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Professional Responsibilities of Pensions Actuaries

Revised: June 2005

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Introduction.

During the second half of 2000, the Pensions Committee of the Groupe Consultatif took the initiative to start up a new study called "Survey on Professional Responsibilities of Pensions Actuaries". A first report has been published in April 2001. During the fourth quarter of 2001, the answers of the first edition have been reviewed and the results are included in this second edition.

A questionnaire (see Appendix 1) has been sent to 26 member associations within Europe. This second edition contains responses of all of these 26 countries (see Appendix 2 for more details on the regional representation). We consider this a great success.

Compared to the first edition, the following improvements have been incorporated :

- The answers to the questionnaires have - as much as possible - been cross-checked within the national actuarial associations ;
- Additional information concerning the questions 5 (reporting requirements overriding client confidentiality) and 6 (ability to limit liability of actuaries to professional indemnity claims) has been given tot the respondents to make it easier to get the right answers.

In 2005 an additional question (question 7) was added to clarify the nature of the relationship between the Pensions (Scheme) Actuary and the Supervisory Authorities.

Although there is still margin for improvement for this survey, we considered it important enough to start a reflection and discussion on the professional responsibilities of pensions actuaries. The proposal for a Directive of the European Parliament and of the Council on the activities of institutions for occupational retirement provision, that aims to contribute - as far as the occupational retirement provisions are concerned - to the creation of a single financial market within the European Union, reserves a specific role for the pensions actuary. This overview of the actual practices within 26 countries gives a first impression on how the professional responsibilities of pensions actuaries are organised and how they differ within the European region.

We'll try to give in the next chapters a brief summary of the answers on the seven questions. The detailed responses to the questionnaire are included as Appendix 3 (key=question) and Appendix 4 (key=country).

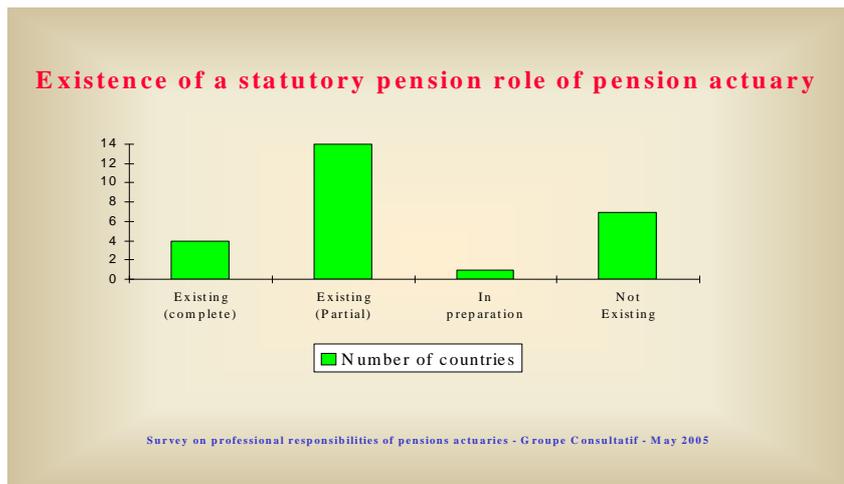
Any comments on this document or on its appendices will be very welcome and will permit us to improve this survey for its third edition.

1. The statutory pension role fulfilled by actuaries.

The pensions actuary has a well defined role in 18 countries. If we compare the functions the actuary has to fulfil - with regard to occupational schemes - in those 18 countries, there is still a big difference. It has led us to the distinction between those countries where the role-description seems complete (United Kingdom, Ireland, Germany and Austria) and the others where the role-description is partial (Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, Hungary, Iceland, Luxembourg, the Netherlands, Norway, Slovenia, Spain, Switzerland). We can describe the main functions as follows :

- Actuarial valuation and related activities (Minimum Funding Requirements, Surplus Statement, ..)
- Certification of the contributions payable
- Certification of individual transfers
- Certification of employer debt on winding up
- Certification of (bulk) transfers in case of mergers and acquisitions

One country (Portugal) is preparing the statutory role for pensions actuaries and 7 countries have no legislation at all in this area. Four of these countries are member of the European Community (France, Greece, Italy and Sweden), have each their own local characteristics in 2nd pillar matters, but the absence of any regulation on the role of the pensions actuary asks for attention. The three others (Czech Republic, Latvia and Lithuania) belong to the Central and East European Zone where the legislation on occupational pension arrangements is in its developing phase, which can explain this situation.



2. Guidance notes or practice standards issued by the professional associations.

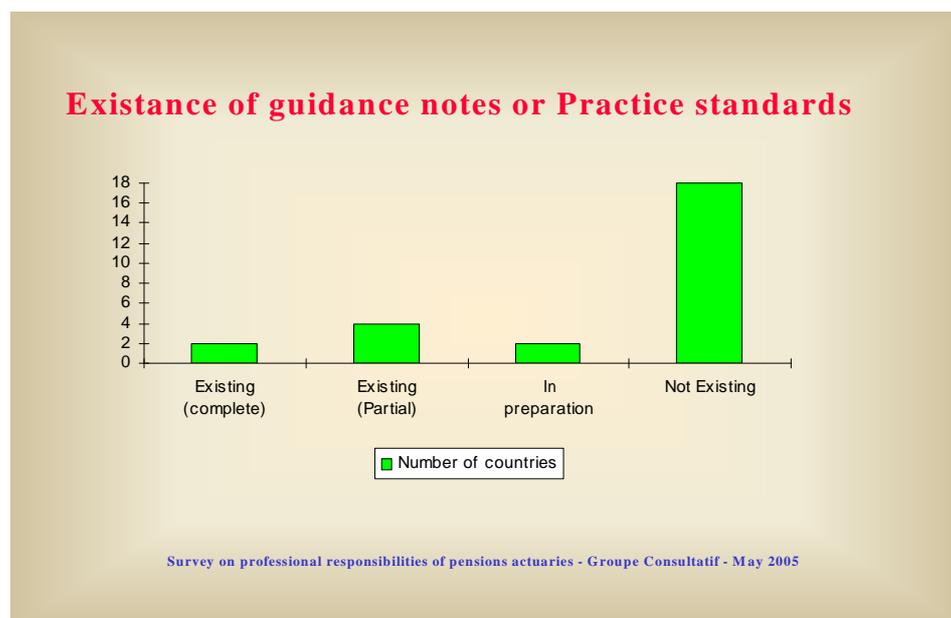
The existence and use of guidance notes or practice standards issued by the local professional (actuarial) associations is even more limited. Through answers given on other questions of this survey, we have knowledge of a lot of actuarial associations that already have elaborated a code of conduct or an ethical code for their members. If we refer to guidance notes or practice standards, it is not this kind of behaviour rules we are looking for.

Guidance notes or practice standards should help pensions actuaries with :

- contents of advice
- reflections on certain subjects
- actuarial techniques.

They only exist in 6 countries. Austria, Cyprus, Ireland, the Netherlands, Switzerland and the United Kingdom. The best examples seem to be Ireland and the United Kingdom.

The associations of 2 countries (Belgium and France) mention they are preparing guidance notes and/or practice standards. For the remaining 18 countries nothing seems to exist or to be planned.



3. Relationship between professional guidance and legislation.

By combining the elements mentioned in the 2 previous sections, we can reduce the number of countries with a relationship between professional guidance and legislation to 6 : Austria, Cyprus, Ireland, the Netherlands, Switzerland and the United Kingdom.

This relationship is very direct in Ireland and the United Kingdom, where the legislation refers in some case to the professional guidance notes (example : Individual Transfers and Minimum Funding Requirements).

In Austria, some elements of the professional guidance notes have been integrated in local legislation.

For the 3 remaining countries (Cyprus, the Netherlands and Switzerland) there is complementarity but no official relationship between legislation on the one hand and guidance notes/practice standards on the other hand.

Only two countries included in this survey (Ireland and the United Kingdom) indicate that the membership of a national actuarial society is mandatory.

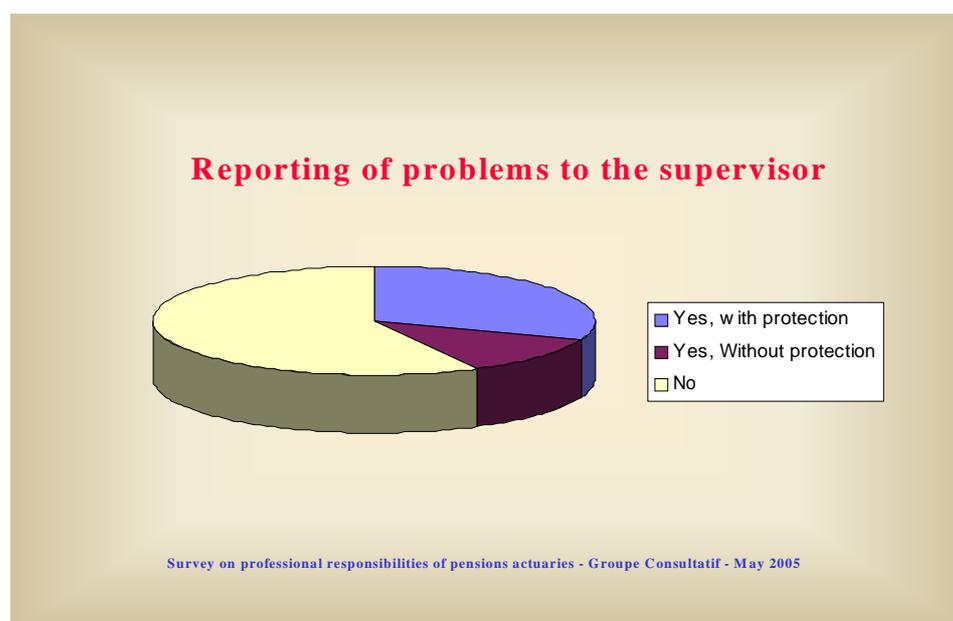
4. Requirements on actuaries to report problems to the supervisor.

Out of the 18 countries where the statutory role of the pensions actuary is defined, 11 countries (*Austria, Belgium, Denmark, Estonia, Germany, Ireland, the Netherlands, Norway, Slovenia, Switzerland, United Kingdom*) have any requirements on this actuary to report problems to the Supervisor.

15 countries have no requirements at all.

In 8 out of the 11 countries with requirements (see countries mentioned *in italic*), there is protection for the actuary if he has to report a material breach of the law or the Scheme Rules. This protection can take different forms :

- the outgoing actuary has to provide a statement/report on resignation or removal
- the outgoing actuary has to provide the incoming actuary with a list of non-reportable breaches to the Supervisor and copies of any reports to the Supervisor
- the incoming actuary has to enquire about the professional position from the outgoing actuary
- if the appointment of the actuary comes to an end, the supervisory authority shall be informed of his/her replacement (example : Denmark, Germany, Norway)
- the actuary can have the protection by law not to be prosecuted if he reports material breaches (examples : Ireland, Slovenia)



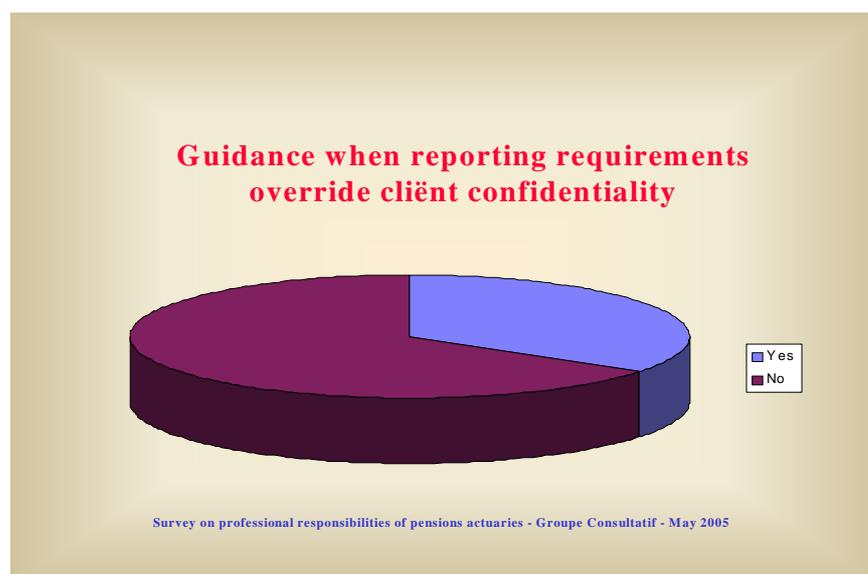
5. Guidance to actuaries when reporting requirements override client confidentiality.

None of the countries have explicit legal requirements in this respect, other than the statutory requirement to “whistleblow” which overrides client confidentiality (UK, Ireland).

On the other hand, 9 countries reported that their local actuarial association has issued guidelines in terms of professional and ethical rules on the basis of a code of conduct. These countries are : Cyprus, Denmark, Estonia, Finland, France, Ireland, The Netherlands, Portugal and Slovenia.

Of course, client specific contractual arrangements between the client and the provider of the actuarial assistance can also prescribe to which extent client specific information can be disclosed, provided such contractual rules do not contradict the legal provisions.

Finally, it was reported that, in the Netherlands, an agreement exists between the Dutch supervisory authority, the association of insurance companies and the actuarial association which comprises reporting requirements that override client confidentiality. Also in the Netherlands the local actuarial association has created a committee which can address on a voluntary basis, issues of member actuaries with regard to client confidentiality.



6. Ability for actuaries to limit their liability to professional indemnity claims.

In general there is no legal limitation of the professional liability for pensions actuaries. Only Austria reported a cap of ATS 5 million which is imposed by law.

Moreover, there is generally no statutory requirement for pension actuaries to have insurance cover in respect of their actuarial advice.

On the other hand, it appears to be customary practice for actuarial consultants to have a professional indemnity cover, especially if they are members of international consultancy firms, in which case the cover is normally available on the basis of world-wide insurance programs.

Professional indemnity cover for pension actuaries is provided by international insurance carriers but the provision of such insurance by local companies appears to be the exception.

Finally, it appears that it is not the rule for the local actuarial associations to encourage their members to seek insurance cover against professional liability claims and for these associations to assist their members with the screening of the insurance market and with the negotiation of the insurance conditions.

7. Nature of the relationship between the Pensions (Scheme) Actuary and the Supervisory Authorities

From the total group of 26 countries that participated in the present survey, 14 reported on the nature of the relationship between the Pension (Scheme) Actuary and the Supervisory Authorities. The reported information was based on statutory prescriptions in combination with actual practice if legal requirements do not cover the surveyed matter in a sufficiently comprehensive fashion.

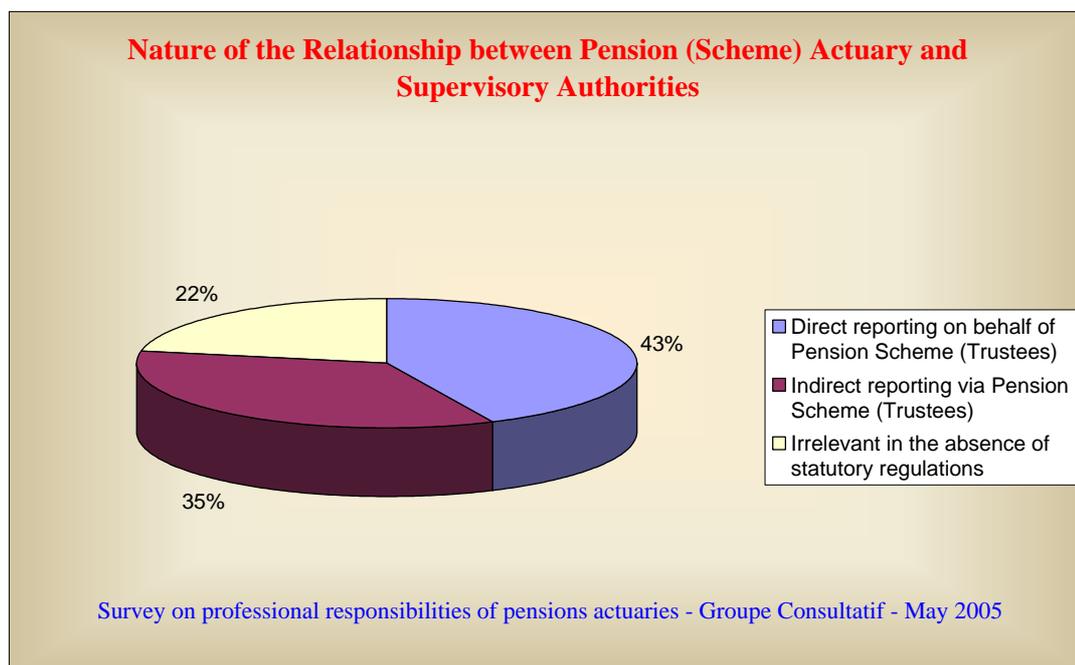
- a) In 6 out of the 14 countries, i.e. Austria, Denmark, Ireland, Luxembourg, the Netherlands and the UK, the Scheme Actuary has the obligation to report and submit certified actuarial accounts to the Authorities on behalf of the Pension Scheme. More specifically,
- In Ireland, new legislation is awaited with actuarial guidance in connection with valuations, funding certificates and funding proposals;
 - In the UK, new legislation is awaited giving more clout to the Authorities and imposing more responsibilities on actuaries.

In 5 other countries, i.e. Belgium, Norway, Portugal, Spain and Sweden, the Scheme actuary has the obligation to submit certified actuarial accounts to the Pension Scheme which reports to the Authorities.

France, Italy and Latvia reported that no statutory regulations on the role of the Scheme Actuary exist.

Finally, most of the countries mentioned the Scheme Actuary's obligation to report to the Supervisory Authorities a material breach of legal requirements (cf. Question 4 with regard to responsibilities in terms of "whistleblowing").

The above survey information can be graphically summarized as shown below :



b) None of the member countries report a formal definition of “conflict of interest” but ...

- In the Netherlands, the Dutch Actuarial Society’s Code of Conduct provides guidance in respect of which circumstances should be viewed as constituting conflict of interest;
- The Irish Society has the intention to develop guidelines;
- In the UK, the current situation is under consideration due to the Morris review.

c) In almost all countries the same actuary usually assumes simultaneously the roles of Scheme Actuary and Advisor of the Scheme Sponsor/Certifier of the Scheme’s actuarial accounts. Only ...

- In the Netherlands, the Society’s Code of Conduct prescribes that the certifying actuary can not be the sponsor’s advisor;
- In Spain, the certifying actuary should be different from the sponsor’s actuary;
- In the UK, the situation is under consideration due to the Morris review.

Conclusion

The second edition of this survey reveals that there is an enormous variety concerning the role of the pensions actuary in the 26 participating countries.

The actual situation in the countries of the Central and Eastern European Region is not a surprise. In most of these countries the development of occupational retirement plans only started in the late 1990's and legislation is far from mature.

More surprising is the situation in the 15 countries of the European Community prior to the enlargement in May 2004. Even if the statutory role of the pensions actuary is in most of these countries well defined, there is still room for improvement. The absence of guidelines and standards in most countries offers a great challenge to the national and European actuarial associations, although the need for explicit guidance in terms of best practice complementing local regulations will largely depend on the existence, scope and extent of any such regulations. Working on this in a co-ordinated way should be a priority for the coming years.

We also think that a constructive dialogue with the supervisory authorities can be set up to improve where necessary the legal framework in which pensions actuaries will take up their responsibilities to take care of the protection of beneficiaries of occupational retirement arrangements.

Appendices

Appendix 1 : Questionnaire

Appendix 2 : European coverage of the survey

Appendix 3 : Survey on a question by question base

Appendix 4 : Survey on a country by country base

Appendix 1 : Questionnaire.

- Question 1 : What statutory pension roles can only be fulfilled by an actuary? Describe the functions covered.
- Question 2 : List any Guidance notes or Practice Standards issued by your association specifically for pension actuaries.
- Question 3 : What is the relationship between Professional Guidance and Legislation ?
- Question 4 : Are there any requirements on the Actuary to report problems to the Supervisor (whistleblowing)? Is there any protection for the Actuary?
- Question 5 : Is there any guidance to actuaries on when reporting requirements override client confidentiality ?
- Question 6 : Are actuaries able to limit their liability to professional indemnity claims ? Are there insurance arrangements available ?
- Question 7a) What is the nature of the relationship between the Pensions (Scheme) Actuary and the Supervisory Authorities?
 - 7b) Is it possible for the Pension (Scheme) Actuary to advise the (Trustees of a) pension scheme and the Scheme Sponsor simultaneously and, if so, how is “conflict of interest” defined if the provision of simultaneous advice is prohibited under certain circumstances ?
 - 7c) More specifically, can an actuary who advises the (Trustees of a) pension scheme and/or the Scheme Sponsor, act as the Pensions (Scheme) Actuary certifying the scheme’s actuarial accounts ? And, if the (Scheme) Actuary is not allowed to play both roles, can a colleague actuary belonging to the same consulting firm advise the (Trustees of a) pension scheme and/or the Scheme Sponsor ?

Appendix 2 : European coverage of the survey.

Order by EU Member / Non-EU Member

Country	EU Member State	Participation to survey
Austria	Yes	Yes
Belgium	Yes	Yes
Cyprus	Yes	Yes
Czech Republic	Yes	Yes
Denmark	Yes	Yes
Estonia	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes
Greece	Yes	Yes
Hungary	Yes	Yes
Ireland	Yes	Yes
Italy	Yes	Yes
Latvia	Yes	Yes
Lithuania	Yes	Yes
Luxembourg	Yes	Yes
Netherlands	Yes	Yes
Portugal	Yes	Yes
Slovenia	Yes	Yes
Spain	Yes	Yes
Sweden	Yes	Yes
United Kingdom	Yes	Yes
Croatia	No	Yes
Iceland	No	Yes
Norway	No	Yes
Switzerland	No	Yes