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**SUPERVISORY STRUCTURES FOR PRIVATE PENSION FUNDS:  
PRELIMINARY SURVEY ANALYSIS**

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# **SUPERVISORY STRUCTURES FOR PRIVATE PENSION FUNDS: PRELIMINARY SURVEY ANALYSIS**

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## **I. Background**

1. The study of the supervisory structures for private pension funds is one of the core activities of the OECD Working Party on Private Pensions' (WPPP) and the International Network for Pensions Regulators and Supervisors (INPRS).

2. Some work has already been undertaken in this area. Most notably document (DAFFE/AS/PEN/WD(2001)6) analysed topics referring to the objectives, functions and risks of the organisation and operation of pension fund supervision. Some additional information was also consolidated in DAFPE/AS/PEN/WD(2001)7REV1, which in particular covered the legal foundation and functional responsibilities of supervisory agencies in OECD countries. Documents DAFPE/AS/PEN/WD(2001)10 and DAFPE/AS/PEN/WD(2001)19 identify key issues related to the determinants of the supervisory framework, structure of supervision, responsibilities, functions and methods of supervisory authorities.

3. At the December 2002 WPPP meeting, OECD Delegates discussed the document "Pension Fund Supervision: Supervisory Structures" (DAFFE/AS/PEN/WD(2002)19), which proposed a deeper survey analysis on the institutional framework of pension fund supervisors based on information collected by the questionnaire DAFPE/AS/PEN/WD(2002)26 (see annex 1).

4. The present document is a preliminary survey consolidation and analysis of the responses to the above-mentioned questionnaire on supervisory structures for private pensions provided by nineteen OECD member countries (Australia, Canada, Czech Republic, Denmark, Germany, Hungary, Iceland, Ireland, Italy, Japan, Mexico, the Netherlands, New Zealand, Poland, Portugal, Spain, Sweden, Turkey and the United Kingdom). The responses provide a unique cross-country comparison of the information available on this issue. Some further information from other OECD countries, collected from different sources, is also provided.

5. This document develops a comparative analysis of the institutional environment of private pension funds supervision. In the first part, it reviews the different types of organisational arrangements according to market structure and the relationship between regulatory and supervisory agencies<sup>1</sup>. In the second part, it analyses the operational independence, governance, accountability and enforcement capacities of supervisory agencies as well as the internal organisation of the latter. The analysis is focused on the primary supervisors identified in annex 2 and data and information presented are preliminary.

## **II. Institutional Framework of Private Pension Fund Supervision**

6. Private pensions are long-term contracts that compromise a sizable share of the worker's income and operate in markets subjected to failures related to asymmetric information, adverse selection and moral hazard. Government intervention is crucial to design regulations oriented to avoid systemic crisis and to guarantee the financial and actuarial sustainability of the private pension system. Regulations have to be implemented by supervisory institutions, which may be properly staffed and financed, insulated from political pressures – from either the government or pension industry – and endowed with reasonable enforcement capacities.

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<sup>1</sup> In this text, the term "supervisory agency" is used in a broader sense to qualify the institution directly responsible for the supervision, including department, directorate, superintendence, secretariat, authority, non-departmental body, commission and all other specific national legal denominations.

## Objectives and functions

7. The main objective of the private pension supervision is to ensure compliance with regulations in order to protect the interests of the members and safeguard the stability of the system. These elements are presented in the stated missions of the majority of the surveyed supervisory agencies, as listed in Box 1.

### Box 1. SELECTED OECD SUPERVISORY AGENCIES' STATED MISSIONS

APRA (Australia)	<i>"...to establish and enforce prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by institutions we supervise are met within a stable, efficient and competitive financial system"</i> .
OSFI (Canada)	<i>"...to safeguard policyholders, depositors and pension plan members from undue loss"</i> .
FSA (Denmark)	<i>"...maintain confidence in the financial sector - both in relation to society and to the individual person - by: ensuring that financial legislation is observed. This includes the prevention of offences that may arise in specific areas, for instance the areas of solvency and liquidity; participating in the elaboration of financial legislation, and collecting and publishing information relating to the financial sector"</i> .
BAFIN (Germany)	<i>"...to ensure that the interests of the insured are adequately safeguarded and that liabilities under insurance contracts can be met at all times (...). The objective of legal supervision is the proper operation of insurance business including observance of the supervisory provisions, provisions concerning the insurance contracts and any other provisions concerning the insured as well as of the legal bases of the operating plan."</i>
HFSA (Hungary)	<i>"...to facilitate the smooth operation of the financial markets and promote the protection of clients of financial organizations, and their consumers; to maintain and strengthen confidence in financial markets; to contribute to the transparency of the markets, provide for the improved awareness of consumers and to the regulation of fair competition in the market."</i>
FME (Iceland)	<i>"...to ensure that these (parties subject to official supervision) are in accordance with laws, regulations, rules and by-laws governing such activities, and that they are in other respects consistent with sound and proper business practices."</i>
PENSION BOARD (Ireland)	<i>"...to promote the security and protection of members of occupational pension schemes and contributors to Personal Retirement Savings Accounts, in accordance with the Pensions Act, 1990; to promote the development of efficient national pension structures; to promote a level of participation in the national pension system which enables all citizens to acquire an adequate retirement income; and to provide information and authoritative guidance to relevant parties in support of pension security, structures and participation"</i> .
COVIP (Italy)	<i>"...aiming at the safe and transparent management of pension funds and at the appropriate functioning of the supplementary pensions system"</i> .
CONSAR (Mexico)	<i>"...to protect the interest of the workers and their beneficiaries by an efficient management of their retirement savings."</i>
PVK (Netherlands)	<i>"...to ensure that insurers and pension funds fulfill their obligations to policyholders, pension scheme members and pension recipients."</i>
KNUiFE (Poland)	<i>"...to protect the interests of members of the funds and members of the employee pension plans."</i>
Finansinspektionen (FI) (Sweden)	<i>"...promotion of financial stability and efficiency in the financial sector and promotion of consumer protection goals."</i>

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD(2002)26.

8. In most surveyed countries, the stated mission is defined in the legislation and is the basis for the organisation of the supervisory agency. It provides guidance for the institutionalisation of values and the creation of corporate culture. A clear definition of objectives and mission is also important for the delimitation of tasks between agencies and for designing supervisory functions.

9. The objective “*protecting the plan member’s interest and safeguarding the stability of the system*” effectively means assuring compliance with regulations to mitigate risks and to guarantee that liabilities under pension contracts will be met. Additional concerns arise when pension funds set up. If plans use existing financial products as funding vehicles, then financial sector supervisors can normally be relied upon to provide adequate protection.

10. The risks involved in private pensions activities are mainly related to the inadequate organisational structure and operation of the pension fund; miss-management; inaccurate actuarial and asset evaluation; investment portfolio, annuity fund and liquidity mismanagement; improper accounting; high administrative costs and market structure. External risks related to the functioning of financial and insurance markets and to economic performance and political stability should also be considered.<sup>2</sup>

11. In order to implement mission statements effectively it is necessary to establish functions and design an institutional framework with one or more agencies to operate them. Typical supervisory functions are implementing regulation related to: licensing/registration; qualification for tax benefits; compliance to governance rules; contributions and regularity of payment; membership and portability (enrolment process, transfers and compliance); benefits eligibility; conditions and access to plans; investments, asset allocation, performance, minimum capital and reserves; custodian procedures; financial, actuarial and accounting methods; administrative cost, fees and marketing; disclosure procedures; merger and liquidation process.

12. Governments organise institutional structures to implement supervisory functions according to the administrative organisation of the state, the distribution of competencies between different levels of government and between institutions, and according to the development of financial markets and services. The features of pension plans and the nature of the regulatory approach applied to these schemes are also variables for designing the supervisory framework.

### **Political organisation of the state**

13. In federative or decentralized countries, the action of the central supervisory agency may be quite limited. The Canadian Office of the Superintendent of Financial Institution (OSFI) is responsible for only eight per cent of the countries regulated pension plans, covering ten per cent of plan membership. Almost all of Canada’s provinces have separate local agencies that are responsible for provincially regulated pension plans within their jurisdiction.

14. The Australian public servants superannuation schemes are not under the same rules and supervisory procedures applied to the private sector. They are subject to Commonwealth, State or Territory government supervision under their enabling acts. A federative agreement requires these funds to comply with the spirit of the general regulation. In the US, states also have federative autonomy to regulate and supervise pension funds for their public servants.

15. In Sweden, Finansinspektionen (FI) is the primary supervisory agency for all financial institutions, including friendly societies<sup>3</sup> and excluding the pension foundations<sup>4</sup>, which are monitored by

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<sup>2</sup> For a detailed analysis of the risks related to the organisation and operation of pension funds see DAFPE/AS/PEN/WD(2001)6.

<sup>3</sup> These institutions are a kind of mutual benefit society offering insurance solutions similar to traditional life insurance.

the parties to the agreements. Counties administrative boards may supervise occupational plans established by sponsoring undertaking employers as pension foundation according to the region where they are located. Since there are twenty four counties in Sweden, the supervision rules and practices can be significantly different.

### **Institutional and functional structure**

16. Private pension supervision involves complex interactions between social security, tax, financial and insurance sectors. Generally, pension funds' supervisors are located in an institutional environment, which includes social and economic institutions, like Ministries of Finance, Labour and Social Security, Central Banks or other financial sector supervisory authority. Tax authorities also supervise private pensions, since they are often in charge of granting tax exemptions. However, except in a few countries (e.g. US), tax authorities are not responsible for prudential supervision or for protection of members and beneficiaries' rights.

17. Supervisors customise their organisation and activities to suit the complexity of the pension fund industry. According to the OECD taxonomy (DAFFE/AS/PEN/WD(2001)5/REV4), pension funds may support public or private pension plans. From a functional perspective, pension plans may be also mandatory or voluntary, defined contribution (DC) or defined benefit (DB), and occupational or personal. A description of the main characteristics of the surveyed countries' private pension schemes is provided in annex 2. Similarly, the structure of supervisory authorities needs to adequately address the institutional form of the pension funds, designing procedures for autonomous and non-autonomous funds, as well as for group, collective, related members, and individual pension funds.

18. It is also necessary to distinguish between two main legal forms of autonomous pension funds, pension entities and separate accounts. Pension entities can be trusts, foundations or corporate entities that own and may control the pension fund on behalf of the plan members. They are the most common type of autonomous pension fund in OECD countries. Separate accounts, on the other hand, are autonomous pension funds without legal personality or capacity that are administered by financial institutions (sometimes special-purpose institutions, pension fund managing companies).

19. Generally, the institutional structure of private pension supervision can be classified into three main approaches, according to the extend whether the authority responsible for pension supervision has also competence for supervising other financial institutions: (i) specialised pension model, with one or more agencies dedicated exclusively to pension fund supervision; (ii) partially integrated model, with one agency responsible for insurance and private pension supervision and (iii) integrated model, with one institution responsible for the overall financial sector supervision, including banks, securities, insurance companies and pensions funds. Table 1 shows how OECD country supervisors currently fit into this classification.

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<sup>4</sup> These institutions are pledges for employer's pension commitment. They are founded by employers and have the sole purpose to safeguard pensions. The sponsor hold all responsibilities, including the financial risks related to the asset allocation and the decisions on the amount and periodicity of the contributions.

**Table 1. PRIVATE PENSION FUNDS SUPERVISORY STRUCTURES IN THE OECD COUNTRIES**

<b>INTEGRATED (Banks, Securities, Insurance Companies, Pension Funds)</b>	<b>PARTIALLY INTEGRATED (Insurance Companies and Pension Funds)</b>	<b>SPECIALISED (Pension Funds)</b>
Australia	Belgium	Ireland
Austria	Czech Republic	Italy
Canada	Finland	Japan
Denmark	Luxembourg	Mexico
Germany	Netherlands	Slovak Republic
Hungary	New Zealand	Sweden
Iceland	Poland	Switzerland
Korea	Portugal	United Kingdom
Norway	Spain	United States
	Turkey	

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD (2002)26 and INPRS database.

20. Historically, in many countries, the private pension supervision has been based either on insurance/financial/pension arrangements linked - directly or indirectly - to Ministries of Finance, or on specialised arrangements under Ministries of Labour, Social Security and/or Social Affairs.

21. Ireland, Italy, Japan, Mexico, Slovak Republic, Sweden, Switzerland, the United Kingdom and the United States all organise their supervision around specialised supervisory authorities. This model is also characterized by the segregation of supervisory functions and the fragmentation of supervision for different private pension schemes or products. Generally, distinct agencies conduct the supervision of occupational and personal plans and there are more than three institutions involved in the overall process, which reinforces the necessity of effective co-ordination and co-operation mechanisms.

22. In Ireland, the Pension Board is the primary supervisor for occupational schemes whilst personal pension plans come under the oversight of the Department of Enterprise, Trade and Employment. Japan follows the same model. The Pension Bureau, linked to the Ministry of Health, Labour and Welfare, supervises most of the occupational pension funds and another agency is in charge of voluntary plans. The Financial Service authority in Japan and the Central Bank in Ireland are also involved in the process related to custodian and investment procedures.

23. In Italy, COVIP (Commissione di vigilanza sui fondi pensione) is the primary pension fund supervisor. It supervises all the new pension funds (closed and open) set up under the new legislation and the pre-1993 "old" autonomous and non-autonomous pension funds internal to undertakings other than banks and insurance companies. The Bank of Italy and the Institute for Private Insurance Surveillance (ISVAP) supervise pension plans instituted as book services respectively within banks and insurance companies. As part of its general supervisory powers, ISVAP also supervises life insurance products that can be used as individual pension plans.

24. In Mexico, the supervisory functions for personal mandatory plans are divided between the National Institute of Social Security - IMSS (Instituto Mexicano de Seguridad Social) and the National Commission for Retirement Savings System - CONSAR (Comision Nacional del Sistema de Ahorro para Retiro). IMSS performs supervisory functions related to: contributions and regularity of payment; membership and portability; benefits eligibility conditions and access to plans. CONSAR is responsible for licensing; compliance with regulations on governance; asset allocation; financial, actuarial and accounting

methods; disclosure, merger and liquidation. The Ministry of Finance is in charge of supervising personal voluntary pension plans.

25. In the United Kingdom, occupational pension funds are subject to surveillance by the Inland Revenue, the Occupational Pensions Regulatory Authority (OPRA), the Pension Compensation Board, the Department of Social Security and the Financial Service Authority (FSA).

26. The United States has several agencies in charge of the supervision of private pension occupational schemes. The US Department of Labor, Pension and Welfare Benefits Administration (PWBA) primarily supervises the protection of employee benefit rights and fiduciary obligations for corporate and multi-employer voluntary pension plans. The Pension Benefit Guaranty Corporation (PBGC) provides protection for the termination of defined benefit schemes. The Internal Revenue Service (IRS), under the oversight of the United States Department of Treasury, operates and supervises the tax treatment related to pensions and in that role is responsible for the registration (tax qualification) of pension plans.

27. The partially integrated perspective is in use in a number of OECD countries, namely Belgium, Czech Republic, Finland, Luxembourg, the Netherlands, New Zealand, Poland, Portugal, Spain and Turkey. They have combined the supervision of insurance and pension funds under an integrated agency which is separated from other financial supervision tasks, or which resides in a specific department of the Ministries of Finance, Labour or other ministries. In all these surveyed countries, occupational and personal plans, contracted out under voluntary or mandatory basis, are under the oversight of the same agency.

28. In Portugal, the Netherlands and Spain, both occupational and personal voluntary pension plans, as well as insurance companies, are supervised by one single agency – the General Directorate for Insurance and Pension Funds (*Dirección General de Seguros y Fondos de Pensiones*), under the Ministry of Finance, in Spain, and the Pensions and Insurance Supervisory Authority (*Pensioen & Verzekeringkamer*), an independent Dutch agency, with specialised departments, in the Netherlands. In Portugal, the Portuguese Insurance Institute (Instituto de Seguros de Portugal – ISP) is a public autonomous body linked to the Ministry of Finance. Poland has a personal mandatory scheme alongside occupational and personal voluntary pension funds, which fall under the oversight of the Commission of Insurance, and Pension Fund Supervision – KNUiFE.

29. Recently, some OECD countries have adopted an integrated supervisory perspective in their financial sector, reforming their supervisory framework to build a unified supervisory authority. This process started during the 80's and in early 90's in Scandinavian countries (Norway, in 1986; Denmark, in 1988; and Sweden, in 1991) and in Canada, in 1987. These countries had unified their previously specialised agencies in order to adapt the institutional regulatory and supervisory structure to the market structure dominated by financial conglomerates delivering banking, insurance and pensions services and products.

30. In the last years, Australia (1998) has adopted an integrated approach as part of the pension reform process. Nonetheless, agencies which integrate the supervision of all financial sectors in one organization do not necessarily embrace all the supervisory functions. Australia has an integrated sector model, but the supervisory functions are divided between Australian Prudential Regulatory Authority (APRA) and Australian Securities and Investment Commission (ASIC). APRA is responsible for licensing and prudential supervision of the plan and pension fund rules and investments. ASIC was given responsibility for pension fund market conduct.

31. Korea (1999) has also unified its supervisory agencies in a package of measures to strengthen the financial system after the 1997's economic crisis, this pattern was followed by Iceland (1999) which has financial conglomerates in the market structure and therefore implemented a unified agency in 1999.

32. Hungary established the integrated Hungarian Financial Supervisory Authority (HFSA) in April 2000, consolidating the supervision of banks, credit institutions and co-operatives, financial enterprises, investment funds and service providers, insurers, health and income replacement funds, as well as mandatory and voluntary pension funds. Since 2001, Austria has also established a similar agency in order to adapt the supervision structure to fit the shape of the market, (banks and insurance companies hold the control of several pension funds). Germany was the last OECD country to adopt this integrated model in 2002.

33. The integrated approach has been proposed as a way to adapt the supervisory framework to the development of financial conglomerates and to address the blurring of differences across financial products. Experts in different products working together in a unified agency would improve the risk assessment taken over by financial conglomerates.

34. Some surveyed countries argue that the main advantage to moving to a single supervisor is the adoption of an integrated supervisory approach. According to the Australian Delegation's response to the questionnaire: *"the integrated nature of APRA enables its approach to supervision to be more holistic with a view to the operation of the superannuation industry within the context of the broader financial services sector"*.

35. For the Hungarian Delegation, integrated supervision leads to a comprehensive control activity – *"(...) in this framework different business lines, transactions can be assessed at the involved partners at the same time. The integrated approach enables the entity for the consolidated supervision. The legal and supervisory arbitrage of the market players could be limited"*. The consolidated supervision may standardise actuarial, accounting and financing parameters for financial entities, avoiding differences and inconsistencies on the supervision of each financial sector and addressing discrepancies between regulatory issues. Nonetheless, Hungarian Financial Services Authority (HFSA) representatives remind us *"an effective integrated supervision requires a coherent and well-developed institutional culture."*

36. Another argument for financial integration is related to economies of scale and scope and to the simplification of the system. The Canadian delegation replied to the questionnaire affirming: *"the simplicity of this system reduces the regulatory cost and burden, while encouraging compliance and new entry"*. In fact, the consolidation of various specialized agencies may decrease the overall supervisory administrative cost, thereby increasing efficiency. The integration of supervisory procedures may reduce and simplify the amount of documents usually sent by entities to supervisors; eliminate duplications and authority overlapping; optimise licensing procedures and facilitate the integration between off-site monitoring and on-site supervision. Furthermore, integration would enable the use of joining supporting services that are multiplied in various institutions in the specialised model. A single complaint handling regime and a single compensation scheme can be established. This would save government scarce human and material resources and reduce operational burden over supervised entities

37. Additionally, financial supervision decisions require on-line availability of strategic information. The specialised model may delay data consolidation or reduce the quality of the information, since they are collected and recorded in fragmented databases under different labels. The agencies' integration may improve the information provision efficiency to avoid systemic crisis, identify illegal procedures and safeguard the credibility of the system. Others consider that actual integration is not a prerequisite to achieve these objectives. The Italian Delegation reports for instance: *"problems due to the separation of*

*supervisory activities over the financial sector between many different bodies may be overcome with a timely and open exchange of information and an effective cooperation”.*

38. The effectiveness of the integrated approach to financial supervision is a controversial question without conclusive evidence. Proponents of financial integration argue that a single agency would work with greater efficiency at a lower cost for supervisors, pension funds and other supervised financial institutions due to “economies of scale and scope, reduction in the reporting requirements, consistency in the treatment of different sectors, capacity to solve conflicts, accountability, and capacity to implement a risk-based supervision model”.<sup>5</sup> Nonetheless, Lumpkin (2002) argues that the effect on costs of the reduction in the number of supervisory agencies remains unclear and the question of whether the organisational structure of supervision needs to mirror the structure of the financial system remains controversial.<sup>6</sup>

39. The arguments against integration and in favour of the specialised model for private pension supervision are based on the differences between the pension service and product business and other financial institutions, like banks or insurers, and their business. Pensions are long-term contracts with specific tax treatments and social aspects, which would require a different approach regarding the supervision of their assets, liabilities and risks. This seems particularly to be the case as regards occupational schemes where employment relationship must be considered and where the employer frequently serves as an intermediary between the plan or fund members and the financial institution.

40. The Italian Delegation reports that a specialised agency can better concentrate expertise and knowledge on the pension funds sector. They raised “*the supervision on pension funds is carried out from a distinct perspective with respect to the supervision of other financial intermediaries, in order to fully take into account their differences from other financial intermediaries (contractual pension funds are on the buying side of the market for financial services; they are non-profit organizations; they are run on a parity basis by employers and trade unions and their establishment is part of the system of industrial relations).*” In the case of Swedish pension foundations, it is reported that “*the number of supervisory authorities (one for each county) may lead to very diverse supervision, but also to flexibility.*”

41. In the case of Latin American reforms, Demarco et al. (1998) mention that a new specialised agency might be more effective than other arrangements. The authors justify their position due to the lack of tradition on the supervision of new products, suspicion of the lack of transparency in pre-existing agencies and the absence of experience on supervising complex interactions, which combine capital markets, insurance and social security.<sup>7</sup>

42. For the Mexican delegation, the institutional and the functional specialisation are considered an advantage. According to Mexican’s reply: “*since CONSAR does not oversee (neither) the payment process nor the eligibility of the retirees, it can focus its efforts in the surveillance of specific processes of the pension system. CONSAR also has developed state-of-the-art technology to oversee the pension funds operation.*”

43. The particularities of pension fund supervision may explain why Japan, Sweden and the United Kingdom have created unified financial services authorities excluding the supervision of the occupational pension funds and maintaining segregate agencies dealing with it. In Japan, the Financial Services Authority is in charge of the personal pension plans and the Pension Bureau oversees the most part of the occupational scheme. Similarly, the British Financial Services Authority, created in 2000, oversees the marketing of personal pensions, including stakeholder pensions, with particular emphasis on promotion,

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<sup>5</sup> Rocha, R., Hinz, Richard and Gutierrez, Joaquim (1999) p.11.

<sup>6</sup> Lumpkin, S. (2002) p 84-85.

<sup>7</sup> Demarco, G. and Rofman, R. with Whitehouse, E. (1998) p 3-4.

selling and advice. The specialised agency (OPRA), established in 1995, is the primary supervisor for most regulations of the occupational and personal pension schemes. In Sweden, one of the pioneers of the financial services authority consolidation, the responsibility to supervise the pension foundations remain in the county supervisory boards and the FI oversees only the mutual benefit society offering insurance solutions similarly to life insurance.

44. Moreover, there is a crucial distinction between the organisational integration of supervisory institutions and the functional integration of supervision procedures. The existence of an integrated supervisory authority does not necessarily imply consolidated supervision. More generally, it should be noted that in most integrated and partially integrated models, the supervision of pensions is actually conducted by a specialised department/division.

45. In the Netherlands, there is an on-going initiative to reform the supervisory framework building up an integrated agency, but maintaining a specialised approach for the pension funds supervision. In March 2003, the Dutch Parliament decided to merge the Central Bank, responsible for banks and investment institutions, and the Pension and Insurance Supervisory Board (PVK). The future integrated agency will be under the oversight of the finance's minister. Nonetheless, the pension supervisory body will be politically accountable to Ministry of Social Affairs and Employment, which is legally responsible for the implementation of the *Pension and Savings Fund Act*. The latter will have extensive powers on the budget process and on the appointment of the governing board for pension supervision.

46. Specialised agencies can co-ordinate their activities in order to achieve economies of scale, greater efficiency and eliminate overlapping duties.<sup>8</sup> Therefore, it is important to look beyond the institutional structure of supervision and analyse the distribution of responsibilities and functions not only between authorities and within authorities, but also the co-ordination and co-operation mechanisms between agencies or areas in the same agency.

47. A complete survey on the distribution of supervisory responsibilities between agencies is provided in annex 3. Generally, unified agencies, as for example in Canada, Germany and Sweden, comprehend all supervisory functions on pension funds, excluding the qualifications for tax benefits, which is under the responsibility of the tax authorities. On other hand, in countries with specialized agencies, like Ireland, Italy, the United Kingdom and the United States, the functions and responsibilities for pension fund supervision are divided between several agencies. Australia is an exception because the country has adopted an integrated institutional approach for all financial sectors, but the supervisory functions are divided in two specialized agencies.

### **Co-ordination with other regulatory and supervisory authorities**

48. The surveyed countries reported various levels and arrangements for co-operation, co-ordination and information sharing, as showed in the Box 2. Both in specialised and integrated model countries, the procedures vary from informal arrangements and regular meetings to legal provisions establishing obligations to agencies. Agreements or memorandums of understating are also an important and flexible instruments to promote exchanging and co-operation. The participation of others agencies' representatives on the governance structure of the supervisory agency, as in Australia, Germany, Iceland and Poland, is the deepest way of institutional co-ordination.

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<sup>8</sup> See Lumpkin, S. (2002) p. 85-92.

**Box 2. CO-ORDINATION, CO-OPERATION AND INFORMATION SHARING MECHANISMS  
BETWEEN SUPERVISORY AGENCIES IN SELECTED OECD COUNTRIES**

Australia	Memorandums of Understanding with ASIC, Commonwealth Treasury, Reserve Bank of Australia (RBA – Australia’s central bank, ATO, Motor Accidents Authority of NSW (MAA), Private Health Insurance Administration Council (PHIAC) and ACCC. Regular liaison meetings. Legal mandate for information sharing procedures. Governance structure includes members from other agencies.
Canada	No explicit formal co-ordination/co-operation arrangements. Legal mandate for information sharing between Financial Institutions Supervisory Committee (FISC) and OSFI.
Czech Republic	Co-operation and sharing information agreement between Securities Commission and the Czech National Bank. Sharing information agreement between the Ministry of Finance, Securities Commission and the Czech National Bank.
Germany	No explicit formal co-ordination/co-operation arrangements. Legal mandate for information sharing procedures. BAFIN’s governance structure includes members from other agencies.
Hungary	Co-ordination and co-operation agreements between the HFSA and The National Tax Authority; Hungarian National Bank; Directorate of Consumer Protection; National Health Insurance Fund; Central Administration of National Pension Insurance.
Iceland	No explicit formal co-ordination/co-operation arrangements. Regular consultative meetings. Legal mandate for information sharing between Central Bank and FME. FME’s governance structure includes members from Central Bank.
Ireland	No explicit formal co-ordination/co-operation arrangements. Legal mandate for information sharing with other agencies.
Italy	Legal provision for cooperation and sharing information between authorities according to their respective tasks in order to strengthen the supervisory activity and to avoid duplications. In particular, COVIP and ISVAP cooperate in the analysis of the contracts arranged by pension funds with insurance companies for the payment of annuities and the coverage of biometric risks.
Japan	No explicit formal co-ordination/co-operation and information sharing arrangements, but the rules of each supervisory agency are clearly divided.
Mexico	No explicit formal co-ordination/co-operation arrangements. Sharing information in regular meetings official gazette and annual report .
Netherlands	Council of Financial Supervisors co-ordinate the co-operation and sharing information on the
New Zealand	No explicit formal co-ordination/co-operation arrangements. Information is treated as public documents.
Poland	KNUiFE ’s governance structure includes members from other agencies. Legal mandate for sharing information between KNUiFE, National Bank of Poland, Securities and Exchange Commission.
Portugal	National Council of Financial Supervisors (CNSF - Conselho Nacional dos Supervisores Financeiros)
Spain	Legal mandate for co-ordination, co-operation and information sharing arrangements.
Sweden	Legal provisions on exchange of views with other authorities on matters decided by a county administrative board that may affect the operations of the other authority. In the case of the Finansinspektionen, there are also provisions regarding exchange of views with the Central Bank in case of systemic or other crises.
Turkey	Legal mandate for co-ordination, co-operation and information sharing between the Undersecretariat of Treasury and the Capital Markets Board and. Banking Regulation and Supervision Agency (BRSA)
UK	Memorandum of understandings and direct co-operation between OPRA, FSA, Revenue and Pension Ombudsman. Legal mandate for information sharing.

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD (2002)26.

49. Australia may be identified as a good practice in terms co-operation, co-ordination and information sharing statements. The Memorandums of Understanding signed with various government agencies address information-sharing activities of the bodies; division of supervisory activities; reducing duplication and compliance costs for industry; achieving effective enforcement and compliance outcomes for industry and the agencies involved. There is a legal obligation for information sharing and regular liaison meetings are held between APRA and other financial supervisory and industry bodies. Furthermore, APRA's Board includes ex-officio members from other supervisory authorities.

50. Canada is an interesting case of federative co-ordination. In the absence of formal explicit national arrangements, provincial and federal supervisors have organised an inter-jurisdictional association of pension supervisory authorities – the Canadian Association of Pension Supervisory Authorities (CAPSA). It discusses pension regulatory issues of common interest and develops policies aiming at the simplification and harmonization of pension laws in the country.

51. In the Netherlands, there is the Council of Financial Supervisors coordinating the actions of PVK, Dutch Central Bank and the Netherlands Authority for Financial Markets. The mission of this council is to coordinate the creation and implementation of consistent rules, regulations and policies in cross-sector areas of financial supervision - areas such as integrity supervision, consumer affairs and financial conglomerates.

52. In Portugal, there is the National Council of Financial Supervisors (CNSF - Conselho Nacional dos Supervisores Financeiros), which is the body that institutionalizes and organizes the cooperation between the three financial supervision authority representatives (ISP, Bank of Portugal - banking supervisor, and Securities Market Commission – CMVM - Comissão do Mercado dos Valores Mobiliários - securities supervisor). The aim of this body is to allow better communication on relevant information that will permit to coordinate future action and to eliminate competence conflicts, holes in regulation and multiple uses of own funds.

53. Additionally, it is important to mention the efforts to internationalise co-operation, co-ordination and information sharing between agencies from different countries, strengthening the national capacity to supervise international financial conglomerates. As for example, the Scandinavian countries financial services agencies have agreements to conduct supervision in financial companies operating in their territories.

### **Regulatory responsibilities of pension supervisors**

54. In most countries surveyed (Australia, Czech Republic, Germany, Hungary, Iceland, Italy, Japan, Mexico, the Netherlands, New Zealand, Poland, Portugal, Spain, Turkey and the United Kingdom), the main regulator is the relevant ministry (generally of finance or social affairs). The only exceptions are the integrated agencies in Canada and Denmark and the specialised Irish agency, which are both primarily supervisors and regulators of the private pension system.

55. In some countries, although the main regulatory power is assigned to the ministries, supervisory agencies hold complementary and supplementary responsibilities on regulations. In Italy, the legislation entrusts the regulatory powers to COVIP, the Ministry of Labour and the Ministry of the Economy. COVIP regulates: accounting procedures and balance sheet schemes; disclosure and transparency; benchmark in the investment performance evaluation; criteria for selecting and appointment of asset managers by contractual pension funds. It also participates in the establishment of standard contracts for asset

management and for the relationship between pension funds and insurance companies for provision of annuities and biometric risks coverage. Finally, it may issue guidelines on all aspects related the conduct of pension funds. The Portuguese ISP is also responsible for enacting subsidiary regulations and present often proposals to the Minister of Finance, which holds the primarily regulatory responsibility.

56. In Iceland, the Financial Markets Authority (FME) is also endowed with regulatory capacities and it is authorised to issue general directive requests regarding the activities of parties subject to supervision. The Swedish FI has delegated powers (provided by law or decree) to issue regulations aimed at covering technical details and guidelines. In Australia, the Department of Treasury is the main regulatory body, but APRA has significant input into the drafting of legislative and regulatory provisions and has extensive powers on complementary regulations. APRA also produces “Circulars”, or guidance notes, that expand on the regulated provisions and set administrative procedures for enforcing regulations. Similarly, the Government Actuary, in New Zealand, has regulatory statutory powers to regulate the superannuation scheme.

57. Germany, Hungary, Mexico, Poland and the UK reported quite limited regulatory powers. In the case of Hungary, when asked if the supervisory authority is satisfied that its powers are adequate in enabling it to fulfill its statutory responsibilities, the HFSA declared that “*would like to have the authority to compose / legislate decrees*”. The Dutch PVK applies existing regulation but has its own powers in the form of Regulations, Policy Rules and Recommendations.

58. On the other side, in the Czech Republic, Japan, Spain and Turkey, the ministry (who is the main regulator) is also the main supervisor. More generally, the main regulator will be consulted for or be involved in important supervisory initiatives. In most surveyed countries (Canada, Denmark, Germany, Hungary, Iceland, Ireland, Italy, Mexico, New Zealand, Spain, Sweden, Turkey, United kingdom, United States) the supervisory agencies, independent or not, are generally accountable to (or supervised by) the relevant governmental ministry. Ministers are also frequently responsible for designation of members of supervisory board.

59. If main regulatory and supervisory functions are generally performed by different institutions in OECD countries, it is also clear that they are interrelated, each category being to some extent involved in the work of the other category.

### **Private pension fund supervision and market structure**

60. The private pension market structure and the resources available for supervision vary widely. The supervisory costs are highly related to the regulatory and supervisory approaches, as well as to the characteristics of the pension system. Given the pension scheme’s particularities and the institutional diversity, it is difficult to compare on accurate basis the agencies performance indicators.

61. In the extremes, the survey shows the cases of Mexico, where 170 employees are in charge of 11 pension funds and New Zealand, where 808 funds are overseen by 3 persons (Table 2). This discrepancy is explained manly by the differences in the regulatory and supervisory approach.

62. Mexico adopts quantitative regulations with pro-active supervision. The pro-active model is a labor-intensive and more expensive approach. It requires frequent activities overview, involving high administrative costs on reporting, recording, monitoring, disclosure and evaluation. In this model the administrative costs are quite sensitive to the number of participants. As the Mexican pension scheme is

mandatory for all private workers, the system cover 29.4 million participants – the second biggest number of participants in the surveyed countries.

63. New Zealand implemented a prudential self supervision approach. The Government Actuary runs the registration regime and the pension funds trustees held the responsibility for most of all supervisory functions, assuring compliance with government rules, regularity of payment, membership and portability, benefits eligibility conditions and access to plans investments, asset allocation, performance, minimum capital and reserves and custodian procedure, administrative cost, fees and marketing, merger and liquidation process. All the supervisory structure was built under the principles of trustees' freedom of action, responsibility and transparency. Trustees are required to act in the best interests of the scheme members and beneficiaries at all times, in accordance with the trust deed and general law. Nonetheless, recent report indicates the excess of flexibility could cause problems for beneficiaries and more regulation and standardization would be required on the funding adequacy of the defined benefit schemes, actuarial valuation assumptions and disclosure.

**TABLE 2. SUPERVISORY AGENCIES' RESOURCES AND SIZE OF THE MARKET  
(2001/2002)**

COUNTRY	NUMBER OF EMPLOYEES	NUMBER OF PLANS/FUNDS	PARTICIPANTS (thousands)	ASSETS (€ billion)
APRA (Australia) (1)	-	249,262 funds/plans	24,800	281.5
OSFI - PPPD (Canada) (2)	20	1,195 plans	557	56.1
OSIPF/MF (Czech Republic) (3)	20	14 funds	2,473	1.7
FSA (Denmark) (3)	15	80 funds	720	32.2
BAFIN (Germany) (4)	29	139 funds	3,416	68.7
HFSA (Hungary) (5)	-	100 funds	3,407	3.2
FME (Iceland)(6)	7	82 funds	228	7.7
PENSION BOARD (Ireland)	34	99,987plans	630	44.0
COVIP(Italy)(7)	60	534 funds	1,907	27.7
PENSION BUREAU (Japan) (6)	30	1,807 funds/plans	14,116	692.6
CONSAR (Mexico)	170	11 funds	29,421	40.8
GOVERNMENT ACTUARY (New Zealand)	3	808 funds	701	5.1
KNUIFE (Poland)	208	17 funds	11,060	4.4
ISP (Portugal) (3)	61	412 funds	323	0.4
OPRA (UK)	260	103,588 plans	40,000	1,050.0

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD (2002)26 and OECD database.

(1) APRA has 472 employees for all financial sector supervision.

(2) Employment information refers to pension fund supervision. Plans, participants and assets information refers to federal plans.

(3) Employment information refers to insurance and pension funds supervision.

(4) Employment information refers to pension fund supervision.

(5) HFSA has 541 employees for all financial sector supervision.

(6) Employment information refers to pension fund supervision. In addition to Pension Bureau, 8 Regional Bureaus of health and welfare are in charge of supervision of pension funds in each region.

(7) Information on assets, funds/plans and participants refers to those funds/plans supervised by COVIP.

64. Prudential and re-active supervision is the only way to deal with large number of small funds as in Australia, Canada, Ireland and the UK. In Australia, 246,670 funds (99 per cent of the total) have less than five members and mainly the tax authority conduct their supervision, but there is an on-going initiative to increase the APRA's supervisory capacity over small pension arrangements.

## **Supervisory structures and methods: integration of on-site and off-site supervision**

65. Countries with a single supervisory agency for all financial sector reported more integration on off-site and on-site supervisory procedures. Australia, Canada, Denmark, Germany have fully integrated both types of supervision. In Italy, Mexico, Spain and UK, where the supervisory agencies are partially integrated or specialized, there are different areas dealing with it, with permanent exchange of information and staff. In Ireland, Japan and New Zealand there is not a routine of on site supervision, but it could happen when it is required, and Poland does not have any integration between this areas. Czech Republic is the only country with a partially integrated agency that reported to have completely integrated on and off-site supervision.

66. Each institution supervised by APRA has a dedicated person who is responsible for choosing the most appropriate supervision strategy and building a strong working knowledge of the institution they oversee. The supervision strategy for each institution is designed to project the frequency and intensity of supervision required to attend to the issues identified by the risk assessment processes and varies in durational terms based on the institution's overall risk profile. In addition to on- and off-site reviews, APRA's supervisors liaise with external parties that have detailed knowledge of individual institutions, such as external auditors, actuaries and administrators. Supervisory actions are directly linked to specific areas of concern or areas that require further scrutiny, which have been identified by APRA's risk assessment processes. The framework promotes the concentration of resources more precisely on those institutions that exhibit greater risk and subsequently require a more intensive supervision.

67. In Hungary, participants involved in on-site and off-site supervision are divided up to departments. The Inspection Department conduct the off-site inspections continuously examining the documents and other relevant information sent by the funds. The on-site inspections are conducted by the Supervisory Department for Pension Funds. The integration of the on and off-site inspections is wide and built up on each other. The information gathered through the off site inspections is used while planning the on-site inspections. Most members of the staff are involved in both on-site and off-site supervision and integration of on-site and off-site supervision is rather straightforward as information flows easily between the two.

68. COVIP conducts annual programs of on-site exams defined by the inspection unit together with the Supervisory units, indicating types and number of inspections to be conducted. Besides the annual plan, on-site inspections may be set up urgently as a result of information collected during ordinary off-site supervisory activity. On-site exams may be general or focused on specific aspects. They are prepared by a thorough off-site analysis of the information and documentation available, in order to minimize the costs and the length of the on-site inspections. They are ordinarily executed by specialized staff together with staff of the supervisory unit that is responsible for the current monitoring of the fund to be inspected.

### **III. Organization of the Supervisory Agency**

69. In order to protect the interest of the members and safeguard the long-term stability of the system, supervisory agencies must be properly staffed and financed, insulated from political pressures coming from the government or pension industry, and endowed with reasonable enforcement capacities. This section analyse the degree of financial, political and operative independence of the supervisory agency as well as the mechanisms used to avoid principal-agent problems.

70. There are many types of supervisory agencies and their characteristics vary widely. They differ in size, function, rationale for creation, funding, legal and organisational status, internal governance structure, accountability mechanisms and reporting.

## Legal status

71. The majority of the OECD supervisory authorities are autonomous bodies, created and regulated by law, what provides more institutional stability. According to the features of the national administrative legislation, they can be non-departmental public bodies, such as the United Kingdom's Occupational Pension Regulatory Authority (OPRA), institutes, superintendence, agencies, commissions or boards. They have been created as isolated institutional structures with complete or partial legal identity.

72. Dependent structures, on the other hand, are vertically integrated into the ministries as secretaries, departments or directorates linked to Central Banks, Ministries of Finance, Labour, Social Security, Social Affairs or other ministries. This is the case of the Czech Department of Insurance and Pension Funds under the Ministry of Finance and the Pension Bureau of the Japanese Ministry of Health, Labour and Welfare. Only five countries have formally dependent supervisory structures - Czech Republic, New Zealand, Japan, Spain and Turkey.

### Box 3. LEGAL STATUS AND ACCOUNTABILITY OF SELECTED OECD SUPERVISORY AGENCIES

	LEGAL STATUS	ACCOUNTABLE TO
APRA (Australia)	Statutory authority formally independent	Commonwealth Parliament and supervised industries
OSFI (Canada)	Office of the Government of Canada formally independent	Ministry of Finance
OSIPF (Czech Republic)	Body formally dependent	Ministry of Finance
FSA (Denmark)	Government body formally independent	Minister for Economic Affairs
BAFin (Germany)	Federal institution formally independent	Ministry of Finance
HFSA (Hungary)	Legal entity formally independent	Parliament
FME (Iceland)	State authority formally independent	Minister of Commerce
PENSION BOARD (Ireland)	Statutory Body formally independent	Ministry for Social and Family Affairs
COVIP (Italy)	Autonomous public institution formally independent	Ministry of Labour and the Ministry of the Economy
PENSION BUREAU (Japan)	Public body formally dependent	Ministry of Health, Labour and Welfare
CONSAR (Mexico)	Public entity formally independent	Ministry of Finance
PVK (Netherlands)	Independent governmental agency	Ministry of Finance and Ministry of Social Affairs and Employment
Gov. Actuary / ISU (New Zealand)	Public body formally dependent	Ministry of Economic Development.
KNUiFE (Poland)	Public entity formally independent	Council of Ministers
ISP (Portugal)	Public body formally independent	Ministry of Finance
DGFSP (Spain)	Public body formally dependent	Ministry of Economy
FI (Sweden)	Government agency formally independent	Government
UT (Turkey)	Public body formally dependent	Ministry of State
OPRA (UK)	Non Departmental Public Body formally independent	Prime Minister

Source: Replies to the OECD Secretariat questionnaire DAFE/AS/PEN/WD (2002)26.

73. The formally independent agencies have different governance structure, distinct control environment and some management autonomy. In the OECD countries, they have been created to improve efficiency and effectiveness of government entities focusing on client needs. These agencies may have

more policy independence and continuity, incorporating the private sector and civil society in the decision making process.

74. In Australia, APRA is a statutory authority with the legal status of a body corporate with perpetual succession, what provides relatively autonomy from the Commonwealth Government. APRA is the unique agency that is ultimately accountable direct to the Parliament and to regulated industries. For that purpose APRA submit annual report to the Parliament, which is also available to the public, and maintains an ongoing accountability through various avenues as industry consultations and regular appearances in Parliamentary Committees.

75. The German BAFIN operates within the ambit of the Ministry of Finance as a legal person functionally and organisationally separate from the Ministry in its decision-making and exercising of its functions and powers. BAFIN's independence and accountability is addressed in its enabling legislation. Ministry of Finance exercises supervisory control via Administrative Council and is required to ensure that BAFIN executes its tasks according to the law and in an effective and adequate way. For this purpose, in exceptional cases, the Ministry may give instructions to the agency. Regularly, BAFIN consults the Ministry regarding new regulations, guidelines or other fundamental policy matters.

76. However, the independent legal status of the supervisory agency is neither a necessary nor a sufficient condition to guarantee its institutional insulation and autonomous operation. There are several institutional mechanisms that can avoid or, at least, minimise, external interference - both from the government and from the pension industry - in the control of the compliance with regulations. These mechanisms are related to the financing of the agency, human resources' policy, criteria to nominate and remove directors, mandate, constraints to the movement of the work force from government to the market and vice versa, disclosure and enforcement capacity.

### **Financing**

77. In the most part of the surveyed countries, supervisory agencies are financed exclusively by levies charged to supervised entities. This is the case of some formally independent agencies as APRA (Australia), OSFI (Canada), HFSA (Hungary) and ISP (Portugal). There are also many countries with mixed arrangements combining general budget and fees paid by private sector as CONSAR (Mexico) and KNUiFE (Poland). Formally, dependent public bodies are always funded by the general budget. COVIP is the only case of a formally independent agency that still depends exclusively on the government transfers, but they plan to activate shortly a contribution from the pension industry. The Italian delegation reported *"the levy on the pension funds is needed because public funds are not sufficient to carry out effectively the required tasks"*. In Sweden, both FI and county administrative boards are financed indirectly by the private sector because levies on supervised entities are part of the general revenue and the supervisory agencies receive resources from the general budget.

#### Box 4. FINANCING THE SUPERVISORY AGENCY

GENERAL BUDGET	MIXED (GOVERNMENT AND SUPERVISED ENTITIES)	SUPERVISED ENTITIES
Czech Republic Italy Japan Spain Turkey	Mexico New Zealand Poland Sweden United Kingdom	Australia Canada Denmark Germany Hungary Iceland Ireland Netherlands Portugal

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD(2002)26.

78. Public budgets are political allocations of resources made under fiscal constraints. Sometimes this process can limit the ability of the supervisory agency to remain up to date technologically and professionally with developments in the private pension market. A market-oriented approach on the financing of the supervision is likely to be more effective to guarantee resources for the agency and avoid political pressure from the government.

79. Moreover, the private pension fund supervision is a service often provided to high-income groups. Under these circumstances, the general budget financing would appear as a perverse cross-subsidy transfer imposed on all taxpayers. According to basic principles in public finance, those who benefit should be the ones who pay the taxes. Therefore, the direct or indirect participation of the pension industry covering the expenses of the supervisory activities could be identified as a good practise.

80. On the other hand, when the financing is exclusively based on private fees, there is a “captured agency” risk. Supervised entities mostly affected by agencies’ decisions and policies could influence the budgetary process bargaining the shaping of the supervisory procedures and policies primarily to benefit themselves at the expense of the participants or government. In order to avoid the supervisory “capture” it is important well design the process of definition and implementation of the budget, avoiding interference of pension industry in the supervisory activities, conflicts of interests and ensuring that the independence from industry is not compromised in any way by funding arrangements.

81. In Australia, levies imposed on institutions regulated by APRA are determined through a consultative process between APRA, ASIC, the ATO, industry and the Commonwealth Treasurer, although the latter ultimately determines the fees. Levies are spread across all the supervised industries – banks, credit unions, building societies, general insurance, reinsurance, life insurance, friendly societies, and superannuation funds and are paid into the Commonwealth Consolidated Revenue Fund. The overall budget for APRA is determined by its Board in consultation with the Commonwealth Treasurer and takes into account the resources required to conduct effective supervision for the forthcoming year for each industry under supervision.

82. In Hungary, the HFSA supervisory fee is calculated out of the payments of the members and employers’ contributions and is regulated in the Law. The HFSA budget are determined by the budgetary law and submitted to the Parliament. The frame numbers are calculated by the HFSA, according to the documents accepted by the Government relating to the planning of the central budgetary system. In Canada, OSFI is financed by a levied on plans based on the number of plan members with a set minimum and maximum amount payable annually.

83. The Portuguese ISP is financed by fees charged on the undertakings subject to its supervision. The agency is also financed by incomes from the sale of assets and from services provided, as well as from rights over the former, by returns on assets and incomes from its activities, returns on financial investments, subsidies, donations or contributions from Portuguese or foreign entities, costs of proceedings for infringements and breaches of regulations and by any other income or return to which it is entitled under the law, under a contract or in any other manner.

84. Supervisees also finance the Dutch PVK through an apportionment system. Pension funds and insurance companies pay a statutory contribution according to its size and the PVK budget requirements. Annually, PVK's Governing Board, based on the Executive Board's proposal, submits a budget for Ministries of Finance and of Social Affairs and Employment's approval.

### **Criteria for nominate directors**

85. Besides the appropriate funding, the criteria used to nominate agency directors, establish their mandates and regulate the relationship between them and the private sector are also issues relevant to analyse the institutional independence of the supervisory authority.

86. There are countries where directors are nominated by political authorities and can be replaced without any restrictions. In other jurisdictions, the names of the directors have to be submitted to the Parliament or specific councils. They are required to present experience, capacity, reputation, university degree and have mandates protected against political pressure. 87. In Australia, Canada, Ireland, Iceland, Italy, Hungary, Netherlands, Portugal, Poland and Sweden, the supervisory agencies' heads have mandates ranging from four to seven years. Mandates are important institutional tools to avoid political interference and instability in the agencies and assure policy continuity. During the mandate, generally, the appointment is terminated just in cases set out in the regulations including, misbehaviour, incapacity, corruption and conflicts of interests.

88. In Germany, the mandate is not defined in legislation, but since the nominated persons are political civil servants, a removal from office is possible only within the narrow restrictions of sections. Normally, the head retires on grounds of age. Removal because of disciplinary proceedings is also possible.

89. In the other countries, the decision on the permanence of agencies' directives is part of the discretionary powers of the high officials. Generally, formally dependent agencies are more vulnerable to political instability.

**Box 5. SUPERVISORY AGENCIES: APPOINTING DIRECTORS**

	<b>WHO APPOINTS?</b>	<b>LEGAL SPECIFIC REQUIREMENTS</b>	<b>MANDATE</b>
Australia	Federal Treasurer	No	5 years
Canada	Governor in Council	Yes – professional background in economics, finance, law, accounting, public or business administration, or any other relevant speciality; Knowledge of Canada’s financial sector and pension system; Experience in the conduct of regulatory agency and the interpretation and application of legislation and regulatory is also required; Leadership and Communication skills	7 years
Czech Rep.	Minister of Finance	No	No
Denmark	Prime Minister	No	No
Germany	President	No	No
Hungary	Parliament upon Prime Minister proposal	Yes – high academic qualification in relevant fields (political sciences, law, economics, state administration, finance and accounting) and at least five years of managerial (executive) working experience acquired in a financial organization or in public administration in the regulation or controlling of financial organizations, or equivalent working experience acquired abroad.	6 years
Iceland	Board	Yes – a university degree and extensive knowledge and experience in the financial market	4 years
Ireland	Board and Minister of Social Affairs	No	5 years
Italy	Government	Yes – members of the Board must be chosen among experts in the field and be of undisputed integrity and independence	4 years
Japan	Minister of Health, Labour and Welfare	No	No
Netherlands	Royal decree upon Minister of Finance and Minister of Social Affairs and Employment proposal	Yes – members of the Boards should be independent, have confidence of the supervised institutions and have outstanding ability in the field of finance, management and socio-economics.	6 years for Governing Board and 5 years for Executive Board
Mexico	Ministry of Finance	Yes – have renowned experience in economics, finance, law or social security. Have no money or family links with the shareholders, the first or second-tier employees of the industry participants subject to CONSAR’s supervision. Must have never been prohibited to trade or work in the Mexican financial system or in the government and be recognized as a highly ethical person.	No
New Zealand	Ministry of Economic Development	Yes – must be an actuary.	No
Poland	Prime Minister	Yes – minimum 4 years of experience in financial, insurance or banking sector of industry and proper educational background as a mathematician, lawyer or economist.	5 years
Portugal	Council of Ministers	Yes – recognized ability, independence and competence.	5 years
Spain	Ministry of Economy	Yes – public servant with high qualification	No
Sweden	Swedish Government	No	6 years
Turkey	Prime Minister	Yes – public servant with minimum 12 years	No
UK	Board	No	No

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD(2002)26.

### **Human resources and procurement policies**

90. Supervisory agencies need flexibility to operate human resources policy in order to be able to pay competitive salaries, in line with those paid by pension funds or at least competitive with other agencies. It is fundamental that the agency is able to compete with pension fund managers for scarce human resources.

91. Furthermore, it would be desirable to have some flexibility in the procurement procedures. This issue is related to the legal status of the supervisory body and to the type of work contract given to employees. Departments linked to Ministries are generally less independent than separated agencies.

92. APRA is a case of completely autonomy on the human resources policy and procurement procedures. The Board determines the terms and conditions of appointment, although this is subject to public service general guidelines. Private sector remuneration is constantly monitored to ensure the authority's remuneration is competitive. APRA has reached a remuneration level comparable with the general private and public sector and is currently addressing parity with the finance market. APRA is not required to follow procurement guidelines of the Federal administration, but it is considered on reference basis.

93. The ISP (Portugal) has also total autonomy to manage the human resources policy as long as it is in line with the budget approved by the Minister of Finance. Private sector workers' rules are applied to the labor contracts and the agency is not required to follow the procurement procedures of the national administration.

94. Italy, Mexico and Poland are examples of partial autonomy for human resources policy. In Italy, COVIP has autonomy to define the policy concerning the level of salaries and the structure of careers for its employees. However, the level of salaries for the different qualifications is linked to other public authorities. In Mexico, the Ministry of Finance sets the level of salaries, but the career structure of the employees depends on each department of CONSAR. General rules concerning all civil servants apply to supervisory authority on hiring, firing and salaries. In Poland, the Minister of Finance shall specify the rules of KNUiFE employees' remuneration taking into consideration salary levels paid in the supervised institutions.

#### **Box 6. PENSION FUND SUPERVISION AGENCIES IN SELECTED OECD COUNTRIES: HUMAN RESOURCES AND PROCUREMENT POLICIES**

	<b>AUTONOMY TO DEFINE SALARIES</b>	<b>AUTONOMY TO CONTRACT AND FIRE STAFF</b>	<b>AUTONOMY ON PROCUREMENT PROCEDURES</b>
Australia	Yes	Yes	Yes
Canada	Partial	Partial	No
Czech Republic	No	No	No
Denmark	Yes	Partial	No
Germany	Yes	Partial	No
Hungary	Partial	Partial	Partial
Iceland	No	No	No
Ireland	Partial	No	No
Italy	Partial	Partial	No
Japan	No	No	No
Mexico	Partial	No	No

New Zealand	No	No	No
Poland	Partial	No	No
Portugal	Yes	Yes	Yes
Spain	No	No	No
Sweden	Yes	Yes	Yes
Turkey	No	No	No
United Kingdom	Yes	No	No

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD(2002)26.

95. Agencies with financial and human resources management autonomy are able to pay higher salaries compare to the private sector or, at least, offer similar or better employment term and conditions. It means that they have more capacity to recruit and retain qualified workers. Except Ireland, all autonomous agencies financed by levies on the supervised agencies reported relative good salary conditions compared to the private sector. Despite its autonomy, the Irish Pension Board is subject to the pay scales that operate within the public sector. In the last year, there has been a benchmarking exercise completed in order to correct distortions. Although not specific to the Pension Board, it has recommended increases in the salary scales to ensure a level of parity with the private sector.

96. The Italian COVIP is formally independent, but is financed by general budget and also reported that terms and condition of the employment currently offered are, in general, lower than those are available to staff in private sector. This agency has some autonomy to define the level of salaries and the structure of careers for its employees. However, the level of salaries for the different qualifications is linked to other public authorities. In Canada, OSFI offers terms and conditions of employment similar to those of the Government, which, in some instances, are more generous than the private sector (e.g. vacation leave, other types of leave, maternity benefits, etc.). But, unlike private sector employers, public agencies are not in a position to offer any type of at-risk compensation plans (e.g. stock option or profit-sharing), what could have a significant impact on the direct compensation.

97. In the Danish Financial Services Authority (Finanstilsynet), the level of salaries is mostly determined by collective agreements between the Ministry of Finance and the relevant trade unions of civil service employees. Finanstilsynet may design its own structure of careers for its employees, within the limits set by these agreements.

#### **Box 7. STAFF OF SUPERVISORY AGENCIES: PRIVATE SECTOR X PUBLIC SECTOR**

	<b>TERMS OF EMPLOYMENT: PUBLIC X PRIVATE SECTOR</b>	<b>RESTRICTIONS FOR MOVEMENTS FROM PUBLIC TO PRIVATE SECTOR</b>	<b>HOW OFTEN ARE THE MOVEMENTS FROM PUBLIC TO PRIVATE SECTOR</b>
Australia	Similar	No restrictions, but penalties for inside information disclosure	Frequently
Canada	Agency	Yes – one year of prohibition to work in supervised entities	Occasionally
Czech Rep.	Private sector	No	Rarely
Denmark	Similar	No restrictions for movement, but penalty for inside information disclosure	Occasionally
Germany	Agency for middle management and private sector for high level	No	Occasionally
Hungary	Agency	No	Occasionally
Iceland	Similar	No	Never
Ireland	Private Sector	No	Rarely

Italy	Private Sector	No	-
Mexico	Similar	No	Occasionally
NZ	Private Sector	No	Occasionally
Poland	Similar	Yes – one year of prohibition to work in supervised entities	Occasionally
Portugal	Similar	No	Rarely
Spain	Private sector	No	Rarely
Sweden	Agency salaries are lower, but its terms of employment are often better	No	Rarely
Turkey	Private Sector	No	-
UK	Similar	No	Rarely

Source: Replies to the OECD Secretariat questionnaire DAFPE/AS/PEN/WD(2002)26.

98. Human resources policy autonomy provides more flexibility and dynamism to design and implement training programs up dating the staff to new supervisory technologies and approaches. APRA has series of training programs reflecting risk based supervision approach, as well as the fact that APRA is responsible for the prudential supervision of a number of different industry sectors of which superannuation forms only a part. In Canada, OSFI conduct a training program oriented to encourage the use of skills needed to successfully employ a risk-focused approach to supervision; ensure that supervisors receive the knowledge required to keep pace with recent and expected changes in the Financial Services Industry; integrate training program with on-the job responsibilities; foster an environment for self-directed learning. In Italy, there are regular training initiatives set up together with other supervisory authorities. However, most of supervision skills are developed directly on the field, as methods and procedures are still in the progress of being established.

99. Occasional staff movements from private to public sector and vice versa are desirable to exchange experiences and views between supervisor and supervised, but is necessary to establish strong regulations on information disclosure and conflict of interests. These regulations are likely to be more effective than prohibitions. It is also interesting to have a mixed composition of staff, combining personal coming from other agencies, private sector and public servants from supervising careers.

100. In Australia, there are no restrictions on movement into the superannuation industry. However, there are some provisions on confidential information disclosure. Ninety per cent of employees leaving APRA are employed afterwards in the private financial sector. Thirty per cent of APRA's staff was previously employed by its predecessor organizations including the Insurance and Superannuation Commission. The remainder of staff is drawn from within the finance sector (e.g. banking, superannuation, insurance), accountants, graduates and other government agencies such as ASIC and the ATO.

101. In Canada, former employees shall not, within a period of one year after leaving office, accept appointment to a Board of Directors of, or employment with, an entity with which they had official dealings during the period of one year immediately prior to their departure. They shall not make any representations for or on behalf of any other person or entity to OSFI. Occasionally, there are former supervisors employed by pension industry. The main source of recruitment for the pension supervisory group is the industry, with the exception of the policy role, which is often filled by public sector employees; and actuarial expertise, which comes from actuarial consulting firms and the insurance industry.

102. In Italy, COVIP's staff comes from other supervisory authorities (5 per cent), government departments (50 per cent) and private sector (45 per cent). BAFIN operates under an open recruitment

policy and the staff is mainly from private sector. The main source of the HFSA's staff used to be the public sector (other supervisory agencies, Ministry of Finance, government departments). However, nowadays, is increasing the number of staff coming from private sector. There are also a growing number of those who are new entrants to the labor force and choose HFSA to be their first employer, what could be a comparative advantage to enter afterwards in the private labor market.

### **Dispute settlement procedures**

103. Generally, in formally dependent agencies, superior authorities as Ministers or Vice-Ministers have direct power to approve, revise, cancel, pursue or intervene in any act of the supervisory body linked to the ministry (Box. 7).

#### **Box 8. WHO CAN REVISE AGENCIES' DECISIONS AND ACTS?**

Australia	Administrative Appeals Tribunal and Federal Court
Canada	Minister of Finance
Czech Republic	Court of Justice
Denmark	Court of Justice
Germany	Minister of Finance and Administrative Council
Hungary	Court of Justice
Iceland	Appeals Committee
Ireland	Court of Justice
Italy	Court of Justice
Japan	Minister of Health, Labour and Welfare
Mexico	Appeals Committee and Court of Justice
Netherlands	Court of Justice
New Zealand	Court of Justice
Poland	Administrative Court
Portugal	Court of Justice
Spain	Ministry of Economy
Sweden	Administrative Court or Swedish Government (depending of the type of decision)
Turkey	Ministry of State
United Kingdom	Court of Justice

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD(2002)26.

104. In some formally independent agencies, as OSFI (Canada) and BAFIN (Germany), Ministers have the final authority on some matters related to public policy. As for example, OSFI's Superintendent is required to report to the Minister on the administration of statutes falling with OSFI's jurisdiction and is responsible for providing certain approvals and taking specified action under these statutes. In certain instances, ministerial approval or action is required when operating decisions have public policy implications. In BAFIN, the Minister of Finance exercises his authority indirectly through the Administrative Council.

105. APRA (Australia) has substantial powers for perform its functions. In the event that the Commonwealth Government disagrees with APRA's policies, the dispute may be settled by agreement with the Commonwealth Treasurer, and failing this, by order of the Commonwealth Governor-General. In certain circumstances, APRA may only act with the Treasurer's written consent. Powers to grant financial assistance to funds also resides with the Treasurer. The legislature has the power to change the agencies'

procedures through amendments to the regulations and disallowance of associated regulations under which APRA operates, as well as those it administers. The Minister may also give directions about the performance or exercise of its functions or powers. In addition, certain decisions are defined as “reviewable decisions”. A person affected by a “reviewable” decision may request to reconsider the decision. If APRA confirms or varies the decision upon receipt of such a request, the decision is reviewable by the Administrative Appeals Tribunal. Federal Court may also review an administrative decision made by APRA. In Portugal, as well, all supervisory powers are delegated by legislation to ISP and any superior authority cannot revise its procedures and decisions.

106. The FME (Iceland) has considerable powers in its supervisory operations. Firstly, the FME decides which supervisory projects are executed in the pension fund market as well as which methods are used in the execution of these projects. Secondly, the FME has unlimited access to information, data and valuables from pension funds. Thirdly, the FME has various effective resources in its supervision such as the permission to grant a pension fund a certain time period to rectify a situation considered to be unsatisfying, to call and direct a Board meeting of a pension fund, to subject a pension fund to daily fines if it does not respond to the demands and to announce general directive requests. However, the Minister of Finance grants pension funds operating licenses, confirms the changes of pension funds statutes and appoints a special supervisory party of a pension fund, based on FME’s recommendations. Supervised parties may refer the FME’s decisions regarding their rights and responsibilities to a special Appeals Committee. Rulings of the Appeals Committee are final at the administrative level and cannot be referred to the Minister of Commerce.

107. The Mexican CONSAR has technical autonomy and executive faculties to take decisions regarding the participants of the pension system. Such is the case of an administrative intervention of a pension fund, a removal of license, etc. The agency has to report the Ministry of Finance about the decisions it takes in a timely fashion.

108. In Italy, almost all supervisory powers are delegated to the supervisor authority that holds the responsibility for final approval of actions. In some cases (applications of sanctions and pension funds, compulsory winding-up) the Ministry of Labour, according to COVIP’s recommendation, adopts the action. The agency is entrusted with reasonable capacities to fulfil its statutory responsibilities. However, sanctioning is now restricted to certain specific irregular behaviour and should be extended to a wider range of cases. Some ex-ante authorizations could be overcome, and more generous funding should be provided for.

### **Governance boards**

109. In agencies with high degree of financial, political and operational independence, it is important to design mechanisms to mitigate principal-agent problems. Institutional independence may lead incentives for people who are placed in control over resources to use these resources to feather their own nests at the expense of those whose interests they are supposed to be serving. The most effective mechanisms implemented by survey countries are related to the establishment of boards, auditing and disclosure policies.

110. As public institutions, pension supervisory agencies have to be submitted to external auditing. In all surveyed countries the national audit offices review periodically the financial statements. Additionally, the parliaments may require further examinations.

111. The most part of the surveyed countries is governed, advised or supervised by boards (Box. 8). These boards include high-level authorities, officials from other agencies, representatives of members and supervised entities and from Legislative and Judiciary Branches. They are important institutional locus for external surveillance of the agencies' activities and performance, co-ordination with other government areas, social control and priorities setting. The agencies without boards are those formally dependent on the ministries, excepting Canada, and are governed by single directors.

112. Some agencies adopt governing boards with extensive strategic decision-making power on the development of policies, requesting and providing information, ensuring commitment to core values and compliance with legal and financial requirements. They might even appoint the agencies' directors. Frequently, ministers are responsible for designating board's members. There are also administrative boards involved directly in the agency's management and advisory boards without any decision-making power.

### **Box 9. GOVERNANCE OF SUPERVISORY AGENCIES**

<b>AGENCIES OVERSIGHT BY BOARDS</b>	<b>AGENCIES WITHOUT BOARDS</b>
Australia	Czech Republic
Denmark	Canada
Germany	Spain
Hungary	Japan
Iceland	New Zealand
Ireland	Turkey
Italy	
Mexico	
Netherlands	
Poland	
Portugal	
Sweden	
UK	

Source: Replies to the OECD Secretariat questionnaire DAF/AS/PEN/WD(2002)26.

113. In Australia, APRA's Board comprises nine members, with representatives from the private sector, RBA and ASIC. The Federal Treasurer appoints ordinary members of the Board, including the Chair and CEO for a term of up to 5 years. Board decisions are made by majority vote. Resolutions may also be passed without a board meeting. Once policies have been drafted by APRA, there is a formal consultation process undertaken with representatives from industry to inform them of the proposed policy changes and determine any implementation problems that may be encountered by industry.

114. In Denmark, Minister for Economic Affairs shall set up the Financial Business Council comprising eight members, appointed for four years: a chairman; deputy chairman; a representative for Denmark National Bank; a consumers' representative; a representative for commercial interests; representative for the mortgage-credit institutions; a representative for Danish banks and a representative for insurance companies and pension funds. The Financial Business Council shall make decisions regarding supervisory matters of general public importance and that entail significant consequences to financial undertakings and financial holding companies. Furthermore, it advises the Danish Financial Supervisory Authority on issuing regulations and assists the Danish Financial Supervisory Authority on its disclosure activities.

115. In Germany, the Administrative Council monitors the BAFIN's management and supports the execution of its duties. The President is obliged to keep the Administrative Council regularly informed of

the conduct of his management activities. The Administrative Council consists of the Chairman and his Deputy, who is seconded by the Federal Ministry of Finance, and 19 representatives from public and private institutions. BAFIN also possesses an Advisory Board comprising 24 members.

116. In Hungary, the Supervisory Council is an advisory body with 15 members. The President of the HFSA chairs the sessions and appoints the council members based on consultations with the Minister of Finance for one-third of members and with the professional associations for two-thirds of members representing the supervised entities. The members of the council are professionals with outstanding theoretical knowledge and practical experience. The Supervisory Council comments on the issues related to HFSA's strategic and regulatory role and development. The members shall be appointed for 3 years.

117. In Iceland, the FME has a Board of three members appointed by the Minister of Commerce for a term of four years. One board member is appointed on the recommendation of the Central Bank. The Minister appoints the Chairman of the Board and decides the members' remuneration. The Board should orient the focus of the Financial Supervisory Authority's work and monitor its activities. Major decisions shall be presented to the Board for approval or rejection on majority voting basis. A special consultative committee composed of representatives from the supervised parties operates in conjunction with the FME. The committee is an arena for parties under supervision, including pension funds, to further their views on procedures and operations of the supervisory agency. The consultative committee does not have the decision-making power. The FME's executives hold, at least twice a year, meetings with the consultative committee.

118. In Ireland, there is a Representative Board of 17 members. While all its members are appointed by the Minister for Social, and Family Affairs, the Board must comprise representatives nominated by trade unions, employers, the Government, industry and beneficiaries. Decisions tend to be taken on a consensus basis.

119. In Italy, the COVIP's Board includes the Chairman and four members. They are appointed by decree of the President of the Republic, subject to the advice of the competent Parliamentary Commission, in accordance with the decision adopted by the Council of Ministers and with the designation made by the Ministry of Labour in agreement with the Ministry of the Economy. The decisions of the COVIP Board are taken at majority.

120. The Dutch PVK has a Governing and an Executive Board composed by at least three members and five at the most. Each appointment is made for a period of five years. The Executive Board takes decisions by majority voting. There are no specific criteria of representation..

121. In Mexico, there is an Administrative Council with representatives of other official authorities dealing with social security and financial sector. In Poland, there is a board of members with Chairman and two deputies of Chairman. There is no separate body that oversees the operation of the KNUiFE. In Sweden, the Finansinspektionen (FI) board consists of up to twelve members without any specific criteria of representation. The members are appointed by the Swedish Government. In the county administrative boards, the board consists of nine members under the same conditions of FSA.

122. In the UK, there is a board with chair and nine other part time members broadly representative of employees, employers and sections of pensions industry. The members are appointed by Government Minister. Decisions should be taken on majority basis, but usually they are taken by unanimity.

123. In Portugal, the ISP has a Consultative Committee and an Audit Committee. The Consultative Committee works on matters related to strategic guidelines and co-ordination with other agencies. The

Audit Committee controls the financial management of the ISP. It analyses the budget, annual report and annual accounts. Both bodies may take decisions on majority basis.

### **Disclosure policies**

124. Supervisory agencies should work in a completely transparent environment, reporting frequently their main actions and activities, providing disclosure of information to members, enterprises and pension fund administrators. Agencies may disclose information to general public on regular basis. All surveyed countries produce annual reports regarding the agencies' activity, statistics and analysis of the pension fund sector. This information is available at the websites, where can be found press releases, publications, punishments applied, list of managers disqualified, guidance and reports of board's meetings.

125. OSFI (Canada) prepare an annual report on its operations to the Minister, who should present it to each House of Parliament (House of Commons and Senate). Additionally, each year OSFI must present its Report on Plans and Priorities, that provides increased levels of detail on a business line basis and contain information on objectives, initiatives and planned results, including links to related resource requirements over a three-year period. The report is tabled in Parliament by the President of the Treasury Board. OSFI also submits an annual report on the administration of the Pension Benefits Standards and the statistics regarding the total allocation of invested pension assets, the distribution of plan membership and assets by plan type, and the source of funds of federally registered.

126. Finanstilsynet (Denmark) is required to submit a report on its activities once a year and for instance, the agency discloses notifications, technical assumptions, decisions, executive orders, directives to entities and recommendations. BAFIN (Germany) publishes an annual report, a monthly official bulletin containing legal and administrative principles, circulars, guidance notes and other information transmitted directly to the entities. The Government Actuary (New Zealand) prepares also a report annually to Parliament, which is available on line and in paper form to interested parties. Statistics are available during the year for interested parties. In Sweden, FI and the county administrative board have to submit annual and semi-annual reports to the Swedish government.

127. While observing confidentiality policies, the HFSA (Hungary) shall be entitled to disclose some of its resolutions in the Financial Gazette and in the internet. In the Financial Gazette the HFSA regularly (quarterly and annually) disclose the list of entities holding operating licenses issued by the HFSA, as well as the list of foreign supervisory authorities with which the HFSA has concluded co-operation agreements based on mutual recognition. The agency prepares also annual and quarterly reports.

128. The FME (Iceland) discloses an annual account as well as an annual report of its main activities in each financial sector. Further, once a year, representatives of parties under supervision are invited to a meeting where main activities as well as trends and outlooks in each market of the financial sector are recapitulated. The website contains news and press releases, description of activities, information on consumer services, complaints committees for financial issues, reports and discussion papers. The agency publishes annually a pension funds yearbook containing information from the annual accounts of pension funds and special report on pension funds investments for the respective year.

129. COVIP (Italy) statistical data are regularly collected by COVIP on a quarterly and yearly basis. For each fund, the information collected is mainly referred to: members, contributions, NAV, performance of pension funds and portfolio managers, asset allocation, income and expenditures. COVIP produces an annual report describing the structure and the most important features of the private pension system along with the regulatory and supervisory activity carried out during the previous year. In addition, the principal

statistical information is made available quarterly at the web site. ISP (Portugal) elaborates an annual report published in the Official Journal and also a quarterly review.

#### **IV. Concluding Remarks**

130. This paper reviewed the different types of institutional organisation of the private pension funds supervision in OECD countries. It argued that supervisory structures for pension funds are function of the state political and administrative organisation (federalism, unitary, centralised, decentralised); characteristics the pension scheme (mandatory, voluntary, occupational, personal, DC or DB); market structure (number of funds/plans, type of fund/plans, market concentration degree) and regulatory and supervisory approach (qualitative, prudential, quantitative, self-supervision, re-active, pro-active).

131. Three private pensions supervisory structures' models have been identified: (i) specialised pension model, with one or more agencies dedicated exclusively to pension fund supervision; (ii) partially integrated model, with one agency responsible for insurance and private pension supervision and (iii) integrated model, with one institution responsible for the overall financial sector supervision, including banks, securities, insurance companies and pensions funds.

132. In countries with integrates financial authorities (Austria, Germany, Hungary), the main arguments pro integration are related to the economies of scale and scope, authority overlapping, intersectoral supervisory consistency, efficiency and transparency of the information flow and institutional adjustment to the expansion of financial conglomerates. Nonetheless, there are countries with unified agencies for the financial sector and segregated agencies for occupational pension plans (Japan, Sweden and the UK). There are countries with integrated agencies and specialised functions (Australia) and countries where the power of the unified agency is limited by the federalism (Canada). In countries with specialised agencies, the survey showed some institutional fragmentation with several institutions sharing the responsibility of the pension supervision according to the product and function (Italy, Mexico and the US). The main argument pro specialisation is the particularity of the private pension contracts with specific tax treatments and social aspects, which would require a different approach regarding the supervision of their assets, liabilities and risks. This seems particularly to be the case as regards occupational schemes where employment relationship must be considered and where the employer frequently serves as an intermediary between the plan or fund members and the financial institution.

133. This study also showed that different specialized can co-operate and co-ordinate their activities their activities in order to achieve economies of scale, greater efficiency and eliminate overlapping duties as long as they have a clear definition of their duties. In this sense, both integrated and specialised models could achieve the same results in terms of efficiency and effectiveness.

134. Despite the diversity and complexity of the national institutional structures, the first "good practise" raised in the discussion is that the private pension supervisory framework should be clearly designed. Each agency involved in the process should have a well-defined mission statement, objectives and responsibilities. Co-ordination, co-operation and information sharing arrangements should be encouraged in order to avoid authority overlapping, promote economies of scale and scope and improve the overall information quality and availability.

135. Second, the survey showed that supervisory agencies should be properly staffed and financed, insulated from political pressures coming from the government or pension industry, and endowed with reasonable enforcement capacities.

136. The study analysed some institutional features that could contribute on the designing of the supervisory agency. Preferably, it should possess operational independence, with autonomy and resources to conduct a human resources policy that could offer salaries (including benefit rights and other social

packages) and terms of employment competitive to those in private sector. Moreover, supervised entities should participate in the financing of the supervisory agency through a transparent budgetary process. The heads of the agencies should be appointed for a pre-defined term. Situations for early termination should be in a transparent manner specified.

137. Additionally, supervisors should be endowed with adequate powers and its decisions may be ultimately revoked only by them or by administrative and judicial courts. Regulations should address conflicts of interest situations and employment of former supervisors in the private should be protected against disclosure of confidential information and create mechanisms to avoid the capture of the agency.

138. On the other hand, it is also important to design institutional mechanisms to avoid principal – agency risks. Supervisory agencies should be overseen by boards with representatives of all the sectors involved or affected by supervisory process (government, entities, participants) and should disclose frequently their actions as well as information on the private pension system.

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## **ANNEX I. Questionnaire on Supervisory Structure for Private Pension Funds**

### **1. Supervision of Private Pension Funds: Functions and Responsibilities**

- 1.1. What bodies/agencies are involved in the supervision of private pension funds?
- 1.2. Which of these agencies is the primary supervisor? Does it differ by type of plan (occupational vs. personal, mandatory vs. voluntary)?
- 1.3. Please identify the institutional body responsible for the following functions related to the supervision of pension funds:
  - a) Licensing/registration
  - b) Qualification for tax benefits
  - c) Compliance to governance rules
  - d) Contributions and regularity of payment
  - e) Membership and portability (enrolment process, transfers and compliance)
  - f) Benefits eligibility conditions and access to plans
  - g) Investments, asset allocation, performance, minimum capital and reserves
  - h) Custodian procedures
  - i) Financial, actuarial and accounting methods
  - j) Administrative cost, fees and marketing
  - k) Disclosure procedures referring to members and beneficiaries, potential members and accounts
  - l) Merger and liquidation process
- 1.4. Please describe any explicit co-ordination and co-operation arrangements between pension fund supervisors and other supervisory bodies, including those in charge of banking, insurance and securities supervision.
- 1.5. What provisions exist for the pension fund supervisory agency to share information with other parties (e.g. central bank, other supervisors)?
- 1.6. Does the primary pension supervisor have any regulatory authority? If yes, please describe? If not, what entity is the principal regulator?
- 1.7. Does the pensions supervisory body produce any statistics and/or research? If yes, what types of information and studies are produced and how are they made available?

- 1.8. What are the main problems and the main advantages of the supervisory framework?
- 1.9. Is there any on-going initiative to reform the supervisory framework? If yes, please describe it and provide the justification for the proposed changes.
- 1.10. Please provide available information concerning supervised entities for the year 2001:
  - a) Number of participants (active workers, beneficiaries and dependents) of the supervised pension scheme
  - b) Number of supervised pension funds or plans, by type
  - c) Fund revenues of the supervised entities in domestic currency.
  - d) Reserves of the supervised entities in domestic currency.

## **2. Political, Institutional and Operational Independence of the Supervisory Body**

- 2.1. What is the legal status of the supervisory body?
- 2.2. Does the supervisory authority have a board that oversees the operation of the authority? If yes, what is the composition of the Board? (E.g. number of members, criteria of representation) How are the members appointed? How are decisions taken (unanimity, majority voting, qualified majority voting, etc.)?
- 2.3. To whom or to what institution is the supervisory authority ultimately accountable to? What are the main means of reporting the authority's activities?
- 2.4. How is the supervisory body financed?
- 2.5. Who determines the overall budget?
- 2.6. Is the pension industry required to contribute to the financing of the costs of supervision?
- 2.7. Do the funding arrangements limit the supervisory agency's independence?
- 2.8. Do the funding arrangements provide the supervisory body with sufficient resources?
- 2.9. How is the head of the supervisory body (and the other directors) appointed?
- 2.10. Are there any minimum professional requirements for the head of the supervisory body?
- 2.11. How is the head (and the other directors) of the supervisory body removed?
- 2.12. How long is the mandate of the head of the supervisory authority?
- 2.13. Are there any restrictions for the movement of professionals from the supervisory body into the pension industry? Is there a minimum period between the departure from the supervisory authority and subsequent hiring by the supervised entity or pension plan?

- 2.14. How often are pension fund supervisors employed within the pension industry once they leave their service as supervisors? (Never, rarely, occasionally or frequently?)
- 2.15. Does the supervisory authority have autonomy to manage the human resource policy concerning the level of salaries and the structure of careers for its employees?
- 2.16. How do the terms and conditions of the employment currently offered by the supervisory authority compare with those available to staff in the private sector?
- 2.17. Is the supervisory body under to the same rules on hiring and firing employees applied to the federal administration?
- 2.18. Is the supervisory body under the same procurement procedures applied to the federal administration?
- 2.19. Which national authorities, if any, control and audit the activities of the supervisory body?
- 2.20. Does legislation delegate all supervisory powers to the supervisory body or does a superior authority retain final approval of certain actions (e.g. intervention in a pension fund, removal of license, etc)?
- 2.21. Can any superior administrative authority change the decisions and procedures of the supervisory body?
- 2.22. Please describe the disclosure policy of the supervisory authority (e.g. annual reports, releases, etc).
- 2.23. Is the supervisory authority satisfied that its powers are adequate in enabling it to fulfill its statutory responsibilities?

### **3. Organisational Structure and the Performance of the Supervisory Agency.**

(Please address the following questions to the primary supervisor. If the supervisory authority is not specialised, please address the following questions to the department of the authority that supervises pension funds)

- 3.1. How many directorates/departments/units in the supervisory authority are in charge of the supervision of pension funds and what are the main tasks of each one? Please provide the organisational chart of the agency.
- 3.2. What is the total number of staff employed by the supervisory authority?
- 3.3. In broad terms, what proportion of the staff is involved in:
  - a) Front-line supervision activities (e.g. on-site and off-site supervision, licensing, enforcement, intervention and termination)
  - b) Supervisory support functions (e.g. statistics, studies, legal and economic analysis)
  - c) Corporate services (e.g. administration, human resources, budget, etc)

- 3.4. How many actuaries are working in the supervisory body?
- 3.5. How many lawyers are working in the supervisory body?
- 3.6. How is the integration of off-site and on-site supervision managed?
- 3.7. How much was the annual budget of the supervisory body for 2001? Please provide the information in domestic currency.
- 3.8. Is there any participation of pension fund industry's representatives or members' representatives in the supervisory structure? If so, how does it operate?
- 3.9. Does the supervisory agency have a stated mission statement and/or statement of values?
- 3.10. What has been the main source of supervisory staff? (e.g. other supervisory agencies; other government departments, private sector)
- 3.11. Does the agency have flexibility and capacity to establish its own corporate culture? What steps has the agency taken to promote it?
- 3.12. What training programs have been established to develop supervisory skills of the staff?

## ANNEX 2: PRIMARY SUPERVISOR FOR PENSION FUNDS

	<b>SUPERVISED PRIVATE PENSIONS SCHEMES</b>	<b>PENSION FUNDS SUPERVISORY AGENCIES</b>	<b>PRIMARY SUPERVISOR</b>
Australia	Occupational and personal, both mandatory and voluntary plans (voluntary and compulsory superannuations funds)	Australian Prudential Regulation Authority (APRA) Australian Securities and Investment Commission (ASIC) Australian Tax Office (ATO)	Australian Prudential Regulation Authority (APRA) for all superannuations funds <a href="http://www.apra.gov.au">www.apra.gov.au</a>
Canada (1)	Occupational voluntary plans	Office of the Superintendent of Financial Institutions (OSFI) Canada Customs and Revenue Agency (CCRA) Provincials Pensions Supervisory Authorities	Office of the Superintendent of Financial Institutions (OSFI) for federal pension plans <a href="http://www.osfi-bsif.gc.ca">www.osfi-bsif.gc.ca</a>  Provincials Pensions Supervisory Authorities for pension plans
Czech Republic	Personal voluntary plans	Ministry of Finance / Office of the State Supervision in Insurance and Pension Funds (MF/OSIPF), Securities Commission (SC), Depository Banks (DB) Ministry of Labour and Social Affairs (MLSA)	Ministry of Finance / Office of the State Supervision in Insurance and Pension Funds (MF/OSIPF)
Denmark	Occupational mandatory plans and personal voluntary plans	Financial Supervisory Authority (FSA)	Financial Supervisory Authority (FSA) <a href="http://www.ftnet.dk">www.ftnet.dk</a>
Germany	Occupational and personal voluntary plans	Financial Supervisory Authority (BAFin)	Financial Supervisory Authority (BAFin) <a href="http://www.bafin.de">www.bafin.de</a>
Hungary	Occupational and personal, both mandatory and voluntary plans	Ministry of Finance (MF) Hungarian Financial Supervisory Authority (HFSA) Tax Authority (TA)	Hungarian Financial Supervisory Authority (HFSA) <a href="http://www.pszaf.hu">www.pszaf.hu</a>
Iceland	Occupational mandatory plans and personal voluntary plans	Ministry of Finance (MF) Financial Supervisory Authority (FME) Internal Revenue Directorate (IRD)	Financial Supervisory Authority (FME) <a href="http://www.fme.is">www.fme.is</a>
Ireland	Occupational and personal voluntary plans	Pension Board (PB) Revenues Commission (RC) Central Bank (CB) Department of Enterprise, Trade and Employment (DETE)	Pension Board (PB) for occupational pension plans <a href="http://www.pensionsboard.ie">www.pensionsboard.ie</a>  Department of Enterprise, Trade and Employment (DETE) for personal pension plans
Italy	Occupational and personal voluntary plans	Pension Funds Supervision Commission (COVIP) Stock Market and Securities Commission (CONSOB) Bank of Italy ISVAP	Pension Funds Supervision Commission (COVIP) for occupational and personal <a href="http://www.covip.it">www.covip.it</a>
Japan	Occupational and personal	Ministry of Health, Labour and	Ministry of Health, Labour and

	voluntary plans	Welfare (MHLW) / Pension Bureau Financial Services Agency (FSA)	Welfare (MHLW) / Pension Bureau for occupational plans <a href="http://www.mhlw.go.jp">www.mhlw.go.jp</a>
Mexico	Personal mandatory and voluntary plans	Ministry of Finance (MF) National Commission for the Retirement Saving System (CONSAR) Mexican Institute of Social Security (IMSS)	National Commission for the Retirement Saving System (CONSAR) for mandatory personal pension plans <a href="http://www.consar.gob.mx">www.consar.gob.mx</a> Ministry of Finance (MF) for voluntary personal pension plans
Netherlands	Occupational, voluntary plans (some industry-wide plans are mandatory) Personal, voluntary plans	Pension and Insurance Supervisory Commission (PVK) Dutch Central Bank and the Netherlands Authority for Financial Markets	Pension and Insurance Supervisory Commission (PVK) <a href="http://www.pvk.nl">www.pvk.nl</a>
New Zealand	Occupational and personal voluntary plans	Gov. Actuary at the Insurance and Superannuation Unit (ISU) of the Minister of Economic Development	Gov. Actuary at the Insurance and Superannuation Unit (ISU) <a href="http://www.isu.govt.nz">www.isu.govt.nz</a>
Poland	Occupational voluntary plans and personal mandatory and voluntary plans	Commission of Insurance and Pension Fund Supervision (KNUiFE)	Commission of Insurance and Pension Fund Supervision (KNUiFE) <a href="http://www.knuife.gov.pl">www.knuife.gov.pl</a>
Portugal	Occupational and personal voluntary plans	Portuguese Insurance Institute (ISP)	Portuguese Insurance Institute (ISP) <a href="http://www.isp.pt">www.isp.pt</a>
Spain	Occupational and personal voluntary plans	General Directorate for Insurance and Private Pension Plans (DGSFP)	General Directorate for Insurance and Private Pension Plans (DGSFP)
Sweden	Occupational mandatory and personal voluntary plans	Finansinspektionen (FI) County administrative boards	Finansinspektionen (FI) for friendly societies County administrative boards for pension foundations <a href="http://www.fi.se">www.fi.se</a>
Turkey	Occupational and personal voluntary plans	Ministry of Finance (MF) Under-secretariat of Treasury (UT) Capital Markets Board (CMB)	Under-secretariat of Treasury (UT) Capital Markets Board (CMB) for pension mutual funds
UK	Occupational and personal, both mandatory and voluntary plans	Occupational Pensions Regulatory Authority (OPRA) Financial Service Authority (FSA) Inland Revenue (IR)	Occupational Pensions Regulatory Authority (OPRA) <a href="http://www.opra.gov.uk">www.opra.gov.uk</a>

- (1) In Canada, the OSFI is responsible for federal pension plans. Provinces have separate provincial agencies that are responsible for provincially regulated pension plans within their jurisdiction - Columbia Pension Standards Branch ([www.labour.gov.bc.ca/psb/](http://www.labour.gov.bc.ca/psb/)); Alberta Labour, Employment Pensions ([www.tras.gov.ab.ca/business/pensions/](http://www.tras.gov.ab.ca/business/pensions/)); Saskatchewan Justice, Pension Benefits Branch ([www.saskatchewan.gov.sk.ca/pensions/](http://www.saskatchewan.gov.sk.ca/pensions/)); Manitoba Pension Commission ([www.gov.mb.ca/labour/pen/](http://www.gov.mb.ca/labour/pen/)); Financial Services Commission of Ontario ([www.ontarioinsurance.com](http://www.ontarioinsurance.com)); Régie de Rentes du Québec ([www.rrq.gouv.qc.ca](http://www.rrq.gouv.qc.ca)); New Brunswick, Office of the Superintendent of Pensions ([www.gov.nb.ca](http://www.gov.nb.ca)); Nova Scotia Pension Regulation Division ([www.gov.ns.ca/enla/pensions/](http://www.gov.ns.ca/enla/pensions/)) and Newfoundland /Labrador Insurance and Pensions Division ([www.gov.nf.ca/gsf/cca/ip](http://www.gov.nf.ca/gsf/cca/ip)).

### ANNEX 3. DISTRIBUTION OF SUPERVISORY RESPONSIBILITIES

	a	b	c	d	e	F	g	h	i	j	k	l
Australia	APRA	ATO	ASIC ATO	ATO APRA	ATO APRA	ATO APRA	APRA	APRA	APRA	ASIC	ASIC	APRA
Canada	OSFI	CCRA	OSFI	OSFI	OSFI	OSFI	OSFI	OSFI	OSFI	Plan Sponsor	OSFI	OSFI
Czech Republic	MF/OSIP F	MF/OSIP F	MF/OSIP F	MF/OSIP F	MF/OSIP F	MF/OSIP F	MF/OSIP F	MF/OSI PF	MF/OSIP F	MF/OSIP F	MF/OSIP F	MF/OSIP F
Denmark	FSA	TA	FSA	FSA	FSA	FSA	FSA	FSA	FSA	FSA	FSA	FSA
Germany	BaFin	TA	BaFin	BaFin	BaFin	BaFin	BaFin	BaFin	BaFin	BaFin	BaFin	BaFin
Hungary	HFSA	HFSA	HFSA	HFSA	HFSA	HFSA	HFSA	HFSA	HFSA	HFSA	HFSA	HFSA
Iceland	MF FME	IRD	FME	IRD FME	FME	FME	FME	FME	FME	FME	FME	FME
Ireland	PB	TA	PB	PB	PB	PB	Na	Na	PB	Na	PB	PB
Italy	COVIP, B I, ISVAP, CONSOB	Automati c	COVIP	na	COVIP	COVIP	COVIP	COVIP BI	COVIP	COVIP CONSO B	COVIP COBNS OB	CIVIP
Japan	MHLW	MHLW	MHLW	MHLW	MHLW	MHLW	MHLW	FSA	MHLW	MHLW	MHLW	MHLW
Mexico	CONSAR	MF	CONSA R	IMSS	IMSS	IMSS	CONSAR	CONSA R	CONSA R	CONSA R	CONSA R	CONSA R
New Zealand	GA	na	Na	Trustees	Trustees	Trustees	Trustees	Trustees	Trustees	Trustees	Trustees	Trustees GA
Poland	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE	KNUiFE
Spain	DGSFP	TA	DGSFP	/DGSFP	DGSFP	DGSFP	DGSFP	DGSFP	DGSFP	DGSFP	/DGSFP	/DGSFP
Sweden	FI	TA	FI	FI	FI	FI	FI	FI	FI	FI	FI	FI
Turkey	UT	MF	UT	UT	UT	UT	UT CMB	CMB	UT CMB	UT	UT CMB	UT CMB
UK	OPRA	IR	OPRA	OPRA	OPRA	Industrial Tribunals	OPRA	na	OPRA	FSA	OPRA	OPRA

Supervisory responsibilities related to the implementation of regulation on: a) Licensing/registration; b) Qualification for tax benefits; c) Compliance to governance rules; d) Contributions and regularity of payment; e) Membership and portability (enrolment process, transfers and compliance); f) Benefits eligibility conditions and access to plans; g) Investments, asset allocation, performance, minimum capital and reserves; h) Custodian procedures ; i) Financial, actuarial and accounting methods; j) Administrative cost, fees and marketing; k) Disclosure procedures referring to members and beneficiaries, potential members and accounts; l) Merger and liquidation process.