



Recommendation of the Council on Core Principles of Occupational Pension Regulation

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Date(s)

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Abrogated on 27/09/2016

Background Information

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the previous Recommendation on Core Principles of Occupational Pension Regulation adopted on 30 March 2004 [C(2004)41] which is replaced by the present Recommendation;

RECOGNISING the important role played by private pensions in the retirement income systems worldwide;

RECOGNISING the important economic and social role played by occupational pension plans, including the role of employers as plan sponsors;

RECOGNISING the need for appropriate regulation and supervision of occupational pension systems;

RECOGNISING the desirability of an authoritative set of core principles and guidelines for occupational pension regulation and supervision,

On the proposal of the Insurance and Private Pensions Committee:

RECOMMENDS that Members, in establishing, amending or reviewing their occupational pension regulations in accordance with their own political, administrative and legal context, take due account of the Core Principles of Occupational Pension Regulation and their associated guidelines which are set out in the Annex to this Recommendation and which form an integral part thereof.

INVITES Members to disseminate these core principles among public and private sector institutions involved in the management of private pension systems as well as organisations that represent the interests of pension plan members and beneficiaries.

INVITES non-members to take due account of this Recommendation and, where appropriate, to adhere to it under conditions to be determined by the Insurance and Private Pensions Committee.

INSTRUCTS the Insurance and Private Pensions Committee to exchange information on progress and experiences with respect to the implementation of this Recommendation, review that information and report to the Council as appropriate.

ANNEX

CORE PRINCIPLES OF OCCUPATIONAL PENSION REGULATION¹

Core Principle 1: Conditions for Effective Regulation and Supervision

An adequate regulatory framework for private pensions should be enforced in a comprehensive, dynamic and flexible way (taking into account the complexity of the schemes) in order to ensure the protection of pensions plan members and beneficiaries, the soundness of pensions plans and funds and the stability of the economy as a whole. This framework should however not provide excessive burden on pensions markets, institutions, or employers.

A productive, diversified investment of retirement savings which spreads risk requires well-functioning capital markets and financial institutions. The development of advance-funded pension systems should go hand-in-hand with a strengthening of the financial market infrastructure and regulatory framework (including the development of new financial instruments and new markets such as inflation-indexed markets and the improved functioning of retirement annuity markets).

Regulation should promote a level playing field between the different operators and take account of the usefulness of a functional approach. The fair competition should benefit to the consumers and allow for the development of adequate private pensions markets.

Implementing Guidelines for Core Principle 1

1.1 Occupational pensions are subject to a set of legal provisions that regulate the main aspects of the operation of those plans.

1.2 The legal provisions promote the protection of pensions plan members and beneficiaries and the soundness of pension funds.

1.3 The legal provisions provide the necessary flexibility in order to permit the efficient operation of occupational pension plans.

1.4 The legal system allows the enforcement of financial contracts pertaining to occupational pensions. In particular, there is a body of ethical, professional and trained lawyers and judges, and a court system, whose decisions are enforceable. Comparable standards apply in cases where alternative dispute mechanisms exist.

1.5 Accounting standards for plan sponsors of occupational pensions are comprehensive, documented, transparent and consistent with international standards.

1.6 The legal provisions take into account the state of development of financial markets.

1.7 The legal provisions encourage efficiency in pension provision.

Core Principle 2: Establishment of Pension Plans, Pension Funds, and Pension Fund Managing Companies.

An institutional and functional system of adequate legal, accounting, technical, financial, and managerial criteria should apply to pension funds and plans, jointly or separately, but without excessive administrative burden. The pension fund must be legally separated from the sponsor (or at least such separation must be irrevocably guaranteed through appropriate mechanisms).

Implementing Guidelines for Core Principle 2

Legal provisions on licensing

2.1 Legal provisions are in place requiring the licensing of pension entities (and where relevant, pension plans) by the relevant authorities.

2.2 Legal provisions are in place regarding the type of pension plans and/or pension funds that can be established and the legal form of pension entities.

Governing documents

2.3 Pension plans or/and pension entities should have formal, written charters or documents describing the plan's/entity's objectives and the plan's parameters (such as types of contributions and benefits), its governance structure and outsourcing or third party service provisions, and the rights of members and other beneficiaries.

Risk control, reporting and auditing mechanisms

2.4 Pension entities should have adequate risk control mechanisms in place to address investment, operational and governance risks, as well as internal reporting and auditing mechanisms.

2.5 If they manage more than one pension plan or fund, pension entities should be required to maintain separate accounts and records for each of the pension funds, or where relevant, each of the pension plans that they manage.

Funding policy

2.6 Pension entities that offer defined benefit (DB) and hybrid/mixed plans should have a funding policy that specifies the sources of funding, the actuarial method to be used, and the mechanisms for fulfilling legal funding requirements.

2.7 Where a pension entity manages assets for different pension funds or plans, separate funding policies and methods should be prepared for each pension fund or, where relevant, each pension plan.

Investment policy

2.8 Pension entities should prepare a statement of investment policy.

2.9 Where a pension entity manages different pension plans or funds, separate statements of investment policy should be prepared for each pension fund or, where relevant, each pension plan.

Capital requirements

2.10 At least where directly exposed to financial and demographic risks, pension entities should be required to hold a minimum amount of free, uncommitted starting capital or otherwise have access to adequate financial resources. The amount should be dependent on the risks to be covered. The required minimum capital should not be used to cover set-up costs. In order to ensure the guarantee function of the minimum capital, legislation could require the setting aside of appropriate assets. In some jurisdictions, capital requirements may also be satisfied by the purchase of insurance providing the same level of protection to the plan members and plan beneficiaries.

Governance

2.11 Pension entities should have a governing body that is ultimately responsible for the entity and a code of conduct for the members of its governing bodies and staff. The code of conduct may be laid out in specific legislation applying to pension entities.

2.12 Member of the governing bodies of the pension entity should be subject to fit and proper requirements.

2.13 Pension entities should be required to keep a functional separation between those staff responsible for investments and those responsible for settlement and bookkeeping.

Business plan

2.14 Pension entities should create a business plan which should at least include (i) a list of the plans/funds that the pension entity will manage; (ii) the types of obligations that the pension entity proposes to incur (e.g. return or benefit guarantees), if any; (iii) the estimated setting-up costs and the financial means to be used for this purpose; (iv) the projected development of the fund/plan; (v) where relevant, the means for fulfilling any capital requirements; and (vi) details regarding the adequate risk control reporting and auditing mechanisms, and a sound investment policy that are in place or to be established at start-up.

License withdrawal

2.15 The legal provisions require the withdrawal of a licence from a pension entity in certain circumstances.

2.16 Legal provisions grant the pension entity whose licence has involuntarily been withdrawn the possibility to appeal the decision and have it reviewed.

Role of the licensing authority in supervisory matters

2.17 The legal provisions should endorse the role of the licensing authority in the wider supervisory and regulatory system and, where there are separate licensing and supervisory authorities, allow for the supervisor to be consulted on each specific licence application.

Clarity of licensing application procedure

2.18 The legal provisions should promote the clear setting out of the application process, including:

- Information about the obligations on the licensing authority, for example the timeframe in which it must decide an application;
- Procedures for the licensing authority to seek further information from the applicant;
- The actions that the licensing authority will take to confirm the information received as part of the licence application;
- Requirements that the staff of the licensing authority observe the appropriate standards of confidentiality with regard to the information gathered as part of the licensing application process (with the exception of information which may have to be provided to other public authorities).

Submission of documents

2.19 The licensing authority should have the power to require the submission of the governing documents and other documents necessary for assessing the entity's compliance with the licensing requirements.

Assessment of the licence application

2.20 The licensing authority should have the power to:

- Examine the proposed legal, managerial and ownership structures of the applicant and its wider group (if any);
- Evaluate proposed directors and other members of the governing bodies as to their expertise and integrity, their skills and experience and their judicial records;
- Review the proposed strategic and operating plans of the applicant, including:
 - Determining that an appropriate system of corporate governance, risk management and internal controls and a code of conduct will be in place, and
 - Considering whether the operational structure of the applicant reflects the scope and degree of sophistication of the proposed activities of the applicant;

- Review the policies and procedures that the applicant has/intends to put in place to ensure ongoing compliance with its obligations under relevant legislation and the conditions of the licence and the risk management control framework established by the applicant.
- Review financial projections for the applicant and assess its financial strength and other resources;
- Where applicable, identify and determine the suitability of major shareholders, including the ultimate beneficial owners, and others that may exert significant influence on the applicant, as well as assess the transparency of the ownership structure and the sources of initial capital (if required).

2.21 The licensing authority should, under specific circumstances, have flexibility in applying legislative requirements so that the type, scale and complexity of an applicant's activities may be taken into account in the assessment as to whether and how licensing criteria are met. The circumstances in which the licensing authority may apply legislative requirements flexibly must be clearly stated in legislation and protection against arbitrary action on the part of the licensing authority must be guaranteed.

2.22 The licensing authority may have the power to impose conditions on the licence of the applicant, and to subsequently vary or withdraw those conditions. The circumstances in which conditions can be imposed, withdrawn or modified must be clearly stated in legislation.

Guidance materials

2.23 The licensing and/or supervisory authority/ies may provide guidance to applicants regarding their expectations as to how they may meet licensing criteria, so that better internal systems (such as risk management systems) result for the applicant.

2.24 The licensing authority should provide appropriate guidance to officers carrying out the licensing assessment.

Power to reject, modify or withdraw a licence

2.25 The licensing authority should have the power to reject an application if the criteria are not fulfilled or if the information provided is inadequate, so that the assessment process supports the objectives of the licensing regime. Any rejection should include identification of the specific criteria on which the rejection is based.

2.26 The licensing authority should have the power to make adjustments to a licence already granted and to withdraw a licence when the conditions for the licence are no longer fulfilled. These powers must be clearly stated in legislation.

2.27 The licensing authority should have a review mechanism in place to examine the demands of entities whose licence has been modified or withdrawn.

2.28 Decisions of the licensing authority should be open to administrative and legal appeal. Adequate protections to preclude arbitrary action on the part of the licensing authority should be in place.

Core Principle 3: Pension Plan Liabilities, Funding Rules, Winding Up, and Insurance

Private occupational plans should be funded. While full-funding exists in principle for defined contribution plans, other types of plans should be subject to minimum funding rules or other mechanisms to ensure adequate funding of pension liabilities. Rules based on winding-up approach may be promoted as a minimum level to complement the ongoing approach. Flexibility can be allowed for temporary limited under-funding under restricted circumstances. Consideration should be given to the development of adequate but flexible requirements for minimum capital/guarantee in pension funds, taking account of the long term nature of their liabilities. Tax and prudential regulations should

encourage a prudent level of funding. Private unfunded pay-as-you-go plans at individual company level should generally be prohibited.

Appropriate calculation methods for asset valuation and liabilities funding, including actuarial techniques and amortisation rules must be set up and based on transparent and comparable standards.

Proper winding-up mechanisms should be put in place. Arrangements (including, where necessary, priority creditors' rights for pension funds) should be put in place to ensure that contributions owed to the fund by the employer are paid in the event of his insolvency, in accordance with national laws.

The need for insolvency insurance and/or other guarantee schemes has to be properly evaluated. These mechanisms may be recommended in some cases but in an adequate framework. Recourse to insurance mechanisms (group and reinsurance) may be promoted.

Implementing Guidelines for Core Principle 3

Funding of occupational pension plans

3.1 Occupational pension plans should be funded.

3.2 Occupational defined contribution plans should be funded through the establishment of pension funds, pension insurance contracts or the purchase of other authorised retirement savings products from financial institutions.

3.3 Occupational defined benefit plans should in general be funded through the establishment of a pension fund or through an insurance arrangement (or a combination of these mechanisms). Additional protection may be provided through the recognition of creditor rights to the pension fund or the plan members and beneficiaries and, in some cases, through insolvency guaranty schemes that protect pension benefits in the case of insolvency of the plan sponsor or the pension fund.

3.4 Private unfunded plans should generally be prohibited. The establishment of an insolvency guaranty scheme should in general be required for occupational defined benefit plans that are financed through the book reserve system.

3.5 Insolvency guaranty schemes should rely on appropriate pricing of the insurance provided in order to avoid unwarranted incentives for risk-taking (moral hazard). The level of benefits guaranteed should also be limited.

Measurement of occupational pension plan liabilities

3.6 Legal provisions should be in place requiring the determination of occupational pension plan liabilities corresponding to the financial commitments or obligations which arise out of the pension arrangement. The ongoing liability is normally defined as the accrued benefit rights of pension plan members and beneficiaries excluding future service but taking into account the projected benefits to be received under estimated retirement, mortality, and early leaver (also known as membership termination or job separation) patterns. The termination liability takes into account the pension benefits accrued if the plan were to be terminated at the time of the valuation.

3.7 Any definitions of ongoing and termination liability should reflect any benefit indexation factors prescribed by law or plan terms (unconditional indexation) that apply from membership or plan termination to the annuity starting date and, if relevant, after the annuity starting date, provided that these factors are predictable. These definitions should also reflect benefits that become vested upon plan termination.

3.8 These legal provisions should require the use of appropriate calculation methods, including actuarial techniques and amortisation rules that are consistent with generally recognised actuarial standards and methods.

3.9 The legal provisions (referencing generally recognised actuarial standards and methods) should require the use of prudent actuarial assumptions which are considered appropriate for the calculation of the pension plan's liabilities. These assumptions would include, among others, the mortality table (representing the assumed level of mortality of plan members and beneficiaries as at the date at which the plan's liabilities are calculated), future trend in mortality (representing permanent changes in mortality that are assumed to occur after the date at which the liabilities are calculated) and retirement and early leaver patterns at different ages (taking into account the actual retirement and early leaver behaviour of those covered by the plan).

3.10 The legal provisions (referencing generally recognised actuarial standards and methods) should require the use of prudent discount rates for determining liabilities that are consistent with the methodologies used in the valuation of assets and other economic assumptions. These legal provisions (or the actuarial profession) should provide guidance as to the factors that may be considered in determining the discount rate for ongoing and termination liabilities.

3.11 The calculation of pension liabilities should take place at least once every three years, while a certification or report of the adjusted development of the liabilities and changes in risks covered should be required for the intervening years. All actuarial valuations should be carried out by an actuary, or by another equivalent specialist, who has had appropriate training and experience in the field of pensions.

3.12 As part of the process of defining its funding policy, the governing body of the pension fund should seek the advice of the actuary or other relevant specialist regarding the assumptions and methods to be used in calculating pension liabilities and funding levels. This advice should be provided in a clear and timely fashion.

Funding rules for occupational defined benefit plans

3.13 The legal provisions require the identification and maintenance of a level of assets that would be at least sufficient to meet accrued benefit payments. The targeted funding level may be based on the termination or the ongoing liability. It should also take account of the plan sponsor's ability and commitment to increase contributions to the pension plan in situations of underfunding, the possibility of benefit adjustments or changes in retirement ages, as well as the link between the pension fund's assets and its liabilities.

3.14 Approved funding methods (also known as actuarial cost methods) for the ongoing liability should attempt to prevent sharply rising cost curves over time by spreading the actuarial (or accrued) liability over the expected career path of plan members. In order to ensure adequate funding levels over time, ongoing funding methods should take into account factors such as future salary growth, mortality, disability, early leaver (separation) and other relevant events.

3.15 In addition to normal costs (the present value of benefits that have accrued on behalf of the members during the valuation period), contributions should reflect other factors, including, to the extent appropriate to the accrual of benefits under the plan, work before a plan's inception, plan amendments that increase liability attributable to past service, deviations of actual results from assumptions (experience gains and losses), and the effects of changes in assumptions (actuarial gains and losses). These supplemental costs should be amortised as even currency units or at a minimum as even percentages of payroll. Amortisation periods should in general not be longer than the expected future period of service of active plan participants.

3.16 The legal provisions should not prevent funding methods that seek to dampen the short term volatility in firms' funding contributions. Prudent amortisation of supplemental costs over time might help achieve a smoother contribution schedule and more stable funding levels.

3.17 These legal provisions set out the different mechanisms and the recovery period for correcting a situation of underfunding, taking into account the sources of underfunding and the type of underfunding (ongoing or termination basis). Funding rules may grant some reprieve on contribution obligations only under restricted circumstances and within defined limits. Temporary reductions of contribution obligations may be considered with a clear waiver procedure managed by the pension regulator.

3.18 Funding rules should aim to be countercyclical, providing incentives to build reserves against market downturns. They should also take market volatility into account when limiting contributions (or their tax deductibility) as a certain funding level is reached. Tax regulations should not discourage the build-up of sufficient reserves to withstand adverse market conditions and should avoid restricting the full funding of the ongoing or termination liability. Temporary suspension of contribution obligations may be appropriate in circumstances of significant overfunding (calculated on an on-going basis).

3.19 Funding rules should take into account the extent to which the autonomous pension fund itself as opposed to the plan sponsor or the plan members is directly responsible partly or wholly for the commitments represented by the pension liabilities. Where the pension fund itself underwrites the pension liability without any guarantee from the plan sponsor or members, it should be required to hold additional assets over and above those necessary to fully fund the pension liabilities on a plan termination basis. This capital requirement or solvency margin should be determined taking into account the nature and size of assets held and liabilities due that are the responsibility of the pension fund and the extent to which benefits may be reduced.

Winding up

3.20 The allocation of plan assets and the responsibility for underfunding in the event of plan termination should be clearly established. In the event that assets exceed promised benefits on a termination basis, there should be rules in place as to the allocation of the funding excess or surplus. In the event that assets are insufficient to cover promised benefits, there should be rules concerning the benefit payment allocation.

3.21 Whenever plan benefits are guaranteed by sponsoring employers, the creditor rights of pension plan members and beneficiaries (either directly, via the pension fund, or, where relevant, via insolvency guarantee schemes) should be recognised in the case of bankruptcy of the plan sponsor. Priority rights relative to other creditors should be required for at least due and unpaid contributions.

Core Principle 4: Asset Management

Investment by pension funds should be adequately regulated. This includes the need for an integrated assets/liabilities approach, for both institutional and functional approaches, and the consideration of principles related to diversification, dispersion, and maturity and currency matching. Quantitative regulations and prudent-person principles should be carefully assessed, having regard to both the security and profitability objectives of pension funds. Self-investment should be limited, unless appropriate safeguards exist. Investment abroad by pension funds should be permitted, subject to prudent management principles.

Increased reliance on modern and effective risk management, industry-wide risk management standards for pension funds and other institutions involved in the provision of retirement income should be promoted. The development of asset liability management techniques should be given proper consideration.

Implementing Guidelines for Core Principle 4

Retirement income objective and prudential principles

4.1 The regulation of pension fund asset management should be based on the basic retirement income objective of a pension fund and assure that the investment management function is undertaken in accordance with the prudential principles of security, profitability, and liquidity using risk management concepts such as diversification and asset-liability matching.

Prudent person standard

4.2 The governing body of the pension plan or fund and other appropriate parties should be subject to a "prudent person standard" such that the investment of pension assets is undertaken with care, the skill of an expert, prudence and due diligence. Where they lack sufficient expertise to make fully informed decisions and fulfil their responsibilities the governing body and other appropriate parties should be required to seek the external assistance of an expert.

4.3 The governing body of the pension plan or fund and other appropriate parties should be subject to a fiduciary duty to the pension plan or fund and its members and beneficiaries. This duty requires the governing body and other appropriate parties to act in the best interest of plan members and beneficiaries in matters regarding the investment of pension plan assets and to exercise “due diligence” in the investment process.

4.4 The legal provisions should require the governing body of the pension plan or fund to establish a rigorous process by which investment activities are carried out (see Guideline III on investment policy), including the establishment of appropriate internal controls and procedures to effectively implement and monitor the investment management process.

Investment policy

4.5 The governing body of the pension fund should set forth in a written statement and actively observe an overall investment policy.

4.6 The investment policy should establish clear investment objectives for the pension fund that are consistent with the retirement income objective of the pension fund and, therefore, with the characteristics of the liabilities of the pension fund and with the acceptable degree of risk for the pension fund, the plan sponsor and the plan members and beneficiaries. The approach for achieving those objectives should satisfy the prudent person standard taking into account the need for proper diversification and risk management, the maturity of the obligations and the liquidity needs of the pension fund, and any specific legal limitations on portfolio allocation.

4.7 The investment policy should at a minimum identify the strategic asset allocation strategy for the pension fund (the long-term asset mix over the main investment categories), the overall performance objectives for the pension fund, and the means of monitoring and, when necessary, modifying allocations and performance objectives in the light of changing liabilities and market conditions. The investment policy should also include any broad decisions regarding tactical asset allocation, security selection and trade execution.

4.8 A sound risk management process that measures and seeks to appropriately control portfolio risk and to manage the assets and liabilities in a coherent and integrated manner should be established.

4.9 The investment policy for pension programmes in which members make investment choices should ensure that an appropriate array of investment options, including a default option, are provided for members and that members have access to the information necessary to make investment decisions. In particular, the investment policy should classify the investment options according to the investment risk that members bear.

4.10 Parties who are responsible for the overall implementation of the investment policy should be identified together with any other significant parties that will be part of the investment management process. In particular, the investment policy should address whether internal or external investment managers will be used, the range of their activities and authority, and the process by which they will be selected and their performance monitored. An investment management agreement should be required if external investment managers are used.

4.11 There should be procedures and criteria by which the governing body or other responsible party periodically reviews the effectiveness of their investment policy and determines whether there is a need to change the policy, its implementation procedures, the decision-making structure, as well as the responsibilities linked to its design, implementation, and review.

Portfolio limits

4.12 The legal provisions may include maximum levels of investment by category (ceilings) to the extent that they are consistent with and promote the prudential principles of security, profitability, and liquidity pursuant to which assets should be invested. Legal provisions could also similarly include a list of admitted or recommended assets. Within this framework, certain categories of investments may be strictly limited. The legal provisions should not prescribe a minimum level of investment (floors) for

any given category of investment, except on an exceptional and temporary basis and for compelling prudential reasons.

4.13 Portfolio limits that inhibit adequate diversification or impede the use of asset-liability matching or other widely-accepted risk management techniques and methodologies should be avoided. The matching of the characteristics of assets and liabilities (like maturity, duration, currencies, etc) is highly beneficial and should not be impeded.

4.14 Where the legal provisions establish maximum levels of investment by category (ceilings), there should be an established procedure for correcting excesses within specified time limits.

4.15 Self-investment by those undertaking investment management of pension funds should be prohibited or limited, unless appropriate safeguards exist. Investment in assets of the plan sponsor, in parties related or affiliated with any pension entity or pension fund managing company is prohibited or strictly limited to a prudent level (e.g. 5 percent of the pension fund assets). When the plan sponsor, the pension entity or the pension fund managing company belong to a group, investment in undertakings belonging to these same groups should also be limited to a prudent level, which may be a slightly higher percentage (e.g. 10 percent of the pension fund assets).

4.16 Investments in assets issued by the same issuer or by issuers belonging to the same group should not expose the pension fund to excessive risk concentration.

4.17 Investment abroad by pension funds should not be prohibited and, among other risks, should take into account the currency matching needs between pension plans assets and liabilities.²

4.18 Legal provisions should address the use of derivatives and other similar commitments, taking into account both their utility and the risks of their inappropriate use. The use of derivatives that involves the possibility of unlimited commitments should be strictly limited, if not prohibited.

4.19 All legal provisions setting forth quantitative portfolio limits should be regularly assessed to determine whether they are unnecessarily inhibiting the ability of pension fund asset managers to implement optimum investment strategies and amended to the extent necessary.

Valuation of pension assets

4.20 The legal provisions should establish a proper, transparent and disclosed basis for valuing pension assets.

4.21 Where national rules do not require valuation at current market value or under a fair valuation methodology, it is recommended that the valuation be accompanied by the disclosure of the results that would have been obtained using a current market value or fair valuation methodology.

4.22 The legal provisions should require pension assets to be valued for accounting, reporting, actuarial and funding purposes. Ideally, permitted valuation methodologies for these purposes should be consistent, and where inconsistent, the differences in methodologies should be transparent. In appropriate circumstances, rules may permit methods that reduce short-term volatility of values over time for actuarial and funding purposes.

4.23 Special methods may be needed to value securities in less liquid markets and assets such as real estate. The legal provisions may set out specific methodologies for valuing such assets which should, as far as possible, take into account the risk inherent to illiquid markets.

4.24 The methodology used for valuing pension fund assets should be transparent to the pension fund's governing body, all others involved in the investment management process for the pension fund, and members and beneficiaries.

Core Principle 5: Rights of Members and Beneficiaries and Adequacy of Benefits

Non-discriminatory access should be granted to private pensions schemes. Regulation should aim at avoiding exclusions based on age, salary, gender, period of service, terms of employment, part-time

employment, and civil status. It should also promote the protection of vested rights and proper entitlement process, as regard to contributions from both employees and employers. Policies for indexation should be encouraged. Portability of pensions rights is essential when professional mobility is promoted. Mechanisms for the protection of beneficiaries in case of early departure, especially when membership is not voluntary, should be encouraged.

Proper assessment of adequacy of private schemes (risks, benefits, coverage) should be promoted, especially when these schemes play a public role, through substitution or substantial complementary function to public schemes and when they are mandatory. Adequacy should be evaluated taking into account the various sources of retirement income (tax-and-transfer systems, advance-funded systems, private savings and earnings).

Appropriate disclosure and education should be promoted as regards respective costs and benefits characteristics of pension plans, especially where individual choice is offered. Beneficiaries should be educated on misuse of retirement benefits (in particular in case of lump sum) and adequate preservation of their rights. Disclosure of fees structure, plans performance and benefits modalities should be especially promoted in the case of individual pension plans.

Implementing Guidelines for Core Principle 5

Access to plan participation, equal treatment and entitlements under the pension plan

5.1 Employees should have non-discriminatory access to the private pension plan established by their employer. Specifically, regulation should aim at avoiding exclusions from plan participation that are based on non-economic criteria, such as age, gender, marital status or nationality. In the case of mandatory pension plans, those plans that serve as the primary means of providing retirement income, and those that are significantly subsidised by the state, regulation should also aim at avoiding other unreasonable exclusions from plan participation, including exclusions based on salary, periods of service and terms of employment, (e.g., by distinguishing between part-time and full-time employees or those employed on an at-will and fixed-term basis). Regulation of voluntary and supplementary pension plans also should aim towards similarly broad access, although the extent of such access may take into account factors including the voluntary nature of the arrangement, the unique needs of the employer establishing the pension plan, and the adequacy of other pension benefits.

5.2 Employees should be equally treated under the plan rules with respect to portability rights, disclosure requirements, governance and redress mechanisms, and other rights associated with the plan.

5.3 If establishing rules for benefit levels and accrual or contribution rates, regulators may take into account the extent of integration of occupational plans with other public or mandated sources of retirement income and the adequacy of the totality of the benefits provided.

5.4 Employees should be protected from retaliatory actions and threats of retaliation by their employer or pension plan representatives with respect to pension benefits and the exercising of rights under a pension plan. For example, they should be protected from terminations of employment carried out with the intent to prevent the vesting of an accrued benefit under the pension plan. Similarly, individuals exercising their rights under a pension plan, including but not limited to their filing of a claim or appeal or their initiation of administrative or judicial action, should be protected from retaliatory action, such as termination of employment, suspension, discipline, fine or any other type of discrimination.

Benefit accrual and vesting rights

5.5 Regulations should promote the protection of benefits that an employee accrues by participating in an occupational pension plan, prevent the retroactive reduction of the value of benefits previously accrued in the plan and provide that plan members obtain timely notice regarding any reduction in the rate of future benefit accruals in the pension plan.

5.6 Accrued benefits should vest immediately or after a period of employment with the employer sponsoring the plan that is reasonable in light of average employee tenure. Benefits derived from member contributions to the pension plan should be immediately vested.

5.7 Practices that substantially undermine or eviscerate benefit accrual and vesting rights should not be permitted.

5.8 Vested benefits of those individuals who have severed employment with an employer should be protected and not subject to forfeiture, regardless of reasons for severance, except in the limited case of dismissals resulting from acts of gross malfeasance that are clearly defined.

5.9 Vested benefits should be protected from the creditors of the plan sponsor and plan service providers (including any financial institutions or other entities managing the pension plan or plan assets or acting as a custodian of pension fund assets associated with the plan) – at a minimum by the legal separation of plan assets. Vested benefits also should be protected when the plan sponsor or a plan service provider changes ownership due to merger, acquisition, sale, or other corporate transaction, or files for bankruptcy. Similarly, the extent to which vested benefits are protected from the creditors of individual plan members and beneficiaries should be addressed.

Pension portability and rights of early leavers

5.10 Individuals who are changing jobs should be able, upon request, to move the value of their vested account balance in a defined contribution plan from their former employer's pension plan either to the plan of their current employer (where permitted) or to a similar, tax-protected environment provided by an alternative financial instrument or institution. Where feasible, a similar portability right also should be available to individuals in defined benefit plans. There may be diminished need for individual portability rights where there are industry-wide and other types of multiple-employer pension plans.

5.11 Individuals should have the right to timely execution of the request to transfer the value of their vested benefit accruals.

5.12 With respect to defined benefit pension plan benefits, the actuarial and interest rate assumptions used in valuing an individual's vested benefit accrual that is to be transferred should be fair and reasonable. These assumptions should be made readily available to the individual transferring the value of his accrued benefit.

5.13 Portability rights should be available to members of a pension plan when they separate from service with an employer, regardless of whether the separation is voluntarily, involuntarily or by mutual agreement.

5.14 Portability rights should not be inhibited by the assessment of unreasonable charges or fees, such as excessive transaction charges or excessive back-end fees. At a minimum, members and beneficiaries should be informed of the presence of any such charges or fees.

5.15 Individuals should not be required to exercise their portability rights and, generally, should be permitted to leave their vested benefits in the pension plan of their former employer.

Disclosure and availability of information

5.16 Members and beneficiaries in pension plans, as well as potential plan members, should have a legal right to ready access or disclosure to basic information about the pension plan, including adequate information regarding their rights of access, anticipated contribution and/or benefit accrual rates, vesting schedules, other rights and obligations, investment policy, the names and manner of contacting responsible parties for plan administration and governance, and claims processes or procedures.

5.17 Plan documents, annual accounts, and annual financial and actuarial reports, if not automatically disclosed, should be made readily available to plan members (and to beneficiaries where relevant) for copying for no more than reasonable charge or fee.

5.18 Members and beneficiaries should be notified in timely fashion if required employer and member contributions have not been made to the pension plan.

5.19 Timely, individualised benefit statement should be provided to each plan member (and to beneficiaries where relevant). The information included on the benefit statement and the frequency of its delivery will depend on the type of pension plan. The information included should enable the plan member to identify current benefit accruals or account balances and the extent to which the accruals or account balances are vested. For pension plans with individual accounts, the information should include the date and value of contributions made to the account, investment performance and earnings and/or losses. For member-directed accounts, a record of all transactions (purchases and sales) occurring in the member's account during the relevant reporting period should be provided. This information and other similarly personal data should be maintained and delivered in a manner that takes full account of its confidential nature.

5.20 Individuals should be provided adequate information about the rules associated with the portability of their vested benefit accruals, especially where the transfer of these assets may entail a loss of certain benefits or rights that were associated with the pension plan in which the benefit originated.

5.21 Disclosure materials should be written in a manner expected to be readily understood by the members and beneficiaries to whom they are directed.

5.22 Consideration should be given to adequate forms of delivery of disclosure materials, including, mail, delivery at the workplace and via email or websites, where feasible.

5.23 Amendments or changes to the pension plan that will significantly impact members and beneficiaries, their rights and their benefits must be disclosed to them in timely fashion and in a manner expected to be readily understood by them.

Additional rights in the case of member-directed, occupational plans

5.24 Where members direct their own investments in an occupational pension plan, they have the right to a number and diversity of investment choices sufficient to permit them to construct an appropriate investment portfolio in light of their own individual circumstances and in the context of the particular pension programme.

5.25 Members should be provided with complete information regarding investment choices that is standardised and readily comparable. At a minimum this information should include disclosure of all charges, fees and expenses associated with each investment choice, as well as portfolio composition and historical investment performance data.

5.26 Members managing their own individual accounts have the right to timely and fair execution of their investment decisions and to written confirmation of these transactions. The right (or responsibility) to make and execute investment decisions should not be inhibited by the assessment of any unreasonable charges or fees.

5.27 Members and beneficiaries who are required to manage their own individual accounts should be provided sufficient opportunity to acquire the financial skills or education and other assistance that they need in order to make appropriate investment decisions in their pension plans.

Entitlement process and rights of redress

5.28 Members and beneficiaries (and individuals claiming the right to be deemed a member or beneficiary under a pension plan) shall be entitled to a fair process or procedure in which their entitlements, rights and benefits under the pension plan may be claimed or asserted.

5.29 The claim process or procedure should be expeditious and transparent. It should be easy to understand and have only reasonable or no cost to the individual claimant.

5.30 The process should include independent administrative or judicial recourse if initial claims of rights or benefits are denied by the pension plan administrator, fiduciary, or employer. This process should provide for adequate remedial measures to redress the loss of rights or benefits suffered by the member or beneficiary whose claim has been found to be valid.

Core Principle 6: Governance

Regulations on pension governance need to be guided by the overriding objective that pension funds are set up to serve as a secure source of retirement incomes. The governance structure should ensure an appropriate division of operational and oversight responsibilities, and the accountability and suitability of those with such responsibilities. Pension funds should have appropriate control, communication, and incentive mechanisms that encourage good decision making, proper and timely execution, transparency, and regular review and assessment.

Implementing Guidelines for Core Principle 6

Identification of responsibilities

6.1 There should be a clear identification and separation of operational and oversight responsibilities in the governance of a pension fund. To the extent that a pension entity is established that owns the pension fund on behalf of plan/fund members and beneficiaries, the legal form of this entity, its internal governance structure, and its main objectives should be clearly stated in the pension entity's statutes, by-laws, contract or trust instrument, or in documents associated with any of these. If the pension fund is established as a separate account managed by financial institutions, the pension plan or contract between plan sponsors/members and beneficiaries and the financial institution should clearly state the responsibilities of the latter with respect to the management of the pension fund. As good pension fund governance should be 'risk-based', the division of responsibilities should reflect the nature and extent of the risks posed by the fund.

Governing body

6.2 Every pension fund should have a governing body³ vested with the power to administer the pension fund and who is ultimately responsible for ensuring the adherence to the terms of the arrangement and the protection of the best interest of plan members and beneficiaries. The responsibilities of the governing body should be consistent with the overriding objective of a pension fund which is to serve as a secure source of retirement income. The governing body should retain ultimate responsibility for the pension fund, even when delegating certain functions to external service providers. For instance, the governing body should retain the responsibility for monitoring and oversight of such external service providers. Appropriate oversight mechanisms should also be established where the governing body is a commercial institution.

Accountability

6.3 The governing body should be accountable to the pension plan members and beneficiaries, its supervisory board (where relevant), and the competent authorities. Accountability to plan members and beneficiaries can be promoted via the appointment of members of the governing body by pension plan members and beneficiaries or their representative organisations. The governing body may also be accountable to the plan sponsor to an extent commensurate with its responsibility as benefit provider. In order to guarantee the accountability of the governing body, it should be legally liable for its actions which fail to be consistent with the obligations imposed on it, including prudence. In defined contribution plans, accountability calls for safe harbour rules that clarify the responsibilities and liabilities of the governing body.

Suitability

6.4 Membership in the governing body should be subject to minimum suitability (or non-suitability) standards in order to ensure a high level of integrity, competence, experience and professionalism in the governance of the pension fund. The governing body should collectively have the necessary skills and knowledge to oversee all the functions performed by a pension fund, and to monitor those delegates and advisors to who such functions have been delegated. It should also seek to enhance its

knowledge, where relevant, via appropriate training. Any criteria that may disqualify an individual from appointment to the governing body should be clearly laid out in the regulation.

Delegation and expert advice

6.5 The governing body may rely on the support of sub-committees and may delegate functions to internal staff of the pension entity or external service providers. Where it lacks sufficient expertise to make fully informed decisions and fulfil its responsibilities the governing body could be required by the regulator to seek expert advice or appoint professionals to carry out certain functions. The governing body should assess the advice received, including its quality and independence, and should verify that all its professional staff and external service providers have adequate qualifications and experience.

Auditor

6.6 An auditor, independent of the pension entity, the governing body, and the plan sponsor, should be appointed by the appropriate body or authority to carry out a periodic audit consistent with the needs of the arrangement. Depending on the general supervisory framework, the auditor should report promptly to the governing body and - if the governing body does not take any appropriate remedial action - to the competent authorities and other appropriate persons wherever he or she becomes aware, while carrying out his or her tasks, of certain facts which may have a significant negative effect on the financial situation or the administrative and accounting organisation of a pension fund.

Actuary

6.7 An actuary should be appointed by the appropriate body or authority for all defined benefit plans financed via pension funds. As soon as the actuary realises, on performing his or her professional or legal duties, that the fund does not or is unlikely to comply with the appropriate statutory requirements and depending on the general supervisory framework, he or she shall inform the governing body and - if the governing body does not take any appropriate remedial action - the supervisory authority and other appropriate persons without delay.

Custodian

6.8 Custody of the pension fund assets may be carried out by the pension entity, the financial institution that manages the pension fund, or by an independent custodian. If an independent custodian is appointed by the governing body to hold the pension fund assets and to ensure their safekeeping, the pension fund assets should be legally separated from those of the custodian. The custodian should not be able to absolve itself of its responsibility by entrusting to a third party all or some of the assets in its safekeeping.

Risk-based internal controls

6.9 There should be adequate internal controls in place to ensure that all persons and entities with operational and oversight responsibilities act in accordance with the objectives set out in the pension entity's by-laws, statutes, contract, or trust instrument, or in documents associated with any of these, and that they comply with the law. Such controls should cover all basic organisational and administrative procedures; depending upon the scale and complexity of the plan, these controls will include performance assessment, compensation mechanisms, information systems and processes and risk management procedures. The governing body should develop a code of conduct and a conflicts of interest policy for them and the staff of the pension entity as well as for any party with operational responsibilities. There should also be appropriate controls to promote the independence and impartiality of the decisions taken by the governing body, to ensure the confidentiality of sensitive information pertaining to the fund and to prevent the improper use of privileged or confidential information.

Reporting

6.10 Reporting channels between all the persons and entities involved in the administration of the pension fund should be established in order to ensure the effective and timely transmission of relevant and accurate information.

Disclosure

6.11 The governing body should disclose relevant information to all parties involved (notably pension plan members and beneficiaries, supervisory authorities, auditors, etc.) in a clear, accurate, and timely fashion.

Core Principle 7: Supervision

Effective supervision of pension funds and plans must be set up and focus on legal compliance, financial control, actuarial examination and supervision of managers. Appropriate supervisory bodies, properly staffed and funded, should be established in order to conduct when relevant off and on site supervision, at least for some categories of funds and in particular when problems are reported. Supervisory bodies should be endowed with appropriate regulatory and supervisory powers over individual plans, in order to prevent mis-selling cases arising from irregularities in the distribution and expenses methods.

Implementing Guidelines for Core Principle 7 (IOPS Principles of Private Pension Supervision)

Objectives

7.1 National laws should assign clear and explicit objectives to pension supervisory authorities

7.2 The principal strategic objectives of the pension supervisory authority should be clearly and publicly specified. They should include a focus on the protection of pension members and beneficiaries' interests. Objectives can also be directed towards the stability and security of pension funds and plans, the sustainability of the pension sector as a whole, the promotion of good governance and the encouragement of pension provision.

7.3 The responsibilities of the pension supervisor should be clearly and objectively stated, giving a clear mandate and assigning specific duties.

Independence

7.4 Pension supervisory authorities should have operational independence⁴

7.5 The pension supervisory authority should have operational independence from both political authorities and commercial interference in the exercise of its functions and powers.

7.6 To ensure independence, stability and autonomy are particularly required at the senior director level of the pension supervisory authority. The nomination, appointment and removal of the head of the pension supervisory authority should be done via explicit procedures and transparent mechanisms. The head of the authority may be appointed for a fixed term.

7.7 The pension supervisory authority should also be funded in such a way as to ensure independence and there should be a transparent budgetary process.

7.8 Supervisory acts should be over-ruled only by judicial decision, including tribunals with relevant powers, or by parliamentary process.

Adequate resources

7.9 Pension supervisory authorities require adequate financial, human and other resources

7.10 Pension supervisory authorities should be granted adequate staff and access to resources.

7.11 The pension supervisory authority should have its own budget sufficient to enable it to conduct proportionate, effective and independent supervision. Funding, in part or in full, of the pension supervisory authority by supervised pension funds and plans could be considered, provided independence is maintained.

7.12 The pension supervisory authority should hire, train and maintain sufficient staff with high professional standards, including appropriate standards of confidentiality and disclosure (e.g. of interests in regulated entities).

7.13 The directors and head of the authority should be suitably qualified, with sufficient education, experience, capacity and reputation.

7.14 If its own capacities are insufficient, or for other reasons deemed necessary, the pension supervisory authority should have the authority to outsource to third parties (e.g. auditors, actuaries) supervisory tasks – though the supervisory authority remains responsible for the supervisory process and decisions. Where pension supervisory functions are outsourced to third parties, the pension supervisory authority should be able to assess their competence, monitor their performance and ensure their independence from the pension fund or any other related parties. If required, the pension supervisory authority must have the ability to take actions against these third parties either directly or through the appropriate professional body. Decision making and the application of sanctions, within the scope of the pension supervisor, should not be outsourced.

Adequate powers

7.15 Pension supervisory authorities should be endowed with the necessary investigatory and enforcement powers to fulfill their functions and achieve their objectives

7.16 Pension supervisory authorities should be legally charged to undertake supervision and should be granted adequate powers and the capacity to exercise these powers.

7.17 The pension supervisory authority should have the power to conduct necessary supervisory functions, according to the nature of the pension system being supervised. Effective supervision of pension funds or plans should focus on legal compliance, financial control, minimum capital requirements, investment activity, good governance and integrity, actuarial examination, the supervision of pension plan or fund managers, and the provision of adequate disclosure and information to members. Powers should allow for relevant off-site and on-site inspection.

7.18 Pension supervisory authorities should have comprehensive investigatory and enforcement powers. On the suspicion of problems, they should have the power to conduct a full investigation, to oblige funds to submit documents and information, and to impose corrective measures and remedial actions if their orders are not obeyed –up to and including the power to impose administrative sanctions such as fines, the power to direct management, the power to revoke licences and the power to refer matters for criminal prosecution. In some cases, powers may include the ability to issue binding regulation.

Risk orientation

7.19 Pension supervision should seek to mitigate the greatest potential risks to the pension system

7.20 The objectives of private pension supervision should be risk-based. Pension supervisory authorities should have a strategy for allocating their finite resources which targets mitigating actions on pension funds or plans which represent the highest risks to achieving the supervisor's objectives. This assumes that they understand the probability and impact of potential risks.

7.21 Pension supervisory authorities should be pro-active, seeking to avoid significant problems before they occur and intervening, in a proportionate way, at as early a stage as possible and searching for those supervisory instruments which add most value to the desired supervisory result.

Proportionality and consistency

7.22 Pension supervisory authorities should ensure that investigatory and enforcement requirements are proportional to the risks being mitigated and that their actions are consistent

7.23 The remedial actions and if necessary sanctions imposed by the pension supervisory authority should be proportional to the problem which is being addressed. In taking or promoting mitigating actions, pension supervisory authorities should choose between the powers available to them according to the assessed seriousness of the risk or compliance failure being addressed.

7.24 The extent of supervisory demands placed on pension funds or plans and associated parties being supervised should be in accordance with the value expected to be derived.

7.25 In fulfilling its supervisory powers, the pension supervisory authority should give pension funds and plans flexibility, where appropriate, in the way they achieve compliance with regulatory requirements.

7.26 Supervisory decisions and intervention should be consistent, taking appropriately into account circumstances of each individual case. Supervisors should have procedures (for example, documentation, training and review) for ensuring that similar decisions are taken in similar circumstances and that these decisions are taken on objective and unbiased grounds.

Consultation and cooperation

7.27 Pension supervisory authorities should consult with the bodies they are overseeing and cooperate with other supervisory authorities

7.28 The pension supervisory authority should consult, as appropriate, with the pensions sector when determining its approach to supervision.

7.29 The pension supervisory authority is empowered to exchange information with other relevant supervisory authorities, subject to legal and confidentiality requirements. This includes cooperation with other authorities or departments involved in pension supervision both nationally and internationally (particularly where cross-border pensions are involved), as well as with authorities supervising other relevant financial institutions or markets and law enforcement agencies. Cooperation should be for both efficiency purposes (avoiding overlaps and promoting economies of scale and scope) as well as promoting pro-active preventative measures (e.g. tackling financial crime).

Confidentiality

7.30 Pension supervisory authorities should treat confidential information appropriately

7.31 The pension supervisor should only release confidential information if permitted by law.

7.32 The pension supervisor in regard to non-public information should when requested by the providing authority keep information confidential and maintain appropriate safeguards for the protection of confidential information within its possession.

7.33 Where unsure of the status of the information, the supervisory authority should treat it as confidential if not publicly available or should check the status with the provider.

7.34 If agreed by the providing authority, the receiving supervisory authority may pass on information to other supervisory bodies or law enforcement agencies with legitimate supervisory interests and equivalent confidentiality standards.

7.35 Where staff transfer between the supervisory authority and the private sector, mechanisms should exist to ensure against the disclosure of confidential information.

7.36 Third parties to whom the pension supervisory authority has outsourced supervisory tasks should be subject to the same confidentiality requirements as the staff of the pension supervisory authority itself.

Transparency

7.37 Pension supervisory authorities should conduct their operations in a transparent manner.

7.38 Pension supervisory authorities should adopt clear, transparent and consistent supervisory processes. The rules and procedures of the pension supervisory authority, and updates thereof, should be published. The pension supervisory authority should generally operate in a transparent environment and should provide and publish a regular report – at least annually and in a timely manner – on the conduct of its policy, explaining its objectives and describing its performance in pursuing those objectives. The pension supervisory authority should be subject to regular audit and reporting requirements which allow for the assessment of how well the authority is fulfilling its responsibilities and ensuring the mandate and functions of the pension supervisory authority cannot be changed on an ad hoc basis

7.39 When directing the management of pension funds or plans pension supervisory authorities should explain to those affected why they are acting.

7.40 Pension supervisory authorities should provide and publish clear and accurate information for the pension industry and the general public on a regular basis – such as the financial situation of the pension fund industry and observations on major developments in the pension sector. Disclosure will generally be on an aggregate basis, but could also be on individual pension funds, in which case the rules of confidentiality may be particularly relevant.

Governance

7.41 The supervisory authority should adhere to its own governance code and should be accountable

7.42 The pension supervisory authority should establish and adhere to a governance code, outlining suitable internal controls, checks and balances, and effective processes for risk and performance management. A code of conduct should be established and enforced in relation to all staff members.

7.43 There should be clearly documented procedures for decision-making, with processes for referring decisions up to the appropriate level of seniority, reviewing and documenting decisions.

7.44 For interventions with serious impact there should be some separation between those within the authority proposing interventions and those taking the final decision, so the scope for emergency action is balanced by a review process.

7.45 Pension supervisory authorities should be clearly accountable for their general conduct and activity. Pension supervisory authorities should have accountability arrangements, which may vary according to specific country circumstances and which may include accountability to a range of bodies, from parliament to the members and beneficiaries of pension funds or plans.

7.46 Procedures should be in place for the governing body of a pension plan or fund to appeal to the pension supervisory authority or relevant tribunal for decisions taken by the pension supervisory authority that affect them and which they consider inconsistent with legal provisions.

¹ In EU countries, Core Principles 2 to 7 may not apply to those occupational private pension plans, pension funds and pension entities that fall outside the scope of the Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the Activities and Supervision of Institutions for Occupational Retirement Provision. The Core Principles also do not cover insurance contracts as such (although they may be used in both occupational and personal pension plans). The International Association of Insurance Supervisors has developed principles for the supervision of insurance (*Insurance Core Principles and Methodology*).

² These limitations on investments abroad are identified in the document "Portfolio Investment Abroad by Insurance Companies and Private Pension Funds: Widened Application of the OECD Code of Liberalization of Capital Movements and Related Amendments" [C(2002)30].

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- ³ In a two-tier board system, involving a managing board and a supervisory board, the body which is responsible for all strategic decisions (usually the managing board) is considered the governing body.
- ⁴ Operational independence is taken to mean that at the day to day operational and decision making level the supervisory authority has autonomous management of its activities. At a higher, more policy orientated level, supervisory agencies may be subject to national governmental and political influences which are out of their control. There may be an intermediate stage where Ministerial approval is required for enforcement actions that involve removal or deregistration of an industry participant.

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* Additional information and statements are available in the Compendium of OECD Legal Instruments:
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OECD Legal Instruments

Since the creation of the OECD in 1961, around 450 substantive legal instruments have been developed within its framework. These include OECD Acts (i.e. the Decisions and Recommendations adopted by the OECD Council in accordance with the OECD Convention) and other legal instruments developed within the OECD framework (e.g. Declarations, international agreements).

All substantive OECD legal instruments, whether in force or abrogated, are listed in the online Compendium of OECD Legal Instruments. They are presented in five categories:

- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.