereignty, mainly within the scope of social and economic issues. It is the prime space for dialogue between the Government, the Social Partners, and the remaining representatives of an organised civil society”. The reply advises that the social concertation role aims to promote social dialogue and negotiation between the Government and Social Partners, the latter being trade unions and employers’ representatives, including via tripartite negotiations with representatives of such bodies. It further advises that during these negotiations, legislative proposals are appraised, especially in so far as they impact social and labour issues, and social concertation agreements are negotiated. The reply advises that [article 3.º of Law n.º 108/91, of August 17th](#) provides that CES shall include in its membership two representatives from organisations representing retirees, pensioners, and the elderly, within the framework of its mission on the pronouncement on economic and social policies, as well as their implementation.

In response to **Question 3** of the ECPRD Questionnaire (concerning the ability of retired workers to access the industrial relations machinery of the State), the reply does not indicate that retired workers have a statutory right to access the industrial relations machinery of the State where changes to the benefits payable to them under their occupational pension scheme are being considered. In terms of alternative mechanisms for ensuring that retired workers and their representative organisations can participate in any negotiations surrounding proposed changes to their occupational pension schemes (**Question 3[c]**), the reply refers to the activities of CES, discussed above.

Of relevance for **Question 4** (concerning a right of access for retired workers to an independent and impartial body, which can adjudicate upon the lawfulness of changes to occupational pension schemes), the reply made a reference to the Exercise of the Right of Petition, approved by [Law n.º 43/90, of 10 August 1990](#), which regulates and guarantees the exercise of the right of petition, with a view to defending citizens’ rights, the Constitution, the law or the general interest. The reply explains that this is achieved by means of the submission of petitions, representations, protests or complaints to the entities that exercise sovereignty, or any public authority save for the courts. The reply also makes reference to article 21.º of Law n.º 4/2007, of 16 January 2007, regarding the principle of judicial guarantee. It advises that this principle ensures that stakeholders have timely access to courts to assert their right to benefits.

Spain

Introduction to the Pension System in Spain

Spain operates a three-pillar pension system comprised of a dominant state pension system and voluntary occupational and private pension arrangements. The state pension system is comprised of a means-tested non-contributory old-age pension and an earnings-related, contributory

pension.¹⁴⁶ The means-tested non-contributory pension is financed by tax revenues and granted to persons who satisfy the minimum age requirement and certain residency requirements, and who have not acquired enough contributions for, or are not entitled to, a contributory old-age pension.¹⁴⁷ All employees and self-employed persons must make mandatory contributions to the earnings-related, contributory pension system. It is financed via contributions from employees and employers.¹⁴⁸ At least 15 years of contributions is required to be eligible for a contributory earnings-related pension with a maximum pension requiring at least 38.5 years of contributions for individuals who wish to retire at 65 years of age.¹⁴⁹

Traditionally, occupational pension plans were not very developed in Spain as the public pension system provided good security.¹⁵⁰ Some large companies and companies with an international exposure offered a form of occupational pension plan.¹⁵¹ Historically, occupational pension plans were defined benefit plans; however, defined contribution plans have become more popular in recent years.¹⁵² In terms of safeguards, rules exist regarding minimum funding levels and solvency margins for defined benefit plans.¹⁵³ Pension funds are established as separate legal entities in Spain, which can serve as a repository for the assets of one or more tax-qualifying pension plans.¹⁵⁴ An investment manager and a custodian must be appointed.¹⁵⁵

In recent years, changes have been made with a view to enhancing the coverage of occupational pension schemes. On 1 July 2022, a new law was published: [Law 12/2022 of June 30, 2022 to encourage occupational pension plans, which amends the revised Pension Plans and Pension Funds Law, approved by Legislative Royal Decree 1/2002 of November 29, 2002](#) ("Law 12/2022"). Law 12/2022 seeks to increase participation in occupational pension schemes, including by simplifying "the arrangement and management processes" for such plans.¹⁵⁶ It provides for new "simplified" occupational pension plans to be established as defined-contribution plans.¹⁵⁷ These simplified plans can take the form of:

- occupational pension plans for employees of companies included in industry-wide/sectoral collective agreements linked to collective bargaining;
- public sector occupational pension plans sponsored by government institutions;
- pension plans for the self-employed or independent contractors, arranged by relevant associations, federations, confederations, unions or welfare mutual insurance societies; and

¹⁴⁶ Pension Funds Online, 'Pension system in Spain', available [here](#).

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ OECD, 'Pensions at a Glance 2021: Country Profile for Spain' (2021). See: OECD [website](#).

¹⁵⁰ Pension Funds Online, 'Pension system in Spain', available [here](#).

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ Rosa Zarza, 'Spain: Law encouraging occupational pension plans published' (*Garrigues*, 1 July 2022) available [here](#).

¹⁵⁷ *Ibid.*

- pension plans for worker partners at cooperatives and worker-owned companies, arranged by cooperatives and worker-owned companies and their representative organisations.¹⁵⁸

The new legislation requires that the rules concerning employers' contributions to sectoral collective agreements are specified in the collective bargaining agreement.¹⁵⁹ Companies may elect not to subscribe to a sectoral collective agreement provided that they arrange their own occupational pension plan whose conditions must equal, or improve upon, those included in the sectoral agreement.¹⁶⁰ Law 12/2022 outlines the process for arranging and formalising simplified occupational pension plans, the mandatory minimum content of such plans, the rules surrounding their modification, and the applicable oversight committees and governance bodies.¹⁶¹

Reply to ECPRD Questionnaire concerning the Situation in Spain

The Directorate of Research, Analysis and Publications (Department of European Affairs) of the Congress of Deputies for Spain provided a reply to the ECPRD Questionnaire. It should be noted that the information provided in the reply pertains primarily to the public pension system.

The reply advises that the regulation of pensions in Spain is provided for under [Royal Legislative Decree 8/2015, of 30 October, approving the revised text of the General Social Security Act](#). Of general relevance in terms of safeguards for protecting benefits payable to members and beneficiaries, the reply notes that Article 50 of the [Spanish Constitution](#) requires the public authorities to guarantee, by means of adequate and regularly updated pensions, the economic sufficiency of citizens in senior years, and promote their welfare by means of a system of social services. The reply also notes that [Royal Decree-Law 2/2023 of 16 March on urgent measures to extend pensioners' rights, reduce the gender gap and establish a new framework for the sustainability of the public pension system](#) was recently approved.

The reply answers "Yes" to **Question 1** of the ECPRD Questionnaire 1 (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme).

In response to **Question 2[a]** (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs), the reply refers to [Act 21/2021, of 28 December, on guaranteeing the purchasing power of pensions and other measures to reinforce the financial and social sustainability of the public pension system](#) ("Act 21/2021"). Act 21/2021 seeks to maintain and guarantee the purchasing power of pensions through a new revaluation criterion, which requires that the annual revaluation of pensions, previously based on the Consumer Price Index, also take inflation into account.¹⁶² The law also requires that every five years, representatives of the government, employees and employers review the effects of the pension revaluation mechanism and implement any changes necessary to retain pensions' purchasing power.¹⁶³ The reply indicates that [Act 21/2021](#) provides a more stable framework for the revaluation of pensions

¹⁵⁸ Ibid; and Baker McKenzie, 'Spain: Labor-law news - Reform of Pension Plans and Funds' (*Lexology*, 7 July 2022) available [here](#).

¹⁵⁹ Rosa Zarza, 'Spain: Law encouraging occupational pension plans published' (*Garrigues*, 1 July 2022) available [here](#).

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² For more information, see Rosa Zarza Jimeno, 'Measures for financial and social sustainability of public pensions system approved' (*Lexology*, 30 December 2021) available [here](#).

¹⁶³ Ibid.

and helps to ensure the maintenance of the purchasing power of pensions during periods of high inflation, such as that presently being experienced in Spain. The reply also notes that Act 21/2021 provides for a mechanism for preserving intergenerational equity and guaranteeing the future financial balance between the employed population and the pensioner population.¹⁶⁴ The reply indicates that more information regarding the relevant protections is available on the website of the Ministry of Inclusion, Social Security and Migration (see [here](#)).

In response to **Question 2[b]** of the ECPRD Questionnaire (regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and to make submissions concerning proposed changes to occupational pension schemes), the reply makes reference to the third additional provision of the Royal Decree-Law 2/2023 of 16 March, which states that the Government shall periodically inform the Permanent Commission of the Toledo Pact and the most representative corporate and trade union organisations of the results of the public pension expenditure projections of the aging report prepared by the European Commission.¹⁶⁵

The reply states “Yes” in response to **Question 3[a]** of the ECPRD Questionnaire (concerning the ability of retired workers to refer a dispute concerning changes to their occupational pension schemes to the industrial relations machinery of the State). The reply refers to Article 37(1) of the [Spanish Constitution](#), which provides that the law shall guarantee the right to collective labour bargaining between the representatives of workers and employers, as well as the binding force of the agreements. It adds that the right of workers and employers to adopt collective labour dispute measures is recognised under Article 37(2) of the [Constitution](#). It should be noted that whilst the reply provides an affirmative answer to Question 3[a], the substantive answer refers to the right of *workers*, as opposed to *retired workers*, to engage in collective bargaining with employers.

The reply states “Yes” in response to **Question 3[b]** of the ECPRD Questionnaire (concerning the right of retired workers to be represented at any industrial relations negotiations regarding proposed changes to benefits payable to them under occupational pension schemes). However, again the substantive answer refers to the rights of *workers*, as opposed to the rights of “*retired*” *workers*. It indicates that the right of workers to participate in the company is operationalised through staff delegates and works councils, without prejudice to other forms of participation. It advises that workers’ collective representation rights are regulated under the [Workers' Statute](#) (articles 61 et seq.). It notes that the right to freedom of association is enshrined in the [Spanish Constitution](#) (Article 28) and regulated under [Organic Law 11/1985, of August 2, 1985, on Trade Union Freedom](#). It indicates that more detailed information is available on the website of the Ministry of Labour and Social Economy, available [here](#).

¹⁶⁴ For additional information on the intergenerational equity mechanism, see *ibid*.

¹⁶⁵ An accompanying footnote in the reply advises that the Toledo Pact is the name given to the approval by the plenary session of the Spanish Congress of Deputies on 6 April 1995 of a document previously approved by the Budget Committee on 30 March 1995, concerning the “analysis of the structural problems of the social security system and the main reforms to be implemented”. The footnote further advises that the Toledo Pact Commission, officially the Commission for the Monitoring and Evaluation of the Toledo Pact Agreements, is a parliamentary commission established in the Congress of Deputies with a permanent and non-legislative character whose objective is to monitor compliance with the objectives of the Toledo Pact and to propose recommendations for the maintenance and improvement of the pension system.

In response to **Question 3[c]** (regarding alternative mechanisms for ensuring that retired workers and their representative organisations can participate in negotiations surrounding proposed changes to occupational pension schemes), the reply advises that [Organic Law 11/1985, of August 2, 1985, on Trade Union Freedom](#) recognises in Article 6 that the most representative trade unions have representative capacity at all territorial and functional levels to:

- engage in collective bargaining, in accordance with the Workers' Statute;
- provide institutional representation before public administrations and certain other entities that have it provided for;
- participate as interlocutors/partners in the determination of working conditions in public administrations;
- participate in non-jurisdictional systems for the resolution of labour-related conflicts; and
- any other representative function that may be established”.

However, it must be noted that Article 6 concerns trade unions as opposed to representative organisations of *retired workers*.

In response to **Question 4** of the ECPRD Questionnaire (concerning the right of access to an independent and impartial adjudicative body where changes to occupational pension schemes are proposed/imposed), the reply indicates that where it is considered that proposed changes might violate the principles of legality or fairness, those changes can be addressed/challenged through: collective negotiations, non-jurisdictional systems for the resolution of labour conflicts (such as conciliation, mediation, and arbitration) or the jurisdictional system. However, it doesn't clarify which of these avenues, if any, are available to retired workers and their representative organisations when changes are proposed to their occupational pension schemes. It states that more information is available on the website of the Ministry of Labour and Social Economy, available [here](#).

Poland

Introduction to the Pension System in Poland

Poland's pension system is centred around a mandatory pay-as-you-go public pension scheme based on notional defined contribution (NDC) accounts, which are operated by the state-owned Social Insurance Institution (ZUS).¹⁶⁶ This pay-as-you-go NDC system replaced an earlier defined benefit pay-as-you-go system. The total contribution rate is 19.52% of the employee's taxable income, which is divided equally between employers and employees.¹⁶⁷

The second pillar of Poland's pension system was traditionally comprised of private individual accounts, which took the form of open pension funds (OFEs) established on a defined contribution basis.¹⁶⁸ However, in 2011 legislation was enacted, which reduced the mandatory contribution to

¹⁶⁶ IOPS Country Profile for Poland (December 2018) based on data from 2017 or the earliest available year. See: IOPS [website](#).

¹⁶⁷ Ibid.

¹⁶⁸ Pension Funds Online, 'Pension system in Poland', available [here](#).

OPEs and in 2014 the contribution was made entirely voluntary.¹⁶⁹ These changes served to reduce the importance of private individual accounts in the overall system.

Voluntary occupational pension plans (PPEs) were introduced in 1999 and operate as defined contribution plans.¹⁷⁰ An employer that establishes a PPE must pay contributions for employees who can also make supplementary contributions up to certain limits.¹⁷¹ PPEs must meet certain minimum requirements, including a legally defined “basic employer contribution” and the conditions of the plan must be negotiated with the unions or employee representatives.¹⁷² The schemes are managed by investment funds, life insurance companies, company pension funds, or foreign management companies.¹⁷³ PPEs are subject to some restrictions on permissible investments.¹⁷⁴

The Act on Employee Capital Plans (ECPs) 2018 established a new occupational-related long-term private savings scheme (Pracownicze Programy Kapitałowe), which is created and co-financed by employees, employers, and the Government.¹⁷⁵

The [Polish Financial Supervision Authority](#) (KNF) regulates the pensions market in Poland.

Replies to ECPRD Questionnaire concerning the Situation in Poland

Two replies to the ECPRD Questionnaire were received on behalf of Poland’s Parliament, which appear to contain different information giving rise to some ambiguity. A reply received on behalf of Poland’s Senat (Upper House of Parliament) provided the following response to **Question 1**: “The Act of April 20, 2004 on occupational pension schemes, which specifies the rules for the establishment and operation of pension schemes, does not provide for changes to the scheme at the benefit payment stage.” The reply provided an “N/A” response to the remaining three questions.

The second reply was received on behalf of Poland’s Sejm (Lower House of Parliament). In response to **Question 1** (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme), it states that, pursuant to Article 10 of the Occupational Pension Schemes Act of 20 April 2004,¹⁷⁶ an occupational pension scheme is established in Poland by following the steps below:

- 1) the conclusion of a company contract or an inter-enterprise contract between the employer and the employees’ representatives;
- 2) the conclusion of a contract with a financial institution (subject to Article 17(3) of the Act) OR the establishment of a pension company and a pension fund; OR the purchase of shares in an existing pension company by the employer; and
- 3) the registration of the program by the KNF.

The reply indicates that it is possible to introduce changes to occupational pension schemes:

¹⁶⁹ IOPS Country Profile for Poland (December 2018). See: IOPS [website](#).

¹⁷⁰ Pension Funds Online, ‘Pension system in Poland’, available [here](#).

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ See, for example, [here](#) and [here](#).

¹⁷⁶ Journal of Laws of 2023, item 710, see [here](#) and [here](#).

- i. in the cases explicitly provided for in the company agreement/contract (pursuant to Article 13(1)(8) of the Occupational Pension Schemes Act 2004);¹⁷⁷
- ii. where the employer runs more than one pension scheme to consolidate the programs (pursuant to Article 7(3) of the Occupational Pension Schemes Act 2004);
- iii. in the event of liquidation of the scheme (pursuant to Article 41(1) of the Occupational Pension Schemes Act 2004); and
- iv. on the basis of a procedure appropriate for the conclusion of the agreement, namely, after the parties to the contract (the employer and the employees' representatives) agree the amendments (pursuant to Article 21(2) of the Occupational Pension Schemes Act 2004).

A footnote accompanying the reply advises that the Polish legal system also provides for PPK (Employee Capital Plans), IKE (Individual Retirement Accounts) and IKZE (Individual Pension Security Accounts). However, it clarifies that these are not pension programs, but rather modifications of standard savings and investment solutions.

In response to **Question 2[a]** (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs), the reply states that there are no regulations guaranteeing the payment and amount of pensions from occupational pension schemes subject to one exception: programs in the form of a group life insurance contract for employees with an insurance company. It advises that pursuant to Article 6(9) of the Occupational Pension Schemes Act 2004, in the case of such programs, the insurance contract should provide for allocating at least 1% of the basic premium to cover the costs of insurance coverage. It explains that the rationale for the provision is to guarantee participants the sum insured in an adequate amount.

The reply advises that Article 12 of the Act of 13 July 2006 on the protection of employee claims in the event of the employer's insolvency¹⁷⁸ outlines the benefits to be satisfied from the Guaranteed Employee Benefits Fund. The Guaranteed Employee Benefits Fund seeks to guarantee the timely payment of wages and certain other claims of employees of insolvent companies. The reply indicates that, in accordance with Article 12, the benefits payable include: social security contributions due from the employer under the provisions concerning the social insurance system. However, it indicates that company pensions are not covered. It states that "[t]he collapse of the financial markets may lead to the loss of all or a significant part of the funds on the accounts of program participants."

A "Yes" answer is provided in response to **Question 2 [b]** of the ECPRD Questionnaire (regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and to make submissions concerning proposed changes to occupational pension schemes). However, it should be noted that the ensuing discussion concerns procedures providing for negotiations between employers and *trade unions/representatives of employees*, as opposed to representatives of *retired workers*. The reply advises that, in accordance with the procedure provided for under Article 21(2) of the Occupational Pension Schemes Act 2004, any amendments to the contract between the employer and the employees' representatives (which forms the basis for the occupational pension scheme) must be agreed by the parties to the contract. It notes that the procedure for selecting employees' representatives is provided for under

¹⁷⁷ For the unofficial English Translation of this Act, see [here](#).

¹⁷⁸ Act of July 13, 2006 (Journal of Laws of 2020, item 710), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20061581121>.

Articles 11 and 15 of the same Act. Article 11(2) and (3) provide that the employees representation in the negotiations shall be formed from all company trade union organisations active in the establishment of the employer or, if none exist, the representatives of employees elected on the basis of a procedure adopted in the employer's establishment.¹⁷⁹

In response to **Question 3[a]** (concerning the ability of retired workers to access the industrial relations machinery of the State), the reply states “no, there are no such regulations”.

In response to **Question 3[c]** (concerning a right of access for retired former employees and their representative organisations to alternative mechanisms in place of the industrial relations machinery), the reply states that disputes are settled by common courts competent for the employer's registered office (pursuant to Article 12 of the Occupational Pension Schemes Act 2004) and indicates that there is no alternative dispute resolution mechanism.

Of relevance for **Question 4** (concerning the right of access to an independent and impartial adjudicative body where changes are proposed/imposed), the reply indicates that disputes arising from legal relations between the parties to the company contract (i.e., the employer and the employees' representatives) are resolved by common courts of law competent for the employer's registered office (Article 12 of the Occupational Pension Schemes Act 2004).

Luxembourg

Introduction to the Pension System in Luxembourg

The pension system in Luxembourg has three tiers: public State pensions, voluntary private occupational pensions, and voluntary private personal pensions.

The public pension scheme is managed by [Caisse Nationale d'Assurance Pension](#) (the National Pension Insurance Fund or CNAP). It encompasses public and private sector employees and the self-employed. It offers retirement benefits based on: (i) a flat-rate amount, which is contingent upon the number of years of social insurance contributions made regardless of income, and (ii) a proportional earnings-related amount.¹⁸⁰ There is also a minimum pension.¹⁸¹ Benefits are financed via equal contributions from employees (8% of covered earnings via social security contributions), employers (8%) and the State (8%).¹⁸² Self-employed workers pay 16% of covered earnings.¹⁸³ An individual must have contributed social security towards their pension for 120 months to be entitled to a public pension, and for 480 months for a full public pension. Pension payments are indexed to reflect changes in the cost of living (price indexation) and the real wage evolution (yearly adjustment).¹⁸⁴ Pensions were [adjusted upwards by 2.2%](#) in January 2023.

A private employer or group of such employers may establish a voluntary occupational pension scheme for their employees. According to a 2018 Country Profile for Luxembourg prepared by the International Organisation of Pension Supervisors (IOPS) using data from 2017 or the latest

¹⁷⁹ For the unofficial English Translation of the Act, see [here](#).

¹⁸⁰ OECD, 'Pensions at a Glance 2021: Country Profile for Luxembourg' (2021). See: OECD [website](#).

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

available year, the self-employed may also establish their own occupational pension plans.¹⁸⁵ The IOPs profile indicates that voluntary occupational pensions are available via pension funds, group insurance contracts (traditional and index linked), and book reserve systems.¹⁸⁶

Pension funds for occupational pension schemes must be established as independent legal entities, which hold pension assets separately from the sponsoring employer.¹⁸⁷ There are three types of pension fund for company pensions in Luxembourg: a SEPCAV (Pensions Savings Companu with Variable Capital), an ASSEP (Pension Savings Association), and an ASBL (Association Sans But Lucrative).¹⁸⁸

A SEPCAV is a public limited company with a similar structure to an investment trust. The company is managed by a board of directors, which may include a representative from the employer. It must have a minimum capital of €1 million within two years of being authorised.¹⁸⁹ SEPCAVs are established as defined contribution schemes.¹⁹⁰ Members are shareholders whose shares are regularly valued according to a net asset value per share.¹⁹¹ Benefits are paid as a single lump sum, which equates to the number of holding shares multiplied by the value of shares on the date of payment.¹⁹² Members benefit from the investment income of the fund; however, bear the full investment risk.¹⁹³

ASSEPs are typically non-profit making.¹⁹⁴ Members do not have direct ownership of assets but rather are creditors who have a claim for payment of benefits against the ASSEP.¹⁹⁵ Consequently, ASSEPs can be established as defined benefit schemes, defined contribution schemes or a hybrid of the two.¹⁹⁶ Depending on how the scheme was established, benefits can be paid as a lump sum or as an annuity.¹⁹⁷ The minimum capital requirement is €5 million.¹⁹⁸

SEPCAVs and ASSEPs may be established as either single or multi-employer funds.¹⁹⁹ Both vehicles are regulated by the Commission de Surveillance du Secteur Financier (Financial Sector Supervisory Commission or CSSF).²⁰⁰

ASBLs are typically established by larger companies, which wish to have their own pension fund.²⁰¹ They may be established as a "multi-employer" fund and administer several pension

¹⁸⁵ *Ibid.*

¹⁸⁶ IOPS Country Profile for Luxembourg (November 2018). See: IOPS [website](#).

¹⁸⁷ Pension Funds Online, 'Pension System in Luxembourg', see [here](#).

¹⁸⁸ Pension Funds Online, 'Pension System in Luxembourg', see [here](#). See also: Sarita Rao, 'Pensions in Luxembourg' (Luxembourg Times, 20 February 2023) available [here](#).

¹⁸⁹ *Ibid.*

¹⁹⁰ IOPS Country Profile for Luxembourg (November 2018). See IOPS [website](#).

¹⁹¹ Pension Funds Online, 'Pension System in Luxembourg', see [here](#). See also: Sarita Rao, 'Pensions in Luxembourg' (Luxembourg Times, 20 February 2023) available [here](#).

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

plans.²⁰² They must be administered in Luxembourg and the sponsoring company must guarantee the solvability and liquidity of the pension fund.²⁰³ ASBLs may be established as defined benefit or defined contribution schemes.²⁰⁴ They are supervised by the CAA (Commissariat aux Assurances), Luxembourg's insurance regulator, because they are created under the general provisions of the insurance law.²⁰⁵ They are subject to quantitative investment regulations.²⁰⁶

The management of the assets of pension funds may be outsourced to authorised domestic or foreign asset managers.²⁰⁷ Previously, most pension plans were funded via book reserve systems, which were non-contributory for employees.²⁰⁸ However, changes to the tax system means that more small and medium-sized businesses are offering direct insurance schemes to employees or linking in with established SEPCAV and ASSEP vehicles to finance pension plans.²⁰⁹

According to the 2018 IOPS Country Profile for Luxembourg,²¹⁰ the following key legislation regulates pensions schemes in Luxembourg:

- the Law of 13 July 2005, on institutions for occupational retirement provision in the form of variable-capital pension savings companies (SEPCAV) and pension savings associations (ASSEP), governs the operation of SEPCAVs and ASSEPs;
- the Grand Ducal Regulation of 31 August 2000, adopted under the terms of the Insurance Law, provides for the supervision of insurance companies;
- the Complementary Pensions Act (1999), which regulates pension plans, group insurance and book reserve schemes. It provides for their registration and supervision, regulates minimum requirements for the vesting and transferability of accrued rights, prohibits gender discrimination, and deals with tax matters;
- the Insurance Sector Act 1991, which provides for the authorisation and supervision of insurance companies, including those administering group insurance contracts. It provides for minimum requirements for such administration; and
- Article 111bis of the amended Law on Revenue Taxation (1967), which concerns individual pension savings contracts.

Reply to ECPRD Questionnaire concerning the Situation in Luxembourg

A general reply was received to the ECPRD questionnaire on behalf of the Luxembourg Parliament. It states that in Luxembourg, supplementary pension schemes, including occupational pension schemes, are regulated by the [modified law of June 8, 1999](#). It adds that ASSEPs and SEPCAVs are regulated by the Law of July 13, 2005, as amended, and draws attention to several relevant provisions of this Law, including Articles 2, 68, 69 and 70.

In terms of general safeguards, the reply advises that Article 68 of the Law of July 13, 2005, as amended, requires pension funds to adopt a set of regulations, also referred to as rules or

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ IOPS Country Profile for Luxembourg (November 2018). See: IOPS [website](#).

guidelines, which describe the characteristics of the pension scheme(s) and must include, at a minimum, the mandatory content outlined in Article 69. Article 69 stipulates that the pension regulations/rules must include the following, amongst other things:²¹¹

- ii. the rights and obligations of the parties involved in the pension scheme, including:
 - a. the obligations of contributor(s), including in the event of a pension scheme being underfunded, and, where applicable, the obligations of the financial institutions assuming liabilities as provided for in Articles 74 and 76;
 - b. the pension fund's obligations in regard to providing information to members and beneficiaries and, where applicable, their representatives;
 - c. the members' rights when they retire, in the event of disability, cessation of employment and in the event of insolvency of the contributing undertaking, as well as the dependants' rights upon a member's death,
- iii. the calculation method for, and frequency of calculation of, the accrued entitlements of each member and beneficiary and the rules concerning the disclosure of information regarding entitlements,
- iv. the conditions for joining and leaving for members and beneficiaries and, where applicable, an indication of the vesting period,
- v. any mechanisms protecting accrued entitlements and the benefit reduction mechanisms,
- vi. the terms and conditions regarding the maintenance, transfer and redemption of the members' acquired entitlements, including in the event of cessation of employment and non-acceptance of the pension rules or a clause thereof or an amendment thereto,
- vii. information on the investment profile,
- viii. information on the financial, technical and other risks associated with the pension scheme,
- ix. the conditions regarding full or partial guarantees under the pension scheme or of a given level of benefits or, where no guarantee is provided, a statement to that effect,
- x. for schemes where members bear investment risk or can take investment decisions: the investment policy and where relevant, the information regarding investment options,
- xi. the structure of costs borne by members and beneficiaries, for schemes which do not provide for a given level of benefits,
- xii. the options available to members and beneficiaries in receiving their retirement benefits,
- xiii. the terms and conditions for drawing up and amending the pension rules, technical note and the Pension Benefit Statement, as determined in the articles of association, and
- xiv. for ASSEPs, a description of the principles governing the allocation of any surplus remaining after liquidation of the pension scheme.

The reply to the ECPRD Questionnaire indicates that, in accordance with Article 68 of the Law of July 13, 2005, as amended, each pension scheme shall also be subject to a technical memorandum (also referred to as a technical note). The technical memorandum must contain certain minimum content as set out in Article 70, including:

- the asset valuation rules and the frequency of calculation of the net asset value;
- the rules for valuing the liabilities and the calculation method used to determine the members' and beneficiaries' benefits in certain situations, including where members retire or where the contributing undertaking is insolvent;

²¹¹ Any articles discussed reflect the content of an unofficial translation of the consolidated text of the Law of July 13, 2005, as amended up to 15 December 2019, available via the [CSSF website](#).

- the measures to be taken in the event of the contributor no longer being able to meet its obligations;
- for pension funds operating pension schemes for several sponsoring undertakings, the terms and conditions under which one or more sponsoring undertakings may withdraw and rules for dividing the assets in the event of the departure or insolvency of one or more sponsoring undertakings; and
- for pension funds assuming biometric and/or financial risks which bring together several sponsoring undertakings within a single pension fund or compartment, the obligations of each of the undertakings in the event of the pension fund being underfunded or one or more sponsoring undertakings becoming insolvent.

Whilst not explicitly noted in the reply to the ECPRD Questionnaire, it is worth mentioning that Article 72(1) of Law of July 13, 2005, as amended, requires that pension funds regulated by the Law must at all times maintain, for the full range of their pension schemes, an adequate amount of liabilities corresponding to the financial liabilities arising out of their portfolio of existing pension contracts. Furthermore, Article 72 (2) stipulates that pension funds, which are operating occupational pension schemes where they provide cover against biometric risks “or” guarantee either an investment performance or a given level of benefits, must establish sufficient technical provisions in respect of the total range of these schemes.

Of relevance to **Question 1** of the ECPRD Questionnaire (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme) and **Question 2[a]** (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs), the reply indicates that, in accordance with Article 68 of the Law of July 13, 2005, as amended, the relevant regulatory body, the CSSF, must provide pre-approval for any amendment to the pension regulations/rules and the technical memorandum/note.

Whilst not explicitly noted in the reply, it is worth noting that Article 73(1) of the Law of July 13, 2005, as amended, provides that each pension fund regulated under the Law must have at all times sufficient and appropriate assets to cover the technical provisions in respect of the total range of pension schemes operated. It indicates that, in order to ensure compliance with this requirement, the CSSF may impose ring-fencing of the assets and liabilities of one or more pension schemes. The CSSF may also require a pension fund to adopt a concrete and realisable recovery plan “with a timeline” in order to ensure that the requirements of Article 73(1) are met.

In addition, Article 57-7 requires pension funds to perform and document an appropriate risk assessment at least every three years or without delay following any significant change in the risk profile of the pension fund or of the pension schemes operated by the pension fund. The risk assessment must include certain information, including:

- “...e) an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits and the effectiveness of any remedial action taking into account, where applicable;
- f) indexation mechanisms;
- g) benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom...”

Of relevance to **Question 2[b]** (regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and to make submissions

concerning proposed changes to occupational pension schemes), the reply indicates that, in accordance with Article 68 (2) of the Law of July 13, 2005, as amended, within one month of the pension fund being authorised, each member or beneficiary must be informed in writing of the registration of their name and status on a list of members and beneficiaries. They must also receive an up-to-date copy of the pension regulations/rules. Every new member must be provided with the same information within one month of joining the pension fund. Upon request, the pension fund must provide any member or beneficiary with an up-to-date version of the articles of association, the pension regulations/rules and the technical memorandum/note. Whenever the pension regulations/rules are amended, each member and beneficiary or, where applicable, their representative, shall receive any relevant information within one month and an explanation of the impact on members and beneficiaries of any significant changes to the technical provisions.

Article 68(2) requires that the articles of association, the pension regulations/rules, the technical memorandum/note, and any amendments to these documents, be communicated within one month to those who committed themselves by accepting those documents, including the contributor(s), and, where applicable, financial institutions assuming liabilities as provided for in Articles 74 and 76 of the Act. Article 68 (3) provides that these actors must accept the articles of association, the pension regulations/rules, the technical memorandum/note, and any amendments thereto, in writing. It indicates that the pension regulations/rules are binding on members and beneficiaries who shall be deemed to have accepted them where they do not raise any objection within two months of receiving them. It further indicates that where a member or a beneficiary does not accept the pension rules or a clause within them, he or she shall forfeit their membership or beneficiary status and their benefits shall be transferred to another qualifying scheme in accordance with the relevant provisions of the pension regulations/rules unless the member/beneficiary is subject to more restrictive provisions, which make their membership of the pension fund compulsory. Article 68(3) provides that, in such circumstances, depending on the relevant provisions of the pension regulations/rules, such membership may be limited to the maintenance of existing benefits or may take the form of a continuous accumulation of benefits in the future. However, it stipulates where the member is also a contributor, or where his or her acceptance makes him or her a debtor of the fund, he or she must accept in writing the articles of association, the pension rules/regulations and, where applicable, the technical memorandum/note, as well as any amendments thereto, unless the pension regulation/rules are founded on a collective agreement or a law.

Whilst not explicitly referenced in the ECPRD response, it should be noted that Article 71 of the Law of July 13, 2005, as amended, provides that amendments to the articles of association, the pension regulations/rules and the technical memorandum/note, which are likely to increase the obligations or reduce the benefits of those who accepted those documents are subject to their unanimous agreement.

Hungary

Introduction to the Pension System in Hungary

A reply to the ECPRD Questionnaire was received on behalf of the Hungarian National Assembly. The reply draws attention to the following laws, cautioning that English translations may not always be up to date:

- Act CXVII of 2007 on Occupational Retirement Pension and Institutions for Occupational Retirement Provision (Act CXVII of 2007, [in Hungarian](#))

- Act V of 2013 on the Civil Code (Civil Code [in Hungarian](#) and [in English](#)),
- Act CXXXIX of 2013 on the National Bank of Hungary (Act CXXXIX of 2013, [in Hungarian](#) and [in English](#))
- Act I of 2012 on the Labor Code (Act I of 2012, [in Hungarian](#))

The reply indicates that institutions for occupational retirement provision (IORPs) may be established in Hungary and operate under Act CXVII of 2007 (the “2007 Act”). It advises that IORPs may provide one or more pension schemes. It indicates that pension schemes may be defined benefit or defined contribution schemes. It advises that any employer may join an IORP. It explains that the employer enters into a contract (sponsorship agreement) with an IORP in which it undertakes to pay contributions for its employees. According to Article 8 of the 2007 Act, the rules of a pension scheme are set out in the sponsorship agreement. The reply notes that the sponsorship agreement must contain certain elements, including:

- a) a description of the elements of the pension scheme, the risks managed, and the exclusions applied;
- b) the regulations governing the payment of contributions and membership supplements, the rights and obligations of members and beneficiaries, and the consequences for failure to perform such rights and obligations;
- c) if the pension scheme includes a waiting period or a period of conditional entitlement, the duration thereof;
- d) a description of the services provided by the IORP, including the mode, time and special conditions of performance and the term of limitation of claims;
- e) in the case of a defined contribution pension scheme, the percentage of the contributions made by the employer and the member to the membership account;
- f) in the case of a defined benefit pension scheme, a detailed methodology for the valorisation of entitlements and for determining capital value, and for the conversion of capital transferred to the scheme from another IORP into entitlements, furthermore, in the case of unit-linked pension schemes, identification of the party that bears the investment risk (member or employer);
- g) in the case of a pension scheme subject to a mathematical provision requirement, the procedure for crediting the bonus, if any, that is due to the member;
- h) in the event of individual settlements with members (termination of membership, transfer to another IORP, calculation of benefits, etc.), the amounts of cost deductions applied;
- i) the types of revenue, expenses, costs from operations, and how they are determined;
- j) details of the employer’s obligations to eliminate the lack of funds;
- k) the proceedings applicable in the event of the employer’s insolvency, or upon the employer’s dissolution or liquidation;
- l) the deadline for terminating the contract; and
- m) the procedure to be followed in the event of termination of the contract (Art. 8 of 2007 Act).

The reply confirms that the transposition of Directive (EU) [2016/2341](#) of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) was carried out in 2019. It notes that there is only [one](#) active IORP in Hungary at present.

Reply to ECPRD Questionnaire concerning the Situation in Hungary

In response to **Question 1** of the ECPRD Questionnaire, (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme), the reply states that the 2007

Act does not permit the employer, members (beneficiaries) or the IORP to make subsequent unilateral amendments to the sponsorship agreement. However, it notes that, according to general contractual law based on the principle of freedom of contract, the parties may depart from the provisions relating to their rights and obligations with mutual consent, unless prohibited by the Civil Code. The reply indicates that the pension scheme rules could potentially permit a reduction in the level of benefits payable according to the 2007 Act.

In response to **Question 2[a]**, (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs, the reply indicates that there are a number of principles which govern the operation of IORPs in Hungary and which protect members' and beneficiaries' rights. It notes, in particular, that:

- members' entitlements shown in the register of entitlements, membership accounts and the related reserves must serve exclusively for the satisfaction of the claims of members and beneficiaries, and may not be confiscated for covering other liabilities of the IORP or the members, nor may they be frozen;
- the principle of sound business management applies: the IORP is required to increase its assets through its business activities, in particular its investment activities, without jeopardising its ability to comply with its obligation to provide retirement benefits;
- the principle of sound and prudent management applies; persons acting on behalf of the IORP are required to act with particular care in the interest of members and beneficiaries; and
- IORPs must, where relevant, have regard to the aim of having an equitable spread of risks and benefits between generations in developing their pension schemes and also in their activities (Article 3 of the 2007 Act).

The reply draws attention to Article 11 of the 2007 Act. It advises that IORPS must have in place key functions proportionate to their size and internal organisation and to the size, nature, scale and complexity of their activities. It indicates that one of these key functions is the risk management function. It notes that where, in accordance with the conditions of the pension scheme, members and beneficiaries bear risks, those risks shall also be considered from the perspective of members and beneficiaries.

The reply draws attention to Article 34/A. (2) of the 2007 Act. It advises that IORPS must have in place a risk assessment policy that is proportionate to the size and internal organisation of the IORP, as well as to the size, nature, scale and complexity of its activities. It notes that the risk assessment policy should include, amongst other things, an assessment of the risks to members and beneficiaries, a description of indexation mechanisms, and an assessment of the effectiveness of benefit reduction mechanisms in the case of defined benefit pension schemes, including the extent to which accrued pension benefits can be reduced.

The reply notes that the objective of the regulatory framework is to prevent situations leading to benefit reduction, primarily via ongoing supervision carried out by [Magyar Nemzeti Bank](#), the national regulatory authority.

In response to **Question 2[b]** of the ECPRD Questionnaire (regarding the existence of mechanisms that afford retired workers and their representative organisations the right to be consulted and to make submissions concerning proposed changes to occupational pension schemes), the reply indicates that where the pension scheme rules permit a reduction in the level

of benefits, the IORP must inform the beneficiaries concerned at least ninety days prior to the disbursement of the reduced benefits (Art. 28/E. § of the 2007 Act)

It notes that within the complaint handling framework, the IORPs are required to provide facilities for their members (including beneficiaries) in order to enable them to submit any complaint they may have relating to the conduct, activity or any alleged infringement of the IORP orally (in person, by telephone) or in writing (delivered in person or by others, by post, fax transmission, or by electronic mail). It notes that the IORP must investigate oral complaints without delay and, if possible, take action to remedy the situation. The reply states that if the member disagrees with the way the complaint is handled or if the complaint cannot be investigated immediately, the IORP must write up a report on the complaint, indicating its position, and must proceed in other respects in accordance with the relevant provisions on written complaints. The reply adds that the IORP must communicate its position relating to the written complaint, including an explanation, to the member within thirty days of receipt of the complaint (see Article 28/A of the 2007 Act).

In response to **Question 3** of the ECPRD Questionnaire, (concerning the ability of retired workers to access the industrial relations machinery of the State), the reply states:

“Regarding that the employer cannot make any unilateral amendments in the rules of pension schemes which could result in the reduction of the benefit, the industrial relations machinery of the State is not involved by the regulation of IORPs. However, general labour rights apply, accordingly the trade union or the works council can act as a representative in the dispute between the members, beneficiaries and the IORP.”

In response to **Question 4** of the ECPRD Questionnaire (concerning the right of access to an independent and impartial adjudicative body where changes are proposed/imposed to an occupational pension plan), the reply indicates that, in circumstances where a complaint is refused by the IORP, the IORP must inform the member affected in writing of his right to:

- initiate proceedings with the supervisory authority for the protection of consumers' interests for any infringement of consumer regulations under Act CXXXIX of 2013;
- initiate an action in a court of law in connection with any dispute relating to the conclusion, validity, legal aspects and termination of contracts, including potential breaches of contract and the related legal effects; or
- seek a remedy at the Financial Arbitration Board.

The reply adds that the IORP must provide the member with the address, phone number and internet address of the [Financial Arbitration Board](#) (see Article 28/A of the 2007 Act).

Slovenia

A reply to the ECPRD Questionnaire was received from the Research Section of the National Assembly of Slovenia in cooperation with the Labour Relations and Labour Rights Directorate at the Ministry of Labour, Family, Social Affairs and Equal Opportunities. It provides both general information about the pension system in Slovenia and some individualised answers to the Questionnaire Questions.

Introduction to the Pension System in Slovenia

The reply to the ECPRD Questionnaire states that in Slovenia, the term “occupational insurance” is used to denote mandatory employers' contributions for particular categories of insured workers, including workers who perform particularly difficult and health-damaging work, and workers who perform work that cannot be professionally performed after a certain age. It indicates that, on the basis of the collected funds and after fulfilling the necessary conditions, insured persons acquire the right to an occupational pension and other rights in accordance with the Pension and Disability Insurance Act. The reply notes that occupational insurance is provided within the framework of the Mandatory Additional Pension Insurance Fund, which is managed by the Kapitalska družba pokojninskega in invalidskega zavarovanja, d. d., and on the basis of the Occupational Insurance Pension Plan.

The reply states that the questions included in the Questionnaire relate to a topic, which in Slovenia is called Collective Supplementary Pension Insurance. It advises that, according to data received from the Ministry of Labour, Family, Social Affairs and Equal Opportunities, at the end of 2022, slightly less than 10,000 employers provided supplementary pension insurance to their employees. It notes that the majority of employees included in collective pension plans were employed in large and medium-sized enterprises. It indicates that it is rare for small and micro enterprises to offer a pension plan to employees. It advises that previously, company owners were precluded under legislation from joining a collective pension plan if they were also employees in the same company, and consequently, many small and micro companies did not introduce any pension plan. The reply indicates that the law has since been amended to remove this restriction.

The reply advises that supplementary pension insurance is established on the basis of an approved pension plan, which determines the conditions for obtaining rights from supplementary insurance, the type and scope of those rights, and the procedure for exercising them. It indicates that the pension plan is approved by the Minister when he or she determines that it contains all the mandatory components and complies with the Pension and Disability Insurance Act. The reply notes that the payment of pensions and other remuneration under compulsory insurance to beneficiaries is provided directly by the Republic of Slovenia, while in cases of occupational and supplementary pension insurance, the State ensures the provision of such forms of insurance and supervises the operation of institutions responsible for their provision.

Reply to ECPRD Questionnaire concerning the Situation in Slovenia

In response to **Question 1** of the ECPRD Questionnaire (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme), the reply advises that voluntary supplementary pension insurance is implemented within the framework of pension funds managed by insurance companies, pension companies and banks. It indicates that these schemes are established as defined contribution schemes where the role of the employer is to provide additional pension insurance to its employees, select the pension fund manager and pay contributions to the pension fund on behalf of its employees. It advises that at the time of payment of the saved funds, the insured decides himself or herself which pension provider (insurance company, pension company) he will choose. It indicates that the scope of rights depends on the amount of funds saved in the insured's personal accounts. It advises that the payment of pension annuities is conducted based on the concluded insurance contract, in the framework of which no changes to the agreed rights between the contracting parties are possible. It indicates that under the system of supplementary pension insurance, it is not possible to subsequently change the rights of recipients of pension annuities.

In response to **Question 2** of the ECPRD Questionnaire, (concerning the existence of statutory and other protections to ensure fairness when restructuring occurs) the reply provides an “N/A” answer.

With regard to **Question 3** of the ECPRD Questionnaire (concerning the ability of retired former workers to access the industrial relations machinery of the State), the reply advises that the Slovenian system of supplementary pension insurance is separate from employers, and rights depend on the amount of funds saved in the personal accounts of supplementary pension insurance (on a defined contribution basis). It explains that, accordingly, in the Slovenian system, situations cannot arise for retired employees as would arise from questions that are typical for defined benefit schemes.²¹²

In response to Question 4 of the ECPRD Questionnaire concerning the right of access of retired workers to an independent and impartial adjudicative body where changes are proposed/imposed to an occupational pension plan), the reply provides an “N/A” answer.

Romania

Reply to ECPRD Questionnaire concerning the Situation in Romania

A general reply to the ECPRD Questionnaire was received from the Directorate for Studies and Legislative Documentation of the Chamber of Deputies of the Parliament of Romania. The reply indicates that Law No. 1/2020 on occupational pensions, as amended, regulates the occupational pension system in Romania. It indicates that joining an occupational pension scheme in Romania is optional. It advises that the contribution to an occupational pension fund is the amount calculated as a percentage of the monthly gross salary of the person who joins an occupational pension fund or of the income assimilated thereto. It indicates that, following the expiration of a minimum mandatory period after joining the pension fund, the contributions made by the employer and/or the employee, as well as the investment results of those contributions, belong to the employee, in accordance with the provisions of the collective labor contract/protocol and the administration contract.

The reply highlights some of the purposes of the legislative framework for the granting of occupational pensions, including contributing to the long-term achievement of the financial sustainability of the public pension system by reducing the pressure exerted on it.

The reply indicates that occupational pensions are distinguishable in Romania by virtue of the vesting clause, which assumes that employees become the owners of the accumulated amounts upon the expiration of a maximum period of three years, provided that they continue to be employees of the company that paid the contributions, according to Law no. 1/2020.

Of relevance to **Question 1** of the ECPRD Questionnaire (concerning the existence of statutory provisions allowing for changes to an occupational pension scheme), the reply advises that in February 2022, the Financial Supervisory Authority (ASF), an autonomous and independent administrative authority, authorised the first company in Romania to operate as an administrator of occupational pension funds (Pillar IV), namely, “BCR Pensii”. In terms of safeguards, the reply

²¹² More about pension system in the Republic of Slovenia is available at: <https://www.gov.si/en/policies/employmentlabour-and-pensions/retirement/>.

indicates that ASF issues regulations regarding the application by administrators of prudential rules and the application of corporate governance principles. It advises that the modification of the fund's prospectus is subject to ASF authorisation and indicates that ASF may reject the requested changes if they: harm the interest of the participants; create inequities between participants; or fail to comply with the relevant legislation in force.

The reply concludes by stating that "since the maturity of the accounts will be achieved in two years (2025), we cannot make any other clarifications regarding the application of protection and compensation measures to the people who applied for the IV pension fund".

Bulgaria

Reply to ECPRD Questionnaire concerning the Situation in Bulgaria

A general response to the ECPRD Questionnaire was received on behalf of the National Assembly of Bulgaria. It indicates that, under existing Bulgarian legislation, supplementary voluntary pension insurance is available via a fund for additional voluntary pension insurance and a fund for additional voluntary pension insurance under professional schemes. It advises that insurance in these funds is provided on a capital cover basis based on predetermined insurance contributions.

The reply indicates that, under Bulgarian legislation, the insurance provided under the professional pension schemes affords the right to: term pension for old age; and a one-time or deferred payment of the accumulated funds under the individual lot. It states that insurance under occupational schemes must be regulated in a collective agreement or in a collective labour contract, which should contain information on the conditions and scope of the insurance, as well as the waiting period, if applicable, on the types of pension payments and on the amount of the insurance contribution. The reply indicates that the relevant legislation, which regulates professional pension schemes in Bulgaria does not regulate the conditions for receiving, and the amounts of, benefits paid from these funds. In terms of safeguards, it advises that the funds are managed by the pension insurance company, which must exercise care and observe the principles of quality, reliability, liquidity, profitability and diversification, in the interest of the insured persons.

Latvia

Reply to ECPRD Questionnaire concerning the Situation in Latvia

According to the [European Commission website](#), Latvia has a [three-tier pension system](#):

- Tier 1, comprised of mandatory social insurance contributions and in which all payers are participants;
- Tier 2, comprised of social insurance contributions, which are invested by an intermediary (a bank) and where the profits earned form part of the accrued pension. Contributions are mandatory for those born after 1 July 1971 and voluntary for those born after this date; and
- Tier 3 comprised of voluntary contributions made by the employer and employee into a private pension fund to be invested.

The Analytical Service of the Parliament of Latvia provided a reply to the ECPRD Questionnaire. The reply states that in Latvia, pensions are regulated by the Law [On State Pensions](#). It observes

that according to section 7 of this Act, there are three types of state pensions: old-age, disability and survivors' pensions. It notes that, subject to certain conditions being satisfied, a service pension is also granted to workers in certain professions or positions, whose professional skills are lost after working for a certain period of time, or whose work is associated with social danger. The reply does not provide a clear answer to **Question 1** of the ECPRD Questionnaire and provides an N/A answer to the remaining Questions.

The Czech Republic, Estonia, Lithuania and Slovakia

Responses were received on behalf of the parliaments of the Czech Republic, Estonia, Lithuania and Slovakia, which indicate that either occupational pension schemes do not operate in their State or that there is no system of occupational pensions where the employer is also a contributor. Some of these responses include general information regarding the pension system in their respective states. This information is outlined below.

Reply to ECPRD Questionnaire concerning the Situation in the Czech Republic

A general response to the ECPRD Questionnaire was received from the Parliamentary Institute of the Czech Republic. It states that occupational pension schemes are not used within the Czech Republic. It advises that occupational pension schemes are officially regulated in the Czech Republic by Act No. 340/2006 Coll. on activities of institutions for occupational retirement provision (available [here](#)), however it indicates that this Act was only introduced to ensure transposition of the IORP Directive and is not used in practice. Indeed, it notes that Article 10h of the Act provides that institutions for occupational retirement provision may not establish themselves in the Czech Republic. The reply observes that Act No. 340/2006 Coll. ostensibly requires relevant institutions to provide information annually on the protection of vested pensions and the manner in which benefits are reduced. Part 2 of the Act concerns the activities of institutions for occupational retirement provision from other EU member states or EEA states in the Czech Republic. Article 7(7) provides that, where an institution takes a decision which leads to a reduction in pension benefits due, it shall inform the beneficiary thereof immediately after the decision has been taken, but no later than 3 months before the date of implementation of that decision.

Reply to ECPRD Questionnaire concerning the Situation in Estonia

A reply to the ECPRD Questionnaire was received from the Parliament of Estonia. In response to Question One of the ECPRD Questionnaire, the reply notes that there is no system of occupational pensions where the employer is the contributor in Estonia. An "N/A" (non-applicable response) was provided to Questions 2, 3 and 4 of the ECPRD Questionnaire. The reply indicates that more information about the Estonian pension system can be found on the website of the [Pension Centre](#).

The reply includes some general information regarding the Estonian pension system. It advises that the system is based on three pillars: (i) the State pension, (ii) the mandatory funded pension, and (iii) the supplementary funded pension. It indicates that the State pension, is paid out of the social tax calculated from salaries. It advises that employers pay 33% of the salary of each employee to social tax, 13% to health insurance, and 20% to fund the pensions of current pensioners. It clarifies that the state pension is paid for old age, incapacity for work or loss of provider to permanent residents of Estonia and aliens residing in Estonia based on a temporary residence permit or right of residence. It advises that the mandatory funded pension is based on

preliminary financing whereby an employee saves for their own pension by paying 2% of their gross salary to the pension fund. It indicates that the State adds 4% from the 33% worth of social tax imposed on the salary of the employee. It advises that the supplementary funded pension, is completely voluntary. It indicates that an employee can make contributions or contributions can be made by their employer. It advises that they are not related to the earned income. It clarifies that the third pillar may not be considered to constitute an occupational pension scheme.

Reply to ECPRD Questionnaire concerning the Situation in Lithuania

The Research Unit of the Information and Communication Department of the Office of the Lithuanian Parliament provided a general reply to the ECPRD Questionnaire. The reply states that occupational pension schemes are not used in Lithuania.

The reply includes general information regarding the Lithuanian pension system. It advises that it consists of three pillars. It indicates that the first Pillar is comprised of the social security system whereby working Lithuanian residents pay contributions to "Sodra" (the State Social Insurance Fund Board under the Ministry of Social Security and Labour) from their wages/social insurance pension. It indicates that a person acquires the right to a social insurance pension where they reach the retirement age and have accumulated the minimum social insurance pension record (15 years) and to a full social insurance pension where they reach the retirement age and have accumulated the required record/years of service (32 years in 2021 but set to reach 35 years in 2027). The European Commission [webpage](#) indicates that individuals who have reached the retirement age but who are not entitled to a social insurance old age pension or for whom such a pension would be very small have the right to receive a social assistance pension.

The reply advises that the second pillar consists of funded pension schemes. It stipulates that all persons with an income from which state social insurance contributions are calculated on a mandatory basis and who have yet to reach the retirement age may become fund participants. It advises that employees contribute 3% of their monthly gross wage and the State contributes 1.5% of the national average wage from the State Budget.

The reply indicates that the third pillar consists of supplementary voluntary contributions to a pension fund or participation in a life insurance scheme.²¹³ All individuals can participate, including individuals who do not participate in Pillars I and II.²¹⁴

Reply to ECPRD Questionnaire concerning the Situation in Slovakia

The Parliamentary Institute of the Chancellery of the National Council of Slovakia provided a reply to the Questionnaire. In response to Question One, the reply states: "No, Slovakia does not use occupational pension schemes. The Slovak pension system consists of three pillars: pension insurance (first pillar), old-age pension scheme (second pillar) and supplementary pension scheme (third pillar)". The reply provides "N/A" responses to questions 2, 3 and 4. It indicates that more information about the Slovak pension system is available [here](#) or [here](#).

²¹³ See European Commission, 'Lithuania - Employment, Social Affairs & Inclusion', available [here](#).

²¹⁴ Ibid.

Annex I: Glossary of Key Technical Terms²¹⁵

Annuity: “a series of pension payments, normally monthly, until a particular event occurs”.²¹⁶

Defined benefit pension schemes: occupational pension schemes that offer a fixed income upon retirement, which is typically based upon: years of service and salary at retirement or in the years preceding retirement (although sometimes they can be based on a “career average” salary) and may be adjusted in line with inflation.²¹⁷

Defined contribution pension scheme: “occupational pension schemes where your own contributions and your employer’s contributions are both invested, and the proceeds used to buy a pension and/or other benefits at retirement. The value of the ultimate benefits payable from the DC scheme depends on the amount of contributions paid, the investment return achieved less any fees and charges, and the cost of buying the benefits.”²¹⁸

IORP: institution for occupational retirement provision.

Money purchase scheme: another name for a defined contribution pension scheme.²¹⁹

Multi-employer pension fund: “Funds that pool the assets of pension plans established by various plan sponsors. There are three types of multi-employer pension funds: a) for related employers i.e. companies that are financially connected or owned by a single holding group (group pension funds); b) for unrelated employers who are involved in the same trade or business (industry pension funds); c) for unrelated employers that may be in different trades or businesses (collective pension funds).by one employer and their employees, where applicable, in a single fund.”²²⁰

Replacement rate: “the percentage of a worker’s pre-retirement income that is paid out by a pension program after the worker retires”.²²¹

Single-employer pension funds: “Funds that pool the assets of pension plans established by a single sponsor.”²²²

²¹⁵ Please note that the exact meaning of terms may differ depending on the State in question and the relevant context. Accordingly, the explanations included in the Glossary are not definitive and are only intended to provide a foundational explanation of some of the more technical terms with a view to enhancing the overall comprehensibility of the paper.

²¹⁶ See Pensions Authority, available [here](#).

²¹⁷ See, e.g., Danielle Barron, ‘Defined-benefit pensions: Perhaps most valuable asset you own’ (The Irish Times, 23 October 2020) available [here](#); and The Pensions Authority, ‘Final Salary Defined Benefit Schemes’, see [here](#).

²¹⁸ See Pensions Authority, available [here](#).

²¹⁹ See Pensions Authority, available [here](#).

²²⁰ OECD, ‘Private Pensions Outlook 2008 (OECD 2009) ISBN 978-92-64-04438-8, Glossary, available [here](#).

²²¹ Julia Kagan, ‘Replacement Rate’ (*Investopedia*, 23 September 2021) available [here](#).

²²² OECD, ‘Private Pensions Outlook 2008 (OECD 2009) ISBN 978-92-64-04438-8, Glossary, available [here](#).

Valorisation: the process “whereby past earnings are adjusted to take account of changes in living standards between the time pension rights accrued and the time they are claimed (sometimes called pre-retirement indexation)”.²²³

Works Council: a group that represents the interests of employees.

Works agreement: an agreement concluded between an employer and a works council.

²²³ OECD, Pensions at a Glance 2013: OECD and G20 Indicators (2013), at p. 124; available at [OECD website](#).

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