Regulation of State and Supplementary Pension Schemes in Luxembourg: Overview

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A Q&A guide to pensions law in Luxembourg.

The Q&A gives a high-level overview of the regulation of national government pensions and supplementary pensions. On national government pensions, it covers employer/employee contributions; national government pension age and monthly amount; and the public pensions body. On supplementary pensions, it covers the provision of supplementary schemes; the requirements to receive vested rights and disclosure/indexing/revaluation requirements; funding and solvency requirements; pension plan investment; member transfers; the regulatory body; applicable tax reliefs on contributions and approval/registration requirements; and the tax treatment of scheme investments and payments to members. Legal protection of employees' pension rights on a business transfer, together with participation in pension schemes, employer insolvency protection and overall scheme solvency, are also included.

Harmonie Méraud, Counsel

National Government Pensions

1. Do employers and/or employees make pension contributions to the government in your jurisdiction?

Contributions Paid to the Government

In Luxembourg, all persons engaged in a professional occupation (whether employed or self-employed) or drawing a work-related benefit (sickness benefit, maternity benefit, workplace accident compensation, or unemployment benefit) are covered by the general pension insurance scheme.

Public sector agents (that is, those employed by the state, the local authorities or the Luxembourg rail operator CFL) are subject to a special pension regime with its own specific conditions.

The statutory general pension insurance scheme covers both old-age pensions and invalidity or survivors' pensions. It is financed by a flat rate of 24% of capped employment income supported in equal shares by employers (8%), employees (8%), and the state (8%). Employment income is capped at five times the minimum social wage (that is, EUR12,854.65 at index 944.43 as of 1 September 2023).

The statutory pension scheme also includes public health insurance and long-term care insurance.

For beneficiaries of an old-age pension affiliated to the National Health Fund (*Caisse nationale de santé*) (CNS), contributions are borne equally by the insured and the National Pension and Insurance Fund (*Caisse nationale d'assurance pension*) (CNAP). The contribution is only intended to finance benefits in kind since a cash sickness benefit is no longer granted. In 2023 and 2024, the contribution payable by the pensioner is 2.8% of the gross pension.

The premium for long-term care insurance is 1.4% of the pension, after deducting a quarter of the minimum social wage (that is, EUR642.73 as of 1 September 2023).

Taxation of Contributions

Contributions paid by the employee or the employer to the state pension scheme are not subject to tax on the payment of pension premiums into the statutory pension scheme. Tax is levied when the pensions are paid out by the CNAP.

On payment of the retirement/invalidity or survivor's pension to the (former) employee or self-employed worker, this income is subject to personal income tax in the hands of the beneficiary. Pension payments are subject on payment by the CNAP to a withholding tax (Article 144, Law of 4 December 1967 on income tax (LIR), as amended), the applicable tax rate of which is published by ministerial order.

Regular pension payments are in principle paid on a monthly basis by the CNAP and are subject to a progressive withholding tax at a rate (including employment fund) determined by the ministerial decree in force since 1 January 2017. From fiscal year 2024, the ministerial decree issued on 22 December 2023 is applicable and provides for updated tax brackets. This tax rate may increase depending on the amount of pension received. Pension payments can be periodic or one-off (Article 96, No. 2, LIR) and the same rules apply to statutory pensions received by previous self-employed workers.

National Government Pension Age

> 2. Where a national government pension is provided, at what age can pension payments be collected by an employee? Are there any provisions allowing for the early payment of this type of pension to an employee?

The legal retirement age is 65. However, early retirement is possible at 57 or 60 under certain conditions.

There is no different age at which men and women can receive their state pension. Under Article 16 of the Law of 8 June 1999 on supplementary pension schemes (Supplementary Pensions Law, as amended on 1 August 2018), any pension regulation that violates the principle of equal treatment between men and women (that is likely to discriminate on grounds of sex, directly or indirectly), in particular in relation to the conditions of affiliation, level of employer and employee contributions, the conditions for granting benefits, and the amount of benefits, must be disregarded.

The old-age pension is granted from the age of 65 on the completion of a qualifying period ("stage" or "traineeship period") of 120 months (ten years) of insurance, whether mandatory, continued, voluntary, or relative to a retroactive purchase of insurance periods. The aim of purchasing insurance periods retroactively is to enable workers who have interrupted or reduced their professional activity for family, or other reasons, to cover insurance periods that are incomplete so that an old-age pension can be drawn at the time of retirement.

Months of insurance contributions in other EU countries are also taken into account. Employees who have reached retirement age are wholly within their rights to retire. Employees are not required to inform their employer of their retirement or to give notice.

The "early" old-age pension is due:

- At the age of 57, if the insured person has completed 480 months (40 years) of mandatory insurance contributions.
- At the age of 60, if the insured person has completed 480 months of insurance whether mandatory, continued, voluntary, additional, or relative to a retroactive purchase of insurance periods, including at least 120 months (ten years) of insurance, whether mandatory, continued, voluntary, or through retroactive purchases of insurance periods.

Those receiving an early old-age pension are entitled to continue engaging in employment but doing so may influence the granting and calculation of the pension as follows:

- For an employment salary, spread over one year, which does not exceed one third of the social minimum wage per month, the early old-age pension will not be reduced.
- For an employment salary, spread over a year, which exceeds one third of the social minimum wage per month and remains below the average of the five highest annual contributory incomes in the insurance career, the early old-age pension is reduced to the extent that the sum of the pension and the salary exceeds the average of the five highest annual contributory incomes in the insurance career.
- For an employment salary, spread over a year, which exceeds the average of the five highest annual contributory incomes in the insurance career, the early old-age pension is withdrawn.

Monthly Amount of the National Government Pension

3. What is the monthly amount of the national government pension?

An old-age pension comprises a flat-rate mark-up and a proportional mark-up. The level of pension under the general pension scheme depends on:

- The length of the individual's professional career.
- The salary received over the course of the individual's insurance history.
- The ceiling on earnings subject to contributions (the amount beyond which declared salary is no longer taken into account in calculating pension), which is five times the social minimum wage (see *Question 1*, *Contributions Paid to the Government*).

The flat-rate mark-up is granted on the basis of the length of the individual's insurance record, irrespective of their level of income. The number of years taken into account must not exceed 40.

The formula to calculate the amount due is as follows:

- The "reference amount" is multiplied by the rate, which is then multiplied by the total amount of both the employee's number of years of service (up to a maximum of 40 years) divided by 40, multiplied by the index rate divided by 100, and then multiplied by the revaluation factor, divided by 12.
- The reference amount is currently fixed at EUR2,085.
- The proportional mark-up sets a proportional amount (pro rata) of all annual income declared throughout the individual's insurance history, evaluated on the index base 100, with the base year set at 1984.
- In 2013, the proportional mark-up rate was 1.85% of the insured individual's total professional income, but this will be reduced to 1.6% by 2052. Depending on the applicant's age and professional history, this rate may be increased, on certain conditions which will be gradually relaxed for beneficiaries reaching the age of 55 (60 in 2052) and having

accrued 38 years (40 years in 2052) of contributions, whether mandatory, continued, voluntary, or through retroactively purchasing periods not worked. The rate can therefore be up to 2.05% of the total employment income.

- Unlike the flat-rate mark-up, the declared income taken into account can be for a period of more than 40 years. Years of equivalent insurance are not taken into consideration in calculating the proportional mark-up, as no salary would have been declared during those periods.
- That proportional amount plus the flat-rate mark-up make up the gross annual old-age pension.
- An old-age pension cannot, under any circumstances, be less than 90% of the reference amount if the beneficiary has completed 40 years of insurance contributions. This sum is decreased by one 40th per missing year between the 20th and 39th years.
- To qualify for the minimum pension, applicants must have accrued at least 20 years of insurance, including ten years of mandatory, continued, voluntary, or retroactively purchased insurance.
- In 2023, the minimum monthly pension of an insured person with 40 years of insurance is equivalent to EUR2,219.71. The minimum pension for an insured person with only 26 years of insurance is EUR1,442.81 (26/40 of EUR2,219.71).
- The maximum amount of the monthly personal pension cannot currently exceed EUR10,276.43.

Public Pensions Body

4. Is there a public body or agency that oversees the operation and policy of national government pension schemes? Do any other governance regimes apply to national government pension schemes?

Public Pensions Body

The National Pension Insurance Fund (*Caisse nationale d'assurance pension*) (CNAP) is the main body that oversees the general pension insurance scheme.

Name. National Pension Insurance Fund (CNAP)
T +352 224141-1
E *www.cnap.lu/accueil-mail*
W *www.cnap.lu*

Other Governance Regimes

Government employees (agents of the state, the communes, or the national rail operator CFL) have a special pension scheme and are registered with the relevant employer's fund:

Name. State Centre for Human Resources and Organisation Management (*Centre de gestion du personnel et de l'organisation de l'Etat*) (CGPO)

T + 352 2478-3200
E *info@ape.public.lu*; *https://cgpo.gouvernement.lu/en/support/contact.html*
W *https://cgpo.gouvernement.lu/fr.html*

Name. Pension Fund for Civil Servants and Communal Employees (*Caisse de prévoyance des fonctionnaires et employés communaux*) (CPFEC)
T +352 450 201-1
E *info@cpfec.public.lu*
W *www.cpfec.lu*

Name. SNCFL (*Société nationale des chemins de fer français, Luxembourg*) Division for Retired Personnel
T +352 4990-3343
E N/A
W N/A

Supplementary Pensions

5. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? If they do, are they:

- Occupational (that is, linked to an employment or professional relationship between the plan member and the entity that establishes the plan)?
- Personal (that is, not linked to an employment relationship, established and administered directly by a pension fund or a financial institution acting as pension provider, where individuals independently purchase and select material aspects of the arrangements, though the employer may make contributions)?

The "second pillar" of pension insurance corresponds to supplementary pension systems linked to employment or the exercise of a profession. The Supplementary Pensions Law applies to supplementary pension schemes that are either:

- Set up by an undertaking or group of undertakings for the benefit of its employees or certain categories of employees.
- Approved by the competent authority to receive the supplementary pension contributions or acquired rights specified in the definition included in Article 2(4) of the Supplementary Pensions Law to provide benefits intended to supplement the benefits of statutory social security schemes in the event of retirement, death, invalidity, or survival.

The Supplementary Pensions Law covers both schemes reserved for employed persons and schemes for self-employed and professional persons. The Supplementary Pensions Law therefore governs occupational schemes (that is, linked to an employment or professional relationship between the plan member and the entity that establishes the plan). Personal pension plans are not regulated by this law.

The Supplementary Pensions Law retains the principle of autonomy of employers who wish to set up a supplementary pension scheme. Employers can decide whether or not to set up a scheme, or even several schemes, in their companies for the benefit of all or only a category of their employees. There is no legal obligation to set up such a scheme, however, it is quite common in companies employing hundreds of employees to set one up.

If an employer decides to set up a supplementary pension scheme, the Supplementary Pensions Law provides a framework for the pension commitment made by them but other matters are at the employer's discretion, for example:

- Defining the nature of the pension commitment to the employees, that is, either to:
  - guarantee a certain level of benefits at maturity (defined benefits); or
  - commit to paying a predefined contribution on a regular basis (defined contributions).
- Choosing a specific method of financing (internal or external scheme) and, in the case of external financing, for a financing vehicle (insurance company or pension fund).
- Determining the different benefits that members of the pension plan will receive on retirement, death, and/or disability.
- Including in the pension regulations the terms of the commitment: conditions of affiliation, financing chosen, beneficiaries, and method of payment of benefits.
- Informing and consulting the staff delegation before introducing the scheme, since such a pension scheme will form part of the employees' working conditions.

6. Where supplementary pension schemes are provided, do these schemes provide pensions, the value of which:

- Is linked to the employee's salary (defined benefit)?
- Is linked to employer and/or employee contributions and investment return on those contributions (defined contribution)?

A supplementary pension scheme can be a defined benefit scheme or a defined contribution scheme, or a mixture of the two.

Linked to the Employee's Salary

In a defined benefit scheme, the employer guarantees members a defined level of benefits. In such a scheme, members know in advance the benefit they will receive, in particular when they retire. The financing of the plan must comply with certain legal rules, but the financial risk in this case lies solely with the employer. Therefore, whatever the proceeds of its investments, the employer will have to honour its pension promise.

Different formulas are possible, ranging, for example, from a lump sum to an amount proportional to years of service, or a formula taking into account the statutory pension. Such a defined benefit scheme can be set up in one of two ways:

- The "off-set formula" consists of giving the member an overall income guarantee (statutory and supplementary pensions) at retirement age. The level of the supplementary pension depends on the level of the statutory pension. The supplementary pension acts as the necessary complement to the general pension to reach a predefined overall level of income at retirement.
- In the "step rate" formula, the pension is set on the basis of the employee's average earnings or any other earnings-related reference, but without taking into account the statutory pension. This formula is based on one or more ceilings that refer directly or indirectly to the social security ceiling taken into consideration for the calculation of the statutory pension and its financing.

Linked to Employer and/or Employee Contributions

Under a defined contribution scheme, the employer undertakes to finance the pension plan by paying into it the amount of the employer's allowances, as defined in the pension plan. The employer no longer guarantees its members the result that will be achieved at retirement. The risk is therefore transferred to the member. This explains, in part, the trend in recent years to favour this type of pension plan. If the contributions of the Luxembourg employer have not been allocated to a product with a guaranteed rate, the member does not know a priori the benefits that could accrue to them on retirement. In the case of payments into investment funds chosen by the affiliate, the affiliate bears the investment risk itself.

In addition, where the member also participates in the financing of this pension plan through personal contributions, deducted by the employer from their remuneration, the Supplementary Pensions Law specifies that these contributions must be allocated to an external scheme (that is, paid to an insurance company or a pension fund).

This does not mean that an employer who sets up a defined contribution scheme is exempt from liability from the moment it has paid the contributions provided for. Although the employer has complete freedom in the design of the pension plan, the primary objective, which is to ensure a supplemental income at retirement, must be preserved. In this regard, the employer can choose whether to:

- Invest the employer's benefits exclusively in a single product that generates a guaranteed interest rate without offering additional products. This is obviously the simplest approach but limiting itself to a return of around 0.5% (gross), as is currently the case, is probably not necessarily attractive for staff.
- Offer (in addition to the guaranteed rate product) a choice between a range of investment funds: equity, bond, or mixed funds (for example, balanced 50% equities, 50% bonds, or on the basis of other weightings).

  In these investment funds, the risk is clearly borne solely by the affiliates who will have no guarantee as to the final benefit they will receive on retirement. If the markets have experienced some turbulence, this may well turn out to be less than the total contributions that will have been paid by the employer. The final amount due will depend on the performance of the underlying assets of the selected funds.

When an employer opts for a defined contribution scheme, it usually uses an insurer, possibly a pension fund, to finance the pension commitment. However, there is also nothing to prevent the employer from financing this commitment through an internal company scheme.

Combination of the Two Regimes

The supplementary pension scheme can also be a mixture of the two types, as is often the case in practice.

For example, the employer can commit only to paying a certain amount to provide the pension benefit in the event of retirement, which will be invested each year according to certain rules (defined contributions) and to an increased level of benefit in the event of premature death and/or disability, paying the premium necessary to cover this commitment (defined benefits).

Compulsory Membership

In all cases, the Supplementary Pensions Law provides that, as a matter of principle, any employee who meets the conditions for affiliation is compulsorily affiliated to the supplementary pension scheme set up by the employer.

However, the law distinguishes between two periods:

- When a new supplementary pension scheme is set up in a company, membership is compulsory for employees in service at that time. However, if the scheme provides for a personal contribution by the member, the payment of this personal contribution is optional. Enrolment is therefore compulsory for an employee who is in service at the time the plan is set up, when the contributions to the plan are employer contributions only.
- When a supplementary pension scheme is in force in the company, membership is always compulsory for any new member of staff who joins the company as long as they meet the conditions laid down in the pension regulation, both for the employer's allowances and for personal contributions. Membership of this scheme is an integral part of the working conditions in the company concerned. The compulsory nature of the membership and the possible existence of personal contributions, in particular, must be mentioned in the employment contract.

7. For supplementary pensions:

- Is there a minimum period of service before workers are entitled to receive vested rights?
- Are there any requirements to disclose pension benefits to participants or beneficiaries?
- Are there any legal requirements for schemes or providers to index pensions in payment and/or revalue pension rights in deferment?

Minimum Period of Service

A pension regulation can set a minimum period of service to be completed before pension rights can be acquired. However, this is not mandatory. In practice, it is rare for the employees concerned to benefit immediately from the vested rights as soon as they join the pension plan.

In the initial version of the Supplementary Pensions Law applicable from 1 January 2000 to 20 May 2018, the maximum vesting period for supplementary pension rights could not exceed ten years. The Supplementary Pensions Law now provides for the following distinction:

- For members who entered into service after 20 May 2018, the total cumulative period of the vesting period (the period of active membership which the member must prove to definitively acquire pension rights) and a possible waiting period (the period of service which the employee must prove before joining the company's supplementary pension scheme) must not exceed three years.
- For members who entered into service before 21 May 2018, the combined total of the vesting period and a possible waiting period must neither exceed ten years nor extend beyond 20 May 2021.

However, an employer can simplify this system and decide to apply immediately a three-year vesting period to all members, old and new recruits combined.

Disclosure Requirements

An employer that has set up a supplementary pension scheme is legally obliged to provide its members and beneficiaries with information about their rights. These information obligations apply to the undertaking or registered manager of the supplementary pension scheme.

The information requirements are as follows:

- The employer must first give each member a copy of the pension regulation. The employer must also notify each member of any amendment to the pension regulation or the repeal of the plan, in the form of an amendment to the pension regulation.
- The employer or its authorised manager must communicate certain data in writing to each member at least once a year:
    - the value of the acquired reserves or reserves corresponding to the rights being formed and the date on which they will be definitively acquired;
    - for all plans, with the exception of defined contribution schemes with no performance guarantee, the amount of benefits accrued and the date from which they will become payable;
    - for defined contribution schemes without performance guarantees, a projection of the hypothetical value at retirement age, together with a statement that this final value is not guaranteed; and
    - for personal contribution plans of an employers' scheme, all this information must be supplemented by an indication of the total contributions paid by the member during the year in question.
- The Supplementary Pensions Law further provides that, on request of the active member, the employer (or the plan manager) must inform the active member in writing of the consequences of the termination of the employment relationship on their supplementary pension rights.
- In the event of the actual departure of a member, within 30 days from this departure at the latest, in addition to the data provided annually, the employer (or the plan manager) must inform the member of the choices open to them regarding the destination of their acquired reserves, as well as the conditions governing their future treatment if the member chooses to maintain their rights in an employer-sponsored scheme.

- In the case of survivor's benefit, the beneficiary of this benefit must also receive information at least once a year on the value of their entitlement and the conditions attached to its payments.
- The manager of the supplementary pension scheme must notify the competent authority and the members if the company ceases to fund the funding vehicle, no later than six months after contributions fall due.

Legal Requirement to Index

There is no legal obligation for schemes or providers to index pensions in payment and/or to revalue deferred pension rights in deferment. This can be provided for in the pension regulation, but it is not mandatory.

Funding and Solvency Requirements

8. In relation to supplementary schemes, are these generally funded or unfunded? If funded, are there any solvency requirements? Are there any legal requirements relating to how the scheme employer, trustee or provider must invest the assets of the scheme?

Funded or Unfunded?

Employers can choose between financing the supplementary pension scheme internally through provisions on the liability side of the employer's balance sheet, or externally by paying premiums to an insurance company or a pension fund (*Institution de Retraite Profesionnelle*) (IRP), as part of a defined benefit plan or a defined contribution plan.

The Supplementary Pensions Law defines an internal scheme as one set up within a company which either:

- Is one where pension promises are subject to provisions entered as liabilities in the balance sheet of the company concerned.
- Is supplemented by a:
    - contract for the collective management of pension funds to be set up by an insurance company; or
    - a trust agreement enabling a legal person governed by EU law to administer the interests of the members and beneficiaries of the scheme that part of the assets accruing to them as a result of the promise.

Under an internal regime, there is no rule that requires the provision to be invested in certain specified assets.

Solvency Requirements for Funded Schemes

Pension schemes referred to in Article 77(1) of the Law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs) and amending Article 167, first subparagraph, of the Law of 4 December 1967 on income tax (Law of 13 July 2005), must at all times hold adequate available solvency, with regard to their overall business, at least equal to the requirements of the Law of 13 July 2005, to ensure the long-term viability of occupational pension plans.

The available solvency margin must consist of the assets of the pension fund, free of any predictable commitment and net of intangible items.

Pension Plan Investment

9. Can supplementary pension schemes hold employer stock of the plan sponsor as a plan investment? If so, are there any limitations that apply?

The law does not prohibit the holding by supplementary pension schemes of sponsoring employer stock.

However, investment in the sponsoring undertaking must not exceed 5% of the portfolio as a whole. When the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking must not exceed 10% of the portfolio. When the pension fund is sponsored by a number of undertakings, investment in these sponsoring undertakings must be made prudently, taking into account the need for proper diversification.

Additional requirements and restrictions can be introduced by a grand ducal regulation, although no such amendments have been made at the time of writing.

10. Are there any fiduciary requirements that apply to the sponsoring employer, trustee, provider or administrator of supplementary pension schemes?

Fiduciary Requirements

Administration, accountancy, and internal control of the pension scheme should be very well organised and the pension scheme must be audited by a certified auditor who makes a report on an annual basis. Central administration of the pension scheme must be located in Luxembourg.

The parties involved must all have an outstanding level of professional integrity, irreproachable business conduct, qualifications, and experience. Pension schemes must put in place an effective governance system that ensures the sound and prudent management of their activities (Law of 15 December 2019 amending, in view of the transposition of *Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision* (IORPs), the Law of 13 July 2005 (Law of 15 December 2019)). This system must include a transparent and adequate organisational structure, with a clear division and appropriate separation of responsibilities, as well as an effective mechanism for the transmission of information. The governance system includes the consideration of environmental, social, and governance factors related to investment assets when making investment decisions and is subject to regular internal review.

The governance system must be proportionate to the size, nature, scale, and complexity of the pension scheme's activities.

Under the Law of 13 July 2005, pension schemes must invest their assets in accordance with the "prudent person" rule and in accordance with the rules set out in the Law of 13 July 2005 (Part V, Chapter 5 Investment Rules, Articles 78 to 84) as amended by the Law of 15 December 2019. The assets must be invested:

- In the best interests of the members and beneficiaries. In the case of a potential conflict of interest, the institution or the entity that manages its portfolio must ensure that the investment is made in the sole interest of members and beneficiaries.
- To ensure the security, quality, liquidity, and profitability of the portfolio as a whole.
- Predominantly on regulated markets. Investment in assets that are not admitted to trading on a regulated financial market must in any event be kept to prudent levels.

Additional requirements and restrictions can be introduced by a grand ducal regulation, although no such amendments have been made at the time of writing.

The Financial Sector Supervisory Commission (*Commission de Surveillance du Secteur Financier*) (CSSF) can lay down more detailed rules on the content of the statement of investment principles, but has not done so at the time of writing.

The investment policy must always be in line with the "prudent person" rule. In particular, it must comply with the principle that the assets must be properly diversified so as to avoid excessive reliance on any particular asset, issuer or group of undertakings, and accumulations of risk in the portfolio as a whole.

The articles of association of the pension scheme can delegate the asset management to one or more asset managers established in Luxembourg or another member state which are duly authorised to carry out investment portfolio management.

Prohibited Activities

There is no activity that is explicitly prohibited.

Accounts and Disclosure

See *Question 11* and *Question 13*.

11.Are there any legal requirements relating to how the scheme's sponsoring employer, trustee, provider or administrator must account for the scheme's assets and liabilities in their financial report and accounts?

Each pension fund must draw up:

- Annual accounts and annual reports that cover all pension schemes.
- Where appropriate, annual accounts and annual reports for each pension scheme.

(Article 85, Law of 13 July 2005.)

The annual accounts and annual reports must:

- Be drawn up within six months of the closure of the financial year.
- Provide a true and fair view of the pension fund's assets and liabilities and its financial situation.
- Be accurate, complete, and clearly presented.

The annual reports must contain:

- The annual accounts.
- A report on the fund's activities in the previous year.
- Any significant information that enables the members and beneficiaries to make an informed judgement on the progress of the business and the pension fund's results.

Rules concerning the form and content of the annual accounts and annual reports must be determined in a grand ducal regulation, after seeking the CSSF's opinion or proposal.

The members and beneficiaries, the sponsoring undertakings and, where applicable, their representatives, can have access to the pension fund's accounts and annual reports on request. When a pension fund is responsible for more than one scheme, they receive the accounts regarding their own specific pension scheme. The annual report does not need to be sent to a SEPCAV's shareholders before a general meeting.

12. Are there any other legal requirements for disclosure of pension scheme information to members, regulatory bodies or the public?

Disclosure to Members

Subject to any more rigorous provisions in the pension scheme's rules, each member can request detailed and substantial information concerning:

- The level that the retirement benefits must reach, where applicable.
- The level of the benefits in the event of cessation of employment.

- When the member bears the investment risk, all investment options available, if any, and the existing investment portfolio, with a description of the risks and costs associated with those investments.
- The procedure for transferring their pension rights to another IORP if their contract of employment is terminated.

(Article 89, Law of 13 July 2005.)

Every year, members receive concise information on the pension fund's situation and the current financing level of their own accumulated pension rights.

On retirement, or when other benefits become payable, each beneficiary receives adequate information on the benefits due to them and the corresponding payment options. On request, the pension fund must provide any members and beneficiaries, or their representatives (where applicable), with an up-to-date version of the fund's articles of association, the pension rules, and the technical note.

Additionally, the statement of the principles underlying the investment policy must be sent to the members and beneficiaries at their request, and to their representatives (where applicable).

Disclosure to Regulatory Bodies

To conduct their business, pension funds must be authorised by the CSSF in accordance with the Law of 13 July 2005.

A pension fund can only be authorised if the CSSF has approved:

- Its articles of association.
- Its pension rules and the technical note of the pension schemes it operates.
- The persons who must meet the legal conditions of integrity or professional qualifications and experience.
- The choice of the custodian and, where applicable, the asset manager(s) and liability manager(s).

A sponsoring undertaking that guarantees payment of the retirement benefits must undertake to provide regular financing for the scheme.

Each pension fund must submit an activities schedule to the CSSF for each pension scheme which shows, at a minimum:

- The method used to calculate the contributions and the payment intervals.
- An estimate of the likely status of the net assets or the technical provisions respectively over five years, in view of the likely change in the number of members and beneficiaries.
- A yield projection.

Pension funds operating occupational pension schemes for which they cover against biometric risk and/or guarantee either the investment performance or a given level of benefits must also submit a financing plan for each pension scheme showing, at least, the method and the bases used to calculate the technical provisions referred to in Article 72(6) of the Law of 13 July 2005 (including substantiation of the interest rate, the other economic and actuarial assumptions and the mortality tables used, as well as a description of the actuarial method used to finance the benefits, accompanied by a statement indicating, among other things, the consequences of the use of that financing method).

Authorisation is contingent on the members of the administrative, management, and supervisory structures substantiating their professional integrity.

The CSSF must be informed immediately of any change affecting the persons required to meet the legal conditions of integrity or professional qualifications and experience.

The CSSF can request any necessary information on the persons required to meet the legal conditions.

A pension fund must:

- Draw up a written statement of its investment policy principles and review it at least every three years, and share it with the CSSF.
- Inform the CSSF of all amendments to its articles of association, the pension rules, and the technical note.
- Send its annual reports to the CSSF.

The CSSF can require pension funds, members of their boards of directors, their managers and other executives, and asset managers, liability managers, or persons responsible for auditing pension funds, to provide any information conducive to the accomplishment of its supervisory mission or to send it any relevant document.

The CSSF can monitor the relations between a pension fund and other undertakings or IORPs when the pension fund transfers functions to them which may affect the pension fund's financial situation, or which have significant importance in terms of efficiency of control.

The CSSF can also require communication of the following information (among others):

- Intermediate internal reports.
- Actuarial valuations and detailed assumptions relating to them.
- Studies on the adequacy of the assets relative to the liabilities.
- Documents attesting to the consistent application of the investment policy's underlying principles.
- Proof that the contributions have been paid as scheduled.

To verify whether a business is being conducted in compliance with the legal provisions and prudential regulations, the CSSF can:

- Conduct on-site inspections at pension funds' premises and, where applicable, those of the outsourced functions.
- Conduct or commission inspections of the books, accounts, registers, or other deeds and documents belonging to pension funds.

Disclosure to the Public

There is no obligation to disclose specific information to the public, except for the information that must be reported to the Luxembourg Trade and Companies Registry under the Law of 10 August 1915 on commercial companies.

13.Are there any specific disclosure rules regarding environmental, social or governance requirements?

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) became applicable on 10 March 2021. The SFDR sets out harmonised rules for market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.

From that date, the SFDR applies to IORPs as they fall within the definition of "financial market participants." IORPs must disclose on their website and in pre-contractual documents:

- Their policy on consideration of sustainability risks.
- Whether they consider principal adverse impacts of investment decisions on sustainability factors.
- How their remuneration policy is consistent with the integration of sustainability risks.

Pensions schemes with environmental, social, or governance (ESG) characteristics or sustainable investments must also make additional disclosures in pre-contractual documents and their periodic report.

Pan-European personal pension product (PEPP) providers under Regulation (EU) 2019/1238 must also comply with the SFDR, as they fall within the definition of "financial market participants."

On 14 September 2023, the European Commission launched a *targeted consultation* and a *public consultation* on the implementation of the SFDR. The consultations include a series of questions on the practical functioning of the SFDR and its possible reform. The EU appears to have recognised that the SFDR is not as user-friendly as it had hoped and is seeking to assess its potential shortcomings and explore potential changes. In this regard, among other changes, a reworking of the SFDR disclosure requirements, which may or may not lead to additional disclosure requirements, is under consultation and may have an impact on IORPs and PEPPs.

Member Transfers

14. In relation to access for members to the funds in their supplementary pension scheme:

- To what extent can members transfer their funds to another pension scheme?
- How do members normally receive the benefit of their funds (for example, lump sums, income withdrawals (drawdown), life annuity arrangements)?

- What are the legal restrictions upon access to the funds (for example, age)?
- What are the common arrangements for early retirement and ill-health retirement?
- Are dependants of deceased members entitled to receive benefits payable on the member's death? What form do these commonly take?

Member's Transfer of Funds

The Supplementary Pensions Law provides that acquired rights can be transferred to another scheme of the company. Where provided for by the pension regulation, it is possible to transfer to another supplementary pension system put in place by another company or another group of companies, as well as to an accredited supplementary pension system. In contrast, the transfer of acquired rights to a life insurance company is no longer allowed. The Supplementary Pensions Law also specifies that in the absence of the member's consent, rights acquired under a defined benefit scheme can only be transferred to a defined benefit scheme guaranteeing retirement benefits at least equal to the transferred acquired rights.

Taking Pension Benefits

Under the Supplementary Pensions Law, benefits can be paid in the form of an annuity or a lump sum. If necessary, the choice between annuity and capital can be left to the beneficiary. In any event, the pension regulation determines the agreed method of settlement. Usually, pension benefits are paid in the form of an annuity.

Legal Restrictions

When the pension regulation sets a minimum age for the acquisition of pension rights, it must not exceed 21 years of age (Article 9, Supplementary Pensions Law). Membership ends at the latest at the retirement age, so that members who have reached their retirement date cannot remain invested in the plan.

Early and Ill-Health Retirement

On early retirement (see *Question 2*), members can request the purchase of their vested rights (Article 13, Supplementary Pensions Law). Members receive the value of their reserves in the form of a capital sum. The repurchase transaction terminates the rights and obligations arising from the occupational pension scheme.

In the case of ill-heath retirement, the pension regulation can provide for premium waiver coverage. In this case, the pension premiums are no longer paid by the employer or the employee as the insurance company usually takes over the pension commitment. The member receives the value of their reserves in the form of a capital at the time of retirement. The pension regulation can also provide for the member to benefit from the capital in the event of disability without premium waiver coverage.

Dependants' Benefits

Any supplementary pension scheme must be documented by a pension regulation that contains (among others) provisions on:

- The supplementary pension scheme chosen (internal, external) and the definition of the benefits granted to the members and, where applicable, to their survivors.
- Arrangements for the payment of benefits.
- Rules for the award of benefits on the death of the member, which can, where appropriate, derogate from the rules on devolution of the estate contained in Chapter III, Title 1, of Book III of the Civil Code.

(Article 5, Supplementary Pensions Law.)

Therefore, dependants of a deceased member will be eligible to receive benefits on the death of the member if provided for in the pension regulation. The benefits received will be paid in accordance with the terms and conditions of the pension regulation (that is, in the form of an annuity or a lump sum).

In the case of death, benefits not allocated by default to beneficiaries meeting the conditions set by the regulation do not revert to the employer (nor to the state) but are paid into a provident fund (*fonds de prévoyance*) or social fund (*fonds social*) managed on an equal footing and intended to help members and their families.

Regulatory Body

15. Is there a regulatory body that oversees the operation of supplementary pension schemes? Do any other governance regimes apply to supplementary pension schemes?

Regulatory Body

The General Social Security Inspectorate (*Inspection Générale de la Sécurité Sociale*) (IGSS) is the Luxembourg authority that oversees the operation of supplementary pension schemes. The IGSS is placed under the authority of the Minister responsible for social security.

Pension funds are subject to the control of the Insurance Commission (*Commissariat aux Assurances*) (CAA) and the CSSF. The CAA and the CSSF are placed under the supervision of the Minister for Finance.

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Regulatory Framework

The functions of the IGSS are set out in the Supplementary Pensions Law and regulations made under it. Its key functions include the following:

- Registration of supplementary pension schemes.
- Verification of compliance of the scheme, pension fund rules, and financing plan with the Supplementary Pensions Law.
- Supervision of the management of the supplementary pension scheme.
- Establishment of tax certificates for the tax authorities.

The IGSS also issues circular letters related to supplementary pension schemes. These documents do not have the same legal force as legislation and are considered as guidelines or recommendations.

In Luxembourg, there are three main types of regulated pension funds:

- Pension savings companies with variable capital (*sociétés d'épargne-pension à capital variable*) (SEPCAVs).
- Pension savings associations (*associations d'épargne-pension*) (ASSEPs).
- Other regulated pension funds (CAA pension funds).

SEPCAVs and ASSEPs are governed by the Law of 13 July 2005 and are supervised by the CSSF. CAA pension funds are subject to the prudential supervision of the CAA.

The CSSF and the CAA can issue regulations and circulars that supplement the legal and regulatory framework. Regulations have the same legal force as legislation, while circulars are not legally binding.

Other Key Governance Requirements

The supplementary pension scheme governance requirements are regulated by the Supplementary Pensions Law. However, the IGSS can contribute to the development of legislative and regulatory measures in the field of social security, including with regard to supplementary pensions schemes.

Penalties for Non-Compliance

A prison term of between one month and one year and/or a fine of between EUR500 and EUR25,000 can be imposed on anyone who:

- Issues, redeems, or arranges the issuance or redemption of shares in a SEPCAV in violation of the Law of 13 July 2005 or of the SEPCAV's articles of association or pension rules.

- Issues or redeems shares in a SEPCAV at a price other than that which would result from application of the criteria set out in in Article 10(2) and 10(4) of the Law of 13 July 2005.
- Grants pension rights, pays, or arranges payment of a capital sum or a pension from an ASSEP in violation of the law or of the ASSEP's articles of association or pension rules.
- As an executive of an SEPCAV or of its custodian, makes loans or advances on shares using the company's assets, or, who, by whatever means, makes payments to pay up shares at the company's expense or treats as made payments which were not in fact made.
- As an executive or custodian of an ASSEP, makes loans or advances using the ASSEP's assets against a pledge of receivables made against the ASSEP or treats as made payments contributions which were not in fact made.

A prison term of between one month and six months and/or a fine of between EUR500 and EUR25,000 can be imposed on:

- Executives of a pension fund who fail to inform the CSSF immediately of the pension fund's intention to put itself into liquidation in accordance with Articles 14, 28, or 94 of the Law of 13 July 2005.
- Executives of a pension fund or of its liability manager or asset manager who contravene the provisions of the pension rules regarding the investment policy, asset valuation rules, financing plan, or the liabilities valuation rules.

Anyone who uses a designation or qualification giving the impression of activities subject to the Law of 13 July 2005 without authorisation is subject to a fine of between EUR500 and EUR25,000.

A fine of between EUR500 and EUR10,000 can be imposed on directors or executives of a pension fund who fail to:

- Establish the net issue price and redemption price of a SEPCAV's shares.
- Comply with the rules governing the frequency of calculation of the net asset value, members' and beneficiaries' benefits, and the provision of information concerning those benefits.

Tax on Pensions

16. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)?

Tax Regime of Contributions made to a Supplementary Pension Scheme

In contrast to the statutory pension regime, any contributions made to a supplementary pension regime are subject to tax at the point of entry, meaning at the moment the pension premiums are paid by the employer or the employee (and not at the exit point, as is the case for the state pension scheme). When the pension benefits are paid out at the exit, any income received from the pension must be exempt from tax provided it has been subject to tax at the entry point (Articles 115(17a) and (18), LIR) and the beneficiaries/(former) employees are resident in Luxembourg.

Tax Relief on Employer Contributions

Payments made by a Luxembourg resident employer are tax deductible for the employer up to an amount of 20% of the ordinary annual compensation of the employee.

Tax Relief on Employee Contributions

The pension payments received by the (former) employee at the exit point are tax exempt in the hands of the individual provided the contributions have already been subject to a final flat rate tax of 20% withheld at source at the entry point (Articles 115(17a) and (18), LIR). Whether the payment at exit is made in the form of capital or annuity does not affect this tax exemption.

Employees' personal contributions to the supplementary pension scheme are deductible for personal income tax purposes up to a maximum annual amount of EUR1,200.

Self-employed and professional taxpayers can deduct the pension's contribution for up to 20% of the net income as special expenses. The 20% flat rate tax withheld at source is neither tax deductible nor creditable on the final income tax. The non-tax deductible remunerative fee of 0.9% used to finance the operating costs of the IGSS, normally due by the employer, must be paid by the taxpayer itself in this case.

When the employee or self-employed worker is not resident in Luxembourg, additional taxes may apply in that employee's/ self-employed worker's country of residence.

17. Are there any approval or registration requirements with the local tax authority where a supplementary scheme is established?

There are no specific registration requirements with the local tax authority, but supplementary pension schemes must have been previously approved by the IGSS.

SEPCAVs and ASSEPs must be authorised by the CSSF.

18. What is the tax treatment of investments made by the scheme?

In most cases, investment income is not subject to tax at the level of the pension scheme, since pension schemes, although subject to tax, benefit in practice from a tax exemption.

More specifically, funds regulated by the CSSF, namely SEPCAVs and ASSEPs, are exempt from net wealth tax under the Law of 13 July 2005. In addition, SEPCAVs are exempt from tax on income derived from transferrable securities (including gains) and ASSEPs are allowed to deduct for tax purposes allocations to regulatory reserves (representing their obligations towards the beneficiaries).

19.What is the tax treatment of pension and lump sum payments made to members?

Contributions made by the Luxembourg resident employer are solely subject to a flat tax rate of 20% withheld at source and paid by the employer on behalf of the employee at the entry point. Additionally, the employer must pay a fee of 0.9% towards the operation costs of the IGSS. There is no taxation at the exit point for Luxembourg resident taxpayers (Articles 115(17a) and (18), LIR). Whether the payment at exit is made in the form of capital or annuity does not affect the tax exemption.

The situation may differ for non-resident taxpayers, as capital may be subject to additional taxes in the taxpayer's country of residence.

For self-employed and professional taxpayers, a flat tax rate of 20% withheld at source is due and not taken into account in the income tax assessment as a deductible expense. The 0.9% tax due to IGSS by the self-employed and professionals is also non-deductible. Pension contributions for up to 20% of the net income are considered as special expenses and are tax deductible. Payments made at the point of exit are also tax exempt (Articles 115(17a) and (18), LIR).

20. Are there any other applicable tax charges on schemes?

There are no other applicable tax charges on schemes.

Pensions tax exempt under article 115(17a) LIR paid to a person affiliated with the Luxembourg health insurance scheme are subject to a contribution for dependence insurance at a rate of 1.40%.

Business Transfers

21. Is there any legal protection of employees' pension rights on a business transfer?

Transfer of Accrued Pension Rights

The following applies in cases of transfers of undertakings:

- If, on a transfer of an undertaking, business, or part of an undertaking or business to another employer resulting, in particular, from a contractual assignment or merger, the undertaking, business, or part ceases to exist, the rights of active members resulting from a supplementary pension scheme and the acquired rights of former members are automatically transferred to the transferee (*Acquired Rights Directive (2001/23/EU)*).
- If the undertaking, business, or part of an undertaking or business continues to exist, the acquired rights and rights resulting from a supplementary pension scheme available to members who are taken over by the transferee must be transferred to the transferee in accordance with the Acquired Rights Directive. The acquired rights of former members must remain with the transferor, unless the transferor and the transferee agree otherwise. As a result, the assignee is under no obligation to take over the assignor's pension plan. The Supplementary Pensions Law does not prohibit the parties (assignor and assignee) from providing, by agreement, for the transferor's pension plan to be taken over for the benefit of the transferee, but this is not a legal obligation. The agreement of the members and former members is not required under any circumstances.
- If the assignee has a supplementary pension scheme, the assignee must recognise equivalent rights under that scheme, both on retirement and on invalidity and survival. In other words, the transferee must affiliate the transferred employees to their own supplementary pension scheme already in place for the existing staff in their company.
- The transfer of rights acquired or in the course of formation of active members and acquired rights of former members to the transferee must not result in a reduction of those rights.
- The periods of service of active members that the transferee takes up are taken into account as periods of active membership required for the definitive acquisition of rights in the course of formation.
- On the transfer of acquired rights or rights in course of formation to an internal scheme in the context of a transfer of undertaking, the provisions of Article 41 of the Supplementary Pensions Law can be waived. Therefore, there is an exemption from the flat-rate taxation of transferred rights on a transfer to a domestic regime. Members can therefore continue to benefit from the same method of taxation of benefits in payment or vested rights that would have applied if their rights had been maintained in the transferor's scheme.

(Article 14, Supplementary Pensions Law.)

Other Protection for Pension Rights

There are no other protections for pension rights on a transfer of undertakings.

Participation in Pension Schemes

22. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- Employees who are working abroad?

- Employees of a foreign subsidiary company?

Employees Working Abroad

During a posting to another EU member state, contributions continue to be paid to the supplementary pension scheme of the state of origin to which the posted worker is affiliated (Article 15, Supplementary Pensions Law). The posted worker and, where appropriate, their employer, are exempt from any obligation to pay contributions to a supplementary pension scheme in another member state.

An employee of a Luxembourg company seconded to an employer established in another member state will therefore remain affiliated to their employer's supplementary pension scheme in Luxembourg and contributions (employer's allowances and personal contributions) can continue to be paid there. At the same time, both the employee and the employer will be exempt from any obligation to make payments to any supplementary pension scheme existing in the state of secondment.

Employees of a Foreign Subsidiary Company

An employee of an undertaking established in the territory of another EU member state who is seconded to a Luxembourg undertaking remains subject to the social security system of their member state of origin. They also remain affiliated solely to the supplementary pension scheme of the foreign company posting them. The secondment preserves the continuity of the affiliation to the same supplementary pension scheme.

Employer Insolvency and Overall Scheme Solvency

23. Is there any protection provided for pension scheme benefits where the sponsoring employer becomes insolvent? If so, who provides the protection, and how does this operate? If the scheme itself is underfunded, are there any funding obligations on connected or associated legal entities?

Insolvency proceedings in Luxembourg include:

- Controlled management (*gestion controlée*).
- Suspension of payments (*sursis de paiement*).
- Composition with creditors (*concordat préventif de faillite*).
- Bankruptcy.
- Compulsory liquidation.

Insolvency insurance (for example, covering the risk of the employer's bankruptcy) is compulsory for any company that has adopted an internal supplementary pension scheme. The company must become a member of a company insuring against insolvency risk which has been duly approved by the government.

To date, approval has only been issued in favour of the *Pensions-Sicherungs-Verein- Versicherungsverein auf Gegenseitigkeit* (PSVaG), an institution under German law. In accordance with Article 21 of the Supplementary Pensions Law and following the bilateral agreement between Germany and Luxembourg, the PSVaG acts as an insolvency insurer to insure the rights of members of an internal scheme against the risk of bankruptcy of the employer. Therefore, any company that has opted for internal financing of its pension plan is legally obliged to affiliate with the PSVaG. Companies affiliated to the PSVaG must pay contributions to that body. The contributions are set annually by the PSVaG and cover the claims assumed by the insolvency insurer during the relevant year. The contributions payable by the companies affiliated to the PSVaG are distributed on the basis of the accumulated reserves. The contribution rate was 0.6% for 2021 and 1.8% for 2022. The contribution rate for 2023 was set on 14 November 2023 at 1.9%.

In the event of bankruptcy:

- Pensioners and their survivors who no longer receive their supplementary pensions because their enterprise has been declared bankrupt have a claim against the insolvency insurer equal to the amount of the benefit that the enterprise should have provided on the basis of the pension settlement if the bankruptcy proceedings had not been opened. These provisions also apply in the event of the opening of the procedure for composition with creditors in bankruptcy (*concordat préventif de faillite*), judicial liquidation (*liquidation judiciaire*), or controlled management procedure.
- Members and former members who are vested at the time of the opening of the bankruptcy (or other similar proceedings), as well as their survivors, will have a claim against the insolvency insurer.

(Article 23, Supplementary Pensions Law.)

The Supplementary Pensions Law also confirms that there is no limitation on the vested rights that the insolvency insurer must assume. In the event of bankruptcy (or similar situations), the vested rights of the members are calculated in accordance with the general principles applied, for example, on leaving the company before the normal retirement age (Article 23(4), Supplementary Pensions Law). Pensioners, members, and former members therefore have an unlimited claim against the PSVaG.

The Supplementary Pensions Law adds that the claim against the insolvency insurer arises at the beginning of the month following the claim. The entitlement expires at the end of the month of the death of the entitled person, unless the pension settlement provided otherwise. This claim also includes pension arrears, if these relate to the last six months before the insolvency insurer's coverage obligation. The claim against the insolvency insurer is reduced to the extent that the employer pays the benefits.

The claim against the insolvency insurer ceases if a life insurance company undertakes to take over the obligations of the PSVaG and if the beneficiaries obtain a direct right to claim their claims from the insolvency insurer. The claim also ceases in the event of redemption.

External supplementary pension schemes are not affected by the insolvency of the company and continue to exist independently.

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Publications

- *New provisions in favour of highly qualified third-country workers*.
- *Employment of third-country nationals: new restrictions for employers*.
- *Employment Law – New rights in favour of work-life balance*.
- *Adoption of the Law introducing into the labour code a right to disconnect*.

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Publications

- *Modification to the FAQ | Submission of closing documents and financial information by managers*.
- *Circular LBR 16/02 | LBR registration of RAIFS*.
- *Update on CSSF circular 21/789 impacting investment fund managers*.
- *ESMA opinion on undue costs requirements for AIFS and UCITS.*

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Publications

- *The minimum net wealth tax rules for holding companies ruled unconstitutional*.
- *Secondary residence | Introduction of tax benefits*.
- Modernization of Luxembourg accounting legislation.
- *Directive proposal on business in Europe | Framework for income taxation (BEFIT).*

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Publications

- *New Directive on transparency and equal pay for men and women*.
- *New provisions on posting of employees*.
- *Introduction of cultural leave in Luxembourg law*.
- *Prohibition of the "zero-hour contracts*."

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