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Group pension funds and insurance contract law

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Abstract

This paper grapples with the nature of the "Management of group pension funds" of Class VII of life insurance. More specifically, it explores three main issues: a) the relationship between the bearer of the pension funds and its members and whether Class VII was justifiably included among the insurance business of life Insurance Undertakings, even though the management of group pension funds does not involve the transfer of insurance risk, b) the similarities and differences between the management of group pension funds and group life insurance and c) the legal nature of IOPRs, its regulated status under EU law and similarities and differences between IORPs and Life Insurance Undertakings. The paper concludes that although the management of group pension funds, group (mainly long-term) life insurance and the benefits of occupational pension institutions have a common characteristic, namely that they provide pension benefits that complement the public pension, which is a constant objective of modern States, pension contracts concluded by entities for their members are a very widespread but unregulated private matter for the parties concerned. Contractual insurance law may only offer limited proportional application to pension schemes, particularly where the management of the pooled group pension funds is entrusted to an Insurance Undertaking, and to IORPs benefits.

Key words: Group pensions, Life Insurance, IORPs

I. Management of group pension funds as a class of life insurance

1. Introduction

The main parties in private insurance are the policyholder, who generally and pursuant to the legal provisions, is also the insured, in the usual case of insurance for its own account, and the Insurance Undertaking. Therefore, the subject matter of insurance law is the insurance business of Insurance Undertakings, which is included in the classes of insurance according to their classification, which is provided for in EU law.[1]

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[1] Annexes I and II of EU Directive 2009/138 [Solvency II].

As an undertaking whose sole object is to carry on insurance business, the Insurance Undertaking carries on only such business as are included in the classified classes of insurance. The legal foundation of the provision of insurance is the insurance contract and the specific legislation governing it. Its central feature and component is the risk, which, for a premium, is "transferred" from the policyholder / insured to the insurer. The existence of this risk, which is called "insurance risk", distinguishes the insurance contract from other contractual obligations. The basic rules of insurance contract law are directly related to the implementation of the transfer of risk. However, EU insurance supervisory law subsumes in the life insurance classes[2] Class VII ("management of group pension funds")[3], which, in accordance with the Solvency II Directive, consists of the management of assets, in particular assets representing the reserves of institutions providing **pension** benefits, **in particular** in the event of **death, survival, discontinuance or curtailment of activities.**[4] Therefore, the law does not preclude the Insurance Undertaking from managing funds of other classes of life insurance (or combining the practice of Class VII with other classes of life insurance) that are appropriate to be provided as a retirement benefit, such as investment-linked life insurance.

With the inclusion of the business of "management of group pension funds" in the insurance classes, as is the case with "tontines" and "capital redemption operations", the activities included in the "insurance business" that an insurer is allowed to carry out beyond those involving **the assumption of insurance risk**, are extended. As mentioned, the assumption of risk is the main object of the Insurance Undertaking's business, but also the element without which the basic principles of insurance contract law do not apply. Since the insurance business of the Insurance Undertaking is extended only in terms of content, its nature as a solo purpose undertaking is not altered; however, the legal basis of its provision is broadened and it is not exclusively the insurance contract governed by the insurance contract law but, for Class VII, the fund management contract.

The Solvency II Directive provides for the possibility for an insurer to provide group pension fund management business in conjunction with "insurance" covering either the preservation of the funds or the payment of a minimum interest. By the word "**insurance"**, the Directive refers to characteristic of "guarantee" in the broad sense, which is attributed by some national laws to insurance, and not to its function as an assumption of "insurance risk" which is professionally transferred, for a premium, from the insured to the insurer and has as its legal basis the insurance contract. With the aforementioned life insurance class VII, the Directive simply provides that, in addition to the management of these funds, the Insurance Undertaking may also undertake the provision of the "guarantees" mentioned above, just as such "guarantees" may also be provided by issuers of securities, but also by undertakings whose object is the

[2] First life insurance Directive 1979/267, which is contained today in Solvency II.

[3] Annex II of Directive 2009/138.

[4] The same applies to classes V, "Tontines", and VI, "Capital redemption operations", which are also operations that do not contain the components of the insurance contract (mainly the transfer of insurance risk).

management of funds, which are neither insurance undertakings nor is their business considered insurance within the meaning of contractual or supervisory insurance law.

Therefore, the **Insurance Undertaking** and the **bearer** of the group pension funds, which is usually the sponsor, are contractually bound, but they can also be bound by a pension plan developed by the bearer, without the involvement of the members/ beneficiaries (for the sake of simplification, it is hereafter referred to as a "pension scheme"). The contract in question **is not an insurance contract** for the purposes of contractual insurance law but, for the purposes of supervisory insurance law, it falls within the category of **life assurance**.

2. Contractual relations between the bearer of the pension fund and its members

EU law has not introduced specific provisions regulating the contractual relations between the bearers of the group pension fund and the beneficiaries / "members of the fund" with the Insurance Undertaking, nor has it harmonised any existing national provisions, leaving it a matter for national law to apply any insurance contract provisions to such fund management business. We refer to the law of the insurance contract, because the provider of insurance cover under an insurance contract can only be an Insurance Undertaking which under EU law is a licensed, supervised undertaking whose sole purpose is insurance business. The analogous application of the core provisions of the law of the insurance contract to the management contract is not possible, mainly because of the lack of the element of transfer of insurance risk. Also, although Insurance Class VII contains an investment activity, the MiFID II Directive on Markets in Financial Instruments, which regulates investment activities[5] and introduces obligations on investment service providers vis-à-vis investors, excludes Insurance Undertakings from its scope.

Furthermore, the legislation on the supervision of insurance undertakings is aimed exclusively at the management of group pension funds and does not enlarge upon neither the contractual relations of the contractual scheme linking the bearer to its members and nor the arrangements for the provision of funds by contributions and for the conditions of retirement and participation of beneficiaries/members. These may be governed by provisions of labour or other areas of law, without prejudice to their application because an Insurance Undertaking is responsible for the management of the funds and for ensuring compliance with the agreement between the bearer and its members. Consequently, the employer of the members of the pension fund, which also makes contributions, may withdraw or reduce the benefits, depending on the manner in which the pension benefit is paid and the provisions of the **pension scheme**. The fact that the management of the fund has been undertaken by an Insurance Undertaking in the context of the life insurance branchVII and, where appropriate, that the Insurance

[5] Directive 2014/65, art. 2 par. 1 (a).

Undertaking has also undertaken its **execution on behalf of the parties**, does not change anything.

Furthermore, the law does not enlarge upon the content of the management contract at all, which is why the Insurance Undertaking can take over the entire planning of the pension and the care for its execution, implementing, with its expertise, the will of the bearer and the parties, as is the case in practice when the bearer is the employer, and the members are its employees. However, as far as supervisory law is concerned, for the aforementioned, non-insurance risk of guaranteeing the maintenance of capital and providing a guaranteed interest rate, which, as we have mentioned, can be provided within the framework of branch VII, the EU supervisory legislation obliges insurers to create specific "**insurance provisions"**. Other regulated entities providing reserve management services (credit institutions and investment firms) are outside the scope of these provisions, which apply only to life Insurance Undertakings when, while carrying on insurance business under Class VII, they provide their clients with a capital maintenance guarantee and a guaranteed interest rate. However, apart from the insurance provisions, the supervisory legislation does not impose any restrictions on the way in which pension funds are invested, other than the general obligation for the insurer to follow the principle of prudent investor.

The inclusion of the management of group funds in the life insurance sectors, aims for the case where the funds under management are gathered **specifically for the purpose of providing pensions**. The regulatory objective of this activity is the **funds** which, since many decades, have been collected on a voluntary basis by groups of persons, usually employers and employees in their companies, where the companies, in part or in whole, finance and/or manage them **for the purpose of providing (private) pensions** to their employees (members of the pension scheme). Contractual relations between the bearer and the members of the **pension scheme** are not specifically regulated at the level of EU law. The only existing specific legislative provision relates to the inclusion of this activity in the life insurance classes, regarding the contractual relations between the bearer and its members, since it derives from insurance supervision law. This is the provision that funds are to be raised **for the purpose of granting pensions** and the obligation of the Insurance Undertaking to build up **reserves**. The amount of the funds raised, the way in which they are invested, the conditions for granting pensions, the type of pensions and the specific circumstances on which the payment of the pension benefit depends are not specifically regulated.

However, if an occupational **pension scheme** has more than 100 members and operates on the basis of funded scheme principles, it must be operated by an **Institution for Occupational Retirement Provision (**IORP) and be subject to the regulation and supervision provided for in the relevant Directive 2016/2341 (IORPs), discussed below.

3. Non-insurance risk management

By managing group pension funds, the Insurance Undertaking does not assume the contractual obligation to pay insurance premiums after the realisation of life

insurance risk due to **events** such as **death**, **survival** beyond a certain period or age or, in addition to these, **disability**/restriction of capacity **to perform activities**, etc.[6] In a long-term life insurance policy, the occurrence of such events gives rise to the Insurance Undertaking's **obligation** to pay the **insurance indemnity** for the risks (death, survival, etc.) assumed. For the policyholder/beneficiary, this type of insurance may function as a private supplementary pension. Although the Insurance Undertaking undertakes the investment of the accumulated pension funds, on a practical level it also undertakes the important task of managing the pension scheme, because the law does not exclude this and because it is to this business that undertakings entrusting VII business to the Insurance Undertaking look to, so that the bearer is limited to paying the prescribed contribution and everything else is undertaken and carried out by the Insurance Undertaking.

The payment of **pension benefits** by the Insurance Undertaking, in the context of pension fund management activities, from the fund it manages, when one of those events occurs, does not give rise to an obligation of the Insurance Undertaking towards beneficiaries on the legal basis of the insurance contract, because the Insurance Undertaking is not a party to and is not liable under an insurance contract. The payment of contributions to build up funds to pay pensions is the business and "internal" responsibility of the bearer and the members of the group pension fund based on the **pension scheme**. The risks of death, survival, incapacity to work, etc. are life insurance risks that can be covered by an IORP. However, the same events may give rise to claims for pension benefits against the bearer of the pension fund which, as we have said, together with the entire pension scheme, is managed by an IORP in the context of group pension fund management operations. If one of these events occurs to a member/beneficiary, that member/beneficiary will be entitled to a pension benefit in accordance with the provisions of the **pension scheme**. However, the pension fund is usually run by a commercial, not an insurance undertaking and therefore the members, who are usually the employees of the undertaking, will receive the benefits provided for in the **pension scheme** according to the capacity of the accumulated capital, i.e. from their group savings, and only if it is provided (in the scheme) that the benefit does not depend on the adequacy of the capital and there is a need for it, will the fund be strengthened by extraordinary contributions.[7] Members neither have nor acquire the status of insureds under an insurance contract if the pension scheme is administered by an Insurance Undertaking in the context of the exercise of class VII.

The Insurance Undertaking is limited to managing the funds, even if, as is usually the case, it undertakes to draft the agreement between the pension fund bearer and its members and puts it in its own document form. Also, the fact that the **pension scheme** may be presented as an "insurance contract" or a "group insurance contract" does not

[6] Art. 2 par. 3(a) of Solvency II classifies these insurances in the category of "life insurances activities where they are on a contractual basis", while Art. 2 para. 3(b), which includes the management of group pension funds, classified them in the category "operations where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance".

[7] In pension arrangements operating under the funded scheme, where in principle there is no need to limit the pension benefit by the amount of the accumulated capital, the rules of the ORPs Directive are mandatory.

change the core of the scheme. Finally, it does not change anything in this respect if the Insurance Undertaking assumes responsibility for the execution of the agreement, i.e. if it also assumes responsibility for the faithful execution of the pension scheme as a trustee, as is the case in practice, with the employer company appearing as a trustee, on a document titled as "insurance contract", in the capacity of "policyholder", the members as "insured", whereas the only party appearing under the correct name derived from the law of the insurance contract is the Insurance Undertaking. This scheme is not insurance on account of a third party because there is no transfer of insurance risk, but it falls within the legal type of stipulation for the benefit of a third party under civil law, in so far as the Insurance Undertaking promises to the pension fund bearer, which is usually a business company, to ensure the good performance of its agreement with the "members" of the fund, who are the employees of the company, in accordance with the terms of the pension scheme, which, as we have said, are usually contained in a document issued by the Insurance Undertaking in the form of an insurance policy.

Within the framework of class VII, an Insurance Undertaking may also undertake the management of the funds raised by an occupational pension provider or "institution" (IORP, which is discussed immediately below), since they are also created for the purpose of providing pensions, without this changing the fact that they operate on a capitalisation basis, since class VII does not distinguish whether the beneficiaries of the pension benefits managed by the Insurance Undertaking are or are not beneficiaries by virtue of their business activity. Consequently, class VII Life includes the management of occupational pension funds.

4. Conclusion

The activity of managing long-term life insurance in general occupies a **significant part of the overall activity of life Insurance Undertakings** and its effective exercise adds value to the insurance policy. This activity is carried out in general and within the framework of the life insurance class VII (management of group pension funds), which includes the management of long-term funds intended for the payment of pension benefits and the management and monitoring of the implementation of these benefits in accordance with the provisions of the pension scheme. Its usefulness is also demonstrated by the fact that in Greece it accounts for 13.80% of the premiums of life insurance classes.[8] Therefore, supervisory insurance law justifiably includes it among the insurance business of life Insurance Undertakings, even though it does not involve the transfer of insurance risk and therefore the contractual relationship between the Insurance Undertaking and the recipient(s) of the management services is not regulated by insurance contract law, because the activity involves important specific activities, without which the insurance contract could not be prepared and distributed.

[8] Annual statistic report of the Hellenic Association of Insurance Companies 2020, available at: http://www1.eaee.gr/sites/default/files/annual_stat_report_2020_eng.pdf, 10.1.2022.

II. Management of group pension funds and group life insurance

1. Similarities and differences

The EU legislator wanted to enable life Insurance Undertakings to take over the management of the various pension schemes created on the international market by life Insurance Undertakings and to strengthen voluntary pension activities. For this reason, the EU legislator allowed and provided for the management of pension funds by a life Insurance Undertaking, since pensions are granted from the pension funds when an event occurs which usually constitutes an insurance risk which the Insurance Undertakings undertake, in particular death, survival and incapacity for work. Life Insurance Undertakings have a level of experience that the various bodies managing group pension funds, such as commercial undertakings which raise funds through contributions for their employees or professional associations for their members, presumably do not have.

However, the lack at an EU level of any regulation, even if only basic, of the operation of Class VII may lead to confusion with **group life insurance**, which also provides **insurance indemnity** in the nature of a pension and can be called a "pension" when an event occurs on which the provision of a pension under the public system normally depends, i.e. the completion of a period of work or age, death or incapacity for work due to an event. **Group life** or disability **insurance**, which is usually taken out to supplement state pension insurance, is insurance on account of a third party, in which, in principle and depending on the wording of the contract, the Insurance Undertaking is directly liable to the insured and **guarantees** the payment of premiums. In this case the provision of the benefit is not dependent on the sufficiency of funds or on payments by the insured to cover any deficits (!), as is the case with the pension fund benefits that an Insurance Undertaking may manage under Class VII. The policyholder pays the premium (which may also be paid by the insured in case the policyholder is late or does not pay at all), while the rights and obligations of the parties and the penalties for a breach, both on the part of the Insurance Undertaking and on the part of the insureds and the policyholder, are regulated by the legislation on the insurance contract and the insurance terms of the policy. The policyholder of the group insurance or group organizer, as it is called, and the insureds, depending on the wording of the contract, have "purchased" the insurance by "transferring" insurance risk for a premium to a life Insurance Undertaking.

Private insurance legislation is primarily aimed at protecting the insureds, in order to ensure the continuous fulfilment of the Insurance Undertaking's obligation to provide cover. It also aims to limit contractual terms and conditions that easily lead to the withdrawal or limitation of cover, and to ensure that the Insurance Undertaking is commercially responsible. The respective contractual relations between the bearer of a group pension fund and its members contained in the **pension scheme** are not, as we have already mentioned, regulated by specific legislation, irrespective of whether the scheme is managed by an Insurance Undertaking under Class VII or not. The members and the

bearer do not purchase insurance and therefore do not transfer their insurance risk to the Insurance Undertaking, but only entrust it with the management of the **pension scheme**, and its members act voluntarily as "self-insured". The European legislator only wished to intervene, in the case where the fund bearer entrusts the management of the fund to an Insurance Undertaking, regarding the quantitative management of the funds within the framework of the provisions of the scheme, and in particular by means of the supervision exercised over the Insurance Undertaking, as we have already mentioned, with the obligation to establish technical provisions and reserves.

2. Life insurance cover giving rise to pension claims

It is important to note that both group life insurances and the management of group funds of class VII, as well as the covers of the IORPs, to which we refer below, have as a common denominator the private **pensions**. In the case of the IORPs in particular, it is stipulated, in order to eliminate any misunderstanding, that the pension they provide is ancillary to the main (state) pension. For this reason, as a rule, the benefits of the pension funds managed by a life Insurance Undertaking and the cover provided by the IORPs relate to events which, if they occur, could give rise to a pension claim (death, survival, reduction in employment). Such a claim cannot arise, for example, from a life insurance policy with birth as the specific risk covered.

The **purpose of the provisions is therefore to (also) strengthen the private pension** which, for this reason, must be granted in cases of death, survival and incapacity for work. Consequently, favourable rules (e.g. on tax matters) introduced by the national legislator to strengthen the institution of private pensions, whether it operates as group life insurance (which, when long-term, may have a pensionary character), or as management of group pension funds or as IORPs cover, should in principle not be applied if the benefit is not of a pensionary nature, e.g. if it is agreed that the policyholder has the right to repurchase the insurance within a relatively short period of time after the conclusion of the contract or if its provision is conditional on an event not related to biometric risks or fitness for work, thus altering its pension nature.

III. Management of group pension funds and benefits of Occupational Retirement Providers

1. Introduction

Provider ("Institution" following the Greek text of the Directive) of Occupational Pensions is the name given by EU law to the entity providing occupational pensions regulated initially by Directive 2003/41 (on institutions for occupational retirement provision) and today, after the significant addition made by Directive 2009/138, by Directive 2016/2341. This is the so-called second pillar of occupational pensions, introduced to complement the first pillar, which is social insurance or public occupational pensions. The third pillar is occupational pensions provided by Insurance Undertakings, which are part of the life insurance sector and have as a legal basis

the insurance contract. The Directive does not regulate the legal status of the entity/provider and indeed provides that it may not even have legal personality. It limits itself to regulating the terms and conditions of operation of this activity in a uniform manner at EU level, so as not to hinder, as far as possible, private initiative and the creative imagination and inventiveness of businesses in setting up schemes, as long as the objective of the institution, which in one sense is to function as a supplement to the public pension, with modern promotion of savings to the general public and the creation of a "culture" of savings, is respected. The Directive requires the provider to operate on the basis of the principle of **capitalisation** and to be **independent** of any undertaking which finances the capital intended for pension benefits, so that it is not subject to the undertaking's business risks.

The legal obligation of the IORP towards its members/insured persons is created by an Occupational Pension Benefits contract (**OPB contract)** and, in this respect (and not only), differs from pure social insurance where the obligation to provide benefits is created by law. This contract is, as a rule, concluded either as an **individual contract** between an employee and an occupational pension provider or as a **group contract** between the employer and the employees. Unlike the pension funds of entities that may be administered by an Insurance Undertaking within the framework of insurance class VII, the recipients of the pension benefits of an Insurance Undertaking are **insured** against the risks assumed by the Insurance Undertaking. Therefore, the funded basis and reserves of an IORP must be sufficient to meet its contractual obligations to pay the pensions provided for in the contract on an ongoing basis, without the payment of those pensions being dependent on the adequacy of the account, as is the case with the provision of pensions under a pension contract administered by an Insurance Undertaking under class VII.

In this respect, the IORP operates like an Insurance Undertaking in the sense that it provides cover by transferring risk from the insured to it, without being an Insurance Undertaking, unlike Class VII which is practised by an insurer, but without providing insurance under the law of the insurance contract.

Twenty-four years after the recognition of the management of the funds of group pension schemes as an activity included in life insurance by Directive 1979/267, the Union introduced in 2003 the institution of the IORPs, consisting of detailed provisions of supervisory nature to be applied by these schemes when they operate on a funded basis and have more than 100 members, in order to strengthen and protect private/voluntary, supplementary to social pensions. The IORPs, which currently exceed EUR 2.5 trillion in assets in the Union, operate as non-commercial undertakings, are subject to supervisory arrangements largely similar to those of the Insurance Undertakings and are subject to pension risks, which are not governed by insurance contract law.

2. IORPs and Life Insurance Undertakings

EU law treats IORPs as pension entities with a social purpose, providing financial services. Thus, they are conceptually separated from insurance under insurance contract law, although their benefits are functionally no different from life insurance. Just as

risk coverage business of a certain size must be mandatorily carried on by a licensed/supervised Insurance Undertaking in accordance with the provisions of the Solvency II Directive, so pension benefits provided by voluntary occupational **pension schemes** of a certain size and operating under the funded scheme are subject to the provisions of the IORPs II Directive and supervised in accordance with its provisions. The strong socio-political charge of the institution of IORPs as a means of addressing the deficit of the public pension insurance system, which has been widening over the years, and its connection with labour law when, as usual, there is a sponsoring company that participates with its employees in the IORP, as well as their non-profit-making purpose, somewhat shift the focus of the protection afforded by insurance and consumer law to the insured person in an Insurance Undertaking to matters of mainly labour law. This is of course due to the fact that the legal basis of the right of those insured in IORPs is not the insurance contract, which has been studied and "cultivated" as only few other branches of private law, and in particular that the pension provision of IORPs is not dependent to the same extent on insurability checks, terms and conditions of coverage, exclusions, warranties, etc. as is the case with private insurance. It is also due to the fact that the benefits of IORPs are designed to combine investment activity, so that people's savings are geared towards participation in IORPs to supplement the public pension. In the light of these principles, it is not fathomable to "exempt" the IORPs from their obligations for the same or similar reasons that the Insurance Undertaking can be exempted from its obligation to pay premiums because of breaches of contractual terms on the part of the policyholder. However, in all other respects, the basic principles of protection of the insured consumer are not completely neglected or rendered irrelevant to the extent that they are in public insurance, with particular emphasis on the rights of pre- contractual and ongoing information of beneficiaries.

The benefits of IORPs have the characteristics of long-term life insurance, which is the legal basis of pension insurance, and are governed by insurance contract law, since they contain an element of risk transfer. However, the regulation of the IORPs benefits differs from the regulation of the corresponding life Insurance Undertaking benefits at the contractual level. While the qualitative and quantitative requirements set by Solvency II for IORPs are similar to those set by Directive 2016/2341 (IORPs II) for IORPs, at the contractual level, apart from a lengthy set of information that the IORP must provide, there are no specific provisions. In particular, among other things, there are no restrictions on the possibility of providing pre-contractual obligations or insurance burdens of the insured during the term of the contract and upon the occurrence of the event on which the obligation to provide is dependent. There is no specific "cultivated" law of the contractual relations of the IORP with its policyholders/members, not only because of the short history of the institution, but also because of its morally charged dual purpose (supplementing the diminishing public pension with capitalisation from broad participation in regulated market investments) and its orientation to manage long-term savings and only limited risks. However, the contractual conditions of cover, risk limitations, insurance conditions and contractual penalties for breaches thereof which result in exemption from or limitation of the obligation to pay premiums are not provided for in whole or in part even in long-term life insurance, because they contain/

perform in part accumulated funds which the Insurance Undertaking has credited to its policyholders. However, in certain cases the proportional application of the provisions of contractual insurance law is not excluded. However, as mentioned above, there are obligations for the IORPs to provide detailed information on the terms of the pension benefit, such as rights and obligations of insured persons/members, conditions under which it is granted, optionsavailable to the recipients of the benefit to receive it and other information at the payment stage, including those in the nature of information to investors, and the provision of information documents.

IORPs are private law entities[9], and their members are insured. The IORPs, on the basis of the **OPB contract**, undertake to provide pensions if events occur which are partly covered by the life insurance classes that a life Insurance Undertaking can provide (e.g. death, survival, risks complementary to these, such as incapacity for work), but the OPB contract is not the insurance contract under private insurance law. Even greater is the difference between the pension benefits of the VII class and those of the IORPs. The mission of occupational pensions under EU law is to supplement the public (social security) pension, which, with the creation of the IORPs, is certified not only by the Member State of establishment, but also by the EU itself, which is guaranteed by "heavy" EU legislation. It is not an insurance product, such as the one provided by the Insurance Undertakings and sold to companies to exercise their labour policies.

The Union therefore imposes strict and thorough supervisory arrangements, not only on insurance sold as a commercial product, but also on occupational pension insurance organised by companies or associations on a voluntary basis.

3. Conclusion

The management of group pension funds, group (mainly long-term) life insurance and the benefits of occupational pension institutions have a common characteristic, namely that they serve/provide pension benefits that complement the public pension, which is a constant and constant objective of modern States, which for this reason provide incentives to those engaged in these activities and increased protection to the recipients of the benefits. Pension contracts concluded by entities for their members are a very widespread but unregulated private matter for the parties concerned. However, if an Insurance Undertaking undertakes the management of the funds raised, its activity is supervised, with a minimum of specific supervisory regulation consisting of the obligation to establish insurance provisions/reserves. On the other hand, if the pension contracts entered into by entities provide coverage under the funded scheme and their members are more than 100, then the entity operating them is subject to the specific supervision of Directive 2016/2341 on IORPs, which introduces similar obligations to the Solvency II Directive and there must be a separation of the assets of the entity funding the IORP (which, however, does not have to exist) from its assets. The Directive does not apply to IORPs where the employees of the sponsoring undertaking have no

[9] In Greece, a special Private Law Legal Entity, the Occupational Insurance Funds (TEA), has been established by Law no. 3029/2002.

statutory rights to benefits and the sponsoring undertaking can release assets at any time and may not necessarily meet its obligations to pay pension benefits.

Contractual insurance law applies directly only to group life insurance, but the various contractual forms created by such insurance are in need of legislative structuring, since the provisions on insurance on behalf of the law of contract are inadequate because they are based on the individual insurance model. Limited proportional application can be made to pension schemes, particularly where the management of the pooled group pension funds is entrusted to an Insurance Undertaking, and to IORPs benefits.