



FUTURE IN BALANCE.

E A P S P I

Pensions for the Public Sector

THE NEWSLETTER OF EAPSPI

EURO PENSION BULLETIN

www.eapspi.eu

3/2010

CONTENT

- Risk management at APG Group NV 3
- Risk management in the occupational pension schemes of the public and church sector in Germany 7
- Risk management and KPA Pension – maximising opportunities and avoiding the pitfalls 12
- The infringement procedure against Germany (C-271/08) Evaluation from the Swedish perspective 17

EDITORIAL

There were many for whom the Judgment handed down by the European Court of Justice on 15 July 2010 in Case C-271/08 came as a surprise. The Court ruled that the Federal Republic of Germany had failed to fulfil its obligations under European public procurement legislation, given that local authority employers, with a number of employees defined by the Judgment of the Court, had awarded contracts concerning partial conversion of earnings into pension savings to service providers designated in a collective agreement, without a call for tenders. In most cases, the Court follows the Opinion of the Advocate-General and departs from that Opinion only in the grounds for its decision. In this case, the surprise lies in the fact that the Court did not follow the Advocate-General, who had even proposed dismissal of the action of the Commission. The Federal Republic of Germany, as the defendant in the case, but also the social partners of the public sector are therefore required to comply with the Judgment. Questions now arise owing to the conflict between freedom of collective bargaining of the social partners and public procurement legislation, creating an unprecedented situation in the field of occupational pensions. This applies not only to the German social partners, but also to other occupational pension schemes governed by collective agreements. That is why you will find an evaluation from the Swedish perspective in this issue of EPB.

The second major theme of this EPB concerns another cross-border issue, namely risk management within public sector pension institutions in the Netherlands, Sweden and Germany. Despite the fact that initial positions vary from one country to another, they have several points in common. After the financial crisis, which is hopefully behind us now, risk management will take on increasing importance. The statements and questions in the Green Paper on safe and sustainable pension systems published by the Commission at the beginning of July also indicate that risk management will be a core issue in the future. It is therefore all the more important for public sector pension institutions to take measures in a timely manner.

Kind regards



Hagen Hügelschäffer

RISK MANAGEMENT AT APG GROUP NV

Introduction

APG Group NV (APG) was incorporated on February 29, 2008 and has its roots in the pensions sector. APG's mission is to maintain the vitality of a collective and united pension system, both in the Dutch market and internationally.

APG provides for the operation of pension plans for various sectoral pension funds. Pension funds in the Netherlands are required to comply with Section 143 of the Pensions Act, which provides that pension funds must be designed to assure controlled business operations that are performed with integrity. These rules relate to matters including operational risk management and control of business processes.

APG performs the following tasks for its clients (pension funds): implementation of pension plans, implementation of asset management and implementation of fund support.

This means that the above Section 143 of the Pensions Act also applies to the pension administrator APG. APG's operations are also subject to the Financial Supervision Act. APG has traditionally devoted close attention to risks and risk management. The many internal and external developments that APG faces have made good internal control still more important. Factors such as changing legislation, more complex business processes, tighter supervision and increasingly critical clients demand that APG manages its organization as effectively as possible.

APG accounts to its shareholders on the control of business operations via an SAS70 Type II declaration. Another of the most important accounting products is the In Control Statement (ICS).

Risk management process

In order to assure controlled business operations that are performed with integrity, APG follows the risk and control principles of good governance formulated in the Dutch Corporate Governance Code (the 'Tabaksblat Code'), the Corporate Governance Monitoring Committee Code and other relevant regulations. The Tabaksblat Code is a code of conduct for listed companies, aimed at improved transparency in financial statements, better accounting to the Board of Supervisory Directors and increased shareholder control and protection.

For risk management, APG uses the standard COSO ERM framework (this is an internationally accepted risk management framework). On the basis of COSO ERM, APG issues a declaration on the management of the risks associated with the four COSO ERM objectives (strategic objectives, operational objectives, financial reporting, and compliance).

APG has chosen a 'principle-driven' rather than a 'rule-driven' approach for risk management. 'Principle-driven' means that the processes and activities performed as part of internal control must comply with certain points of departure and principles (in accordance with the Tabaksblat Code).

APG Control Framework

In order to create a basis for systematic and structural internal and external accounting on the level of risk control, an APG Control Framework has been designed. The Control Framework consists of the following five primary elements:

1. Objectives and Strategy;
2. Policy Framework;

3. Steering Philosophy and Planning & Control cycle;
4. Development;
5. In Control Statement (ICS).

The five primary elements are briefly discussed below:

1. Objectives and Strategy

The APG Control Framework is based on APG's objectives and strategy. As part of the steering and control process, the impact of any policy changes on internal control and which new or additional measures are then needed to manage the risks associated with the change, are assessed each year.

2. Policy Framework

A Policy Framework has been set up at group level, including all points of departure and principles that apply to APG. These policies relate to various fields, such as accounting, IT, human resources, pensions, investments, communications, etc. Because the Policy Framework is subject to change, it must also be actively managed. It is the responsibility of the individual business units to translate the policies in terms of their own situations and then to embed them in the processes and activities. Where necessary, the business unit is free to implement department-specific policies.

3. Steering Philosophy and Planning & Control Cycle

The next principle of the APG Control Framework is the APG steering philosophy and Planning & Control cycle. The APG Control Framework matches APG's existing steering philosophy as closely as possible. The APG Control Framework process is also integrated into the existing Planning & Control cycle as far as possible. This means that it matches the report-

ing and accounting lines that apply for the existing Planning & Control cycle.

4. Development

This primary element relates to the process that the organization follows each year with the aim of ultimately arriving at an optimal internal control system and an In Control Statement from the management of the individual business units, as well as from the APG Executive Board. Through an In Control Statement, the management explains the extent to which the relevant business unit has the risks 'in control'. The development distinguishes three elements that each represent a phase in the APG Control Framework:

4.1 Match with the risk management process

In this phase, preparations are made for the coming year. The key issue here is to determine the scope of the In Control Statement. The following activities are performed in this phase:

- Analysis and determination of value chain and process matrix. The value chain covers the activities that are of strategic importance to APG. In a process matrix, the APG value chain is translated in terms of strategic, primary, and support processes that are then assigned to the various business units and process owners. The value chain and process matrices are determined anew each year.
- Determination of materiality criteria. The materiality criteria for APG and for each business unit are determined and established each year. Materiality relates to the potential impact of a shortcoming in the internal controls. A shortcoming is material if it (a) could lead to an incorrect presentation of figures and accounting (e.g. the financial statements), (b) could cause damage to APG's image or reputation and/or (c) could

mean that APG fails to realize strategic goals.

- Determination of scope. On the basis of the value chain, process mix, and materiality criteria, processes are selected that could potentially lead to material shortcomings (= scoping).
- Determination of signing structure. Scoping leads to the signing structure, which determines which process owners and managers of business units must issue an internal In Control Statement before the APG Executive Board can produce its own In Control Statement. The signing structure matches the existing reporting and accounting lines.
- Issue of frameworks and guidelines. Corporate Finance, Control & Risk Management draws up frameworks and guidelines for the performance of risk management at APG and communicate these frameworks and guidelines to the various business units. These could include guidelines on testing controls and test plans, documentation requirements, assessment of findings, etc.
- Assessment and testing of Company Level Controls. Company Level Controls are measures directed at risks that supersede processes and business units. In comparison with Process Controls, it is difficult to show the effectiveness of Company Level Controls. Company Level Controls are directed at matters such as integrity and the organization's ethical values, leadership, competencies, organizational structures, etc.
- Performing Risk Self Assessments. Risk Self Assessments are performed annually by the management of the different business units and by the Executive Board. The purpose of the Risk Self Assessments is to identify and assess the risks that primarily supersede process limits. The outcomes of the Risk Self Assessments also provide input for the annual plans of the business units.

4.2 Allocation of risks and controls in the value chain

In this phase, the management of the business units show that the processes and controls (= measures) are designed to manage the main risks. Actually demonstrating the effect of the management of the processes and controls takes place in a subsequent phase.

The outcome of the activities in this and subsequent phases is recorded and reported via the regular Planning and Control cycle. This means that the existing monthly and quarterly management reports now also account for progress in relation to the APG Control Framework, any findings notes, the action plans drawn up and the implementation of these action plans.

The following activities are performed in this phase:

- Preparing/updating process descriptions.
- Identifying/determining the main risks in each process (= key risks).
- Identifying/determining the controls with which the main risks are managed (= key controls).

Explicit attention is devoted here to risks arising from the dependence on:

- IT
- Transfer moments. Transfer moments arise when a process moves from one department to another. New risks can arise in this situation, because it is not clear who is responsible for certain controls in the process.
- Internal and external service organizations. This arises if processes or parts of processes are outsourced to other business units within APG or to an external service organization. Again, risks can arise here because it is not clear who is responsible for specific controls.

- Analyzing and assessing whether the controls are designed to control the key risks.
- Preparing/updating risk and control matrices. A risk and control matrix is an overview in which risks and controls are systematically recorded for each process.
- Preparing/updating test plans with which the operation of the key controls can be validated in the next phase.
- Preparing and implementing action plans in order to solve any findings in the design of the business processes.
- Conducting a quality test of the process, form and content of the products of this phase.
- Performing a quality test of the process, form, and content of the products of this phase.
- Evaluation and assessment of findings in the operations. At each level, the findings that should be reported to the next level must be determined. A decision tree has been developed for this purpose, which helps process owners and the management of the relevant business units to determine the materiality of any shortcomings.
- Signing and delivery of internal In Control Statement.
- In addition to the evaluation of the findings, the overall process is evaluated. The purpose of this is to improve the process for the coming year, where possible.

4.3 Assurance process

In this phase, the management shows that the processes and controls recorded in the process descriptions and the risk and control matrices operate as intended. At the same time, the process owners and the management of the relevant business units submit an internal In Control Statement in this phase, on the basis of the work performed, for their own areas of responsibility. The following activities are performed in this phase:

- Testing and assessment of the operation of IT controls.
- Testing and assessment of the operation of process controls.
- Preparation and implementation of action plans to solve any findings in the operation of controls.

5. In Control Statement

On the basis of the results of the activities described in the preceding paragraph, its own assessment and the independent Assurance of Corporate Internal Audit, the Executive Board issues an In Control Statement.

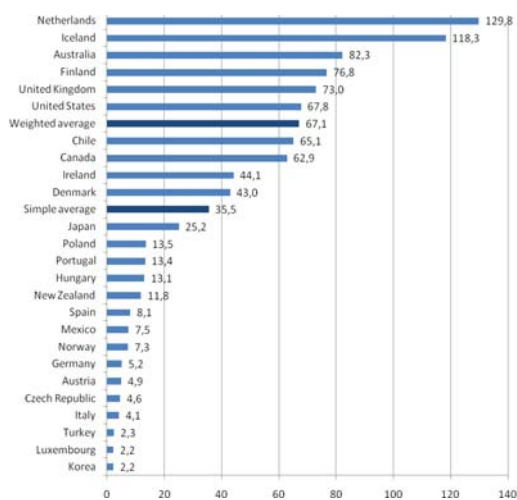
Pascal Borghans
Senior Risk Controller
APG – Corporate Finance, Control & Risk Management

RISK MANAGEMENT IN THE OCCUPATIONAL PENSION SCHEMES OF THE PUBLIC AND CHURCH SECTOR IN GERMANY

1. Introduction

Occupational pension schemes are taking on increasing importance in many European countries. Given the cuts in benefits in the pay-as-you-go first pillar, there is an increasing need for supplementary pensions to ensure that employees have a decent income in their old age. In some countries, the total amount of the capital invested by funded pension schemes reaches more than 50% of the gross domestic product, and in some cases significantly more than 100%, as shown in the graph below. It is therefore fully understandable that the President of the European Central Bank *Jean-Claude Trichet* stated, during the CEIOPS conference of November 2009, that certain pension institutions rank among the systemically significant stakeholders on the financial markets.

Figure 1: Investment volumes of funded pension schemes in relation to GDP

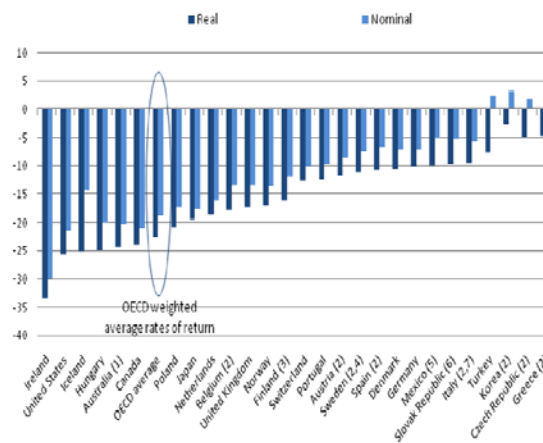


Source: OECD: Pension Market in Focus, July 2010

The financial crisis that started in 2008, has in some cases led to significant losses for funded

pension institutions. As the graph below shows, the losses vary from one country to another, but it is noteworthy that many countries with a high degree of catalization suffered significant losses also during the first nine months of 2008.

Figure 2: Nominal and real results of pension institution investments from January to October 2008



Source: OECD – Pension markets in focus, December 2008

Although the pension institutions did not cause the crisis, but suffered from it, and in some cases continue to suffer, the developments of the last few years have shown the need for reliable risk management, so as to prevent similar phenomena in the future. Against this backdrop, one could, at first sight, be surprised that there are not yet any binding provisions in this area in Community law. Directive 2003/41/EC on institutions for occupational retirement provision does not explicitly state the term risk management, but implies it in certain provisions, such as, for example, article 9, par. 1, line f), article 11 par. 4, line c) or article 14, par. 1. This could be explained by the spirit of the IORP

Directive, based on the prudent-person-principle, which therefore presupposes the existence of measures for containment of risks, but without defining them in greater detail. It is likely that the issue of risk management will, however, take on increasing importance at EU level, given that the Green Paper of the European Commission published at the beginning of July 2010 deals precisely with this topic and raises the question whether *"a reassessment of the IORP Directive may be required in areas such as governance, risk management, safekeeping of assets..."*

Given that the purpose of a green paper, however, is only to launch a public debate on a given topic, possibly followed by other initiatives on the part of the European lawmaker, the status quo remains for the time being, meaning that it is national legislation, frequently in cooperation with the supervisory authorities, that determines the legal framework for risk management.

2. Risk management in Germany

It is § 64a of the Insurance Supervision Act (referred to as the VAG Act) that contains the basic provision with respect to risk management. Under the title "Operational Organisation", the Act stipulates the implementation of "appropriate risk management" for insurance undertakings. This obligation is compulsory for companies listed on the stock exchange since 1998. In terms of content, § 64a of the VAG Act is the first anticipated implementation of the second pillar of Solvency II, with the difference that § 64a of the VAG Act took effect as from January 1, 2008, while Solvency II must be transposed by the Member states only two or even four years later. By November 2010, the most recent QIS study (5th quantitative impact study) will be completed and the final parameters are expected to be established in 2011.

a) The legal framework

§ 64a of the VAG Act includes the core elements of appropriate risk management, as understood by the German lawmaker. These core elements are the following:

1. development of a risk strategy focused on steering of the undertaking, taking into account the nature, volume and time frame of the business of the undertaking and the risks related thereto;
2. regulations concerning the organisation and operation of the undertaking, ensuring supervision and control of essential operations and their adaptation to changed general conditions;
3. implementation of an appropriate internal steering and control system, including the following elements:
 - a) an appropriate resistance to risks concept, taking into account the risk strategy to establish a suitable limit system,
 - b) appropriate processes based on the risk strategy, including the identification, analysis, assessment, steering and monitoring of risks,
 - c) sufficient internal communication within the undertaking, concerning the risks rated as fundamental,
 - d) reliable reporting to the management of the undertaking, presenting the essential objectives of risk management, the methods for risk assessment and the action taken to limit risks as well as the results of such action, and the manner in which risk management objectives have been reached and steered,
4. internal control to monitor the entire organisation of the undertaking.

b) More detailed definition by the Financial Supervisory Authority

This list of principles is not sufficiently detailed to develop a reliable risk management system. On January 22, 2009, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin) therefore published a 44-page circular entitled "Minimum requirements of the Supervisory Authority for risk management" containing additional explanations, that can be found in English at the following address:

http://www.bafin.de/cln_171/nn_720788/Shared_Docs/Veroeffentlichungen/EN/Service/Circulars/rs_0903_va_marisk_english.html

The first objective of the circular is to provide a consistent and binding interpretation of § 64a of the VAG Act. It is also intended to contribute to the development of a risk awareness, in all the departments of an insurance undertaking. Finally, the circular stipulates minimum requirements for risk management, based on legal principles and complying, in particular, with the principle of proportionality. This principle provides that *"the requirements must always be met taking the undertaking-specific risks, the nature and the scale of the business operations, as well as the complexity of the undertaking's business model, into account"*. This approach does not, therefore, impose a single model, but leaves it up to each undertaking to implement an individual system, taking into account the specificities of the undertaking and of its business environment. The downside is that all insurance undertakings, without exception, must implement a risk management system including the elements described in § 64a of the VAG Act, even if their business model is simple, if they offer only a few simple products or if they manage only simply-structured products in terms of capital investment. They must opt for a comprehensive approach, that covers all the risks specific to the undertaking.

According to the legal text, this obligation applies only to insurance undertakings (the so-called "third pillar") and to a specific group of pension schemes. The occupational pension institutions of the public and church sector are not subject to this obligation. They have, how-

ever, chosen to develop their risk management system on a voluntary basis, along the lines defined by the circular of the Supervisory Authority. For occupational pension schemes, the essential risks lie first and foremost in insurance (in particular the constant increase in life expectancy) and in capital investment (mostly due to a persistent low level of interest). Other risk factors include changes in the number of future contributors, a crucial aspect for pay-as-you-go schemes, in particular, and operational risks, including the fact that the institutions depend on decisions made by means of collective agreements of the social partners.

3. Transposition into the occupational pensions of the public and church sector

The public and church sector occupational pension scheme is by far the largest second-pillar scheme in Germany, including some 48,000 employers, more than 5 million members and 2 million pensioners. This high coverage is due to the fact that occupational pensions are governed by collective agreements and therefore cover almost all the employees of the public and church sector. Given that approximately 17 million people in Germany are entitled to occupational pension benefits, the share of public and church service occupational pensions is around 30%.

Although the level of benefits is determined almost uniformly by means of collective agreements, organisation, i.e. the management of members and the payment of occupational pensions, is administered by 25 institutions in total. The largest of these, with 1.8 million insured, is the VBL (Versorgungsanstalt des Bundes und der Länder) which, as its name indicates, is in charge of Federal and regional employees. The 3.2 million employees of local government and church organisations are managed by 24 occupational pension schemes throughout Germany, grouped within the AKA. Their size varies significantly, ranging from 600,000 insured employees to less than 20,000 employees.

From the viewpoint of risk management, it is noteworthy that each of these 25 institutions has the right to decide on its own financing method. Until 2001, all the schemes were financed on a pay-as-you-go basis and the volume of their reserves already varied extremely at the time. The most recent significant reform negotiated at the end of 2001 by the social partners introduced different financing methods, ranging from a pay-as-you-go system to a funded system, via "hybrid modes". On the whole, funded systems have gained importance since the beginning of the decade, which raises the issue of risk management. We will now look in more detail at the manner in which public and church sector occupational pension institutions, within the AKA umbrella organisation, deal with this issue in practice.

a) A specific starting position for the development of risk management at local government and church level

In concrete terms, development of risk management within a scheme should take into account the specific features of occupational pensions governed by collective agreements. One of the key aspects is that the level of benefits is determined by the social partners, while the organisation and financing are managed by the different schemes. For that reason, and in accordance with the principle of proportionality, risk management is to be organised depending both on the financing method and on the number of members.

To manage the risks of occupational pensions governed by collective agreements, the specific features that make them different from the individual insurance solutions of the third pillar must also be taken into account. Occupational pensions are based on a time frame spanning several decades, meaning that long-term developments are often more important than short-term phenomena. Thanks to their regulation by collective agreements, almost all employees are covered, meaning that the pension schemes can count on a stable number of members. Their line of business is determined

by collective agreements and often also by law. Their profits are paid to their members, not to shareholders. Their boards consists of employer and employee representatives, often with equal representation, so that a balance of interests is ensured among all participants. Finally, the occupational pensions of public and church sector employees are based on a relatively simple economic model.

b) Recommendations for the development of risk management

Given the differences in size and in financing methods and the other specificities of public and church sector occupational pension institutions, it is clear that a single approach valid for all institutions would not have been workable. That is why the occupational pension schemes of the public and church sector developed a modular system after publication of the circular of the Supervisory Authority (BaFin) at the beginning of 2009. For each of the core elements mentioned in the circular published by BaFin, modules to develop the different components of risk management are proposed. The modules are more or less detailed, ranging from a simple solution for small institutions to complex concepts suited to the larger institutions. Moreover, a catalogue is provided, listing the limits and criteria according to which the schemes should opt for the modules best suited to them. This makes it possible to develop risk management specific to the undertaking, depending on its structure.

Risk strategy therefore constitutes a core element of the BaFin circular. The management must establish its risk strategy based on the business strategy and must audit it at least once a year. Based on the module system described above, definition of the business strategy can initially be based on implementation of a mission established by a collective agreement. In a more differentiated approach, the business objectives and, concomitantly, the intentions and measures to achieve them, could be explicitly defined.

Another essential point addressed by the circular concerns the framework conditions for the organisation of the undertaking. It must be structured so that lines of business that are not compatible in their operation are clearly separated. The organisation must ensure separation between risk monitoring and the fields to be controlled. In a simplified approach, this can be done by means of the four-eye principle, in which risk monitoring is entrusted to two mutually independent positions, each of which is to report to management. A more sophisticated solution would involve creating a hierarchically separate position at management level by creating an independent risk management and control department.

Documentation is another important component. The undertaking must document not only its risk strategy, but also the regulations organising its structure as well as the internal steering and monitoring system. The objective is to have documents that are clearly understandable for those involved in risk management procedures within the company, but also for third parties, in particular auditors and supervisory authorities. This documentation obligation is met by the risk management manual, which is prepared, like the risk strategy, for each of the schemes, to meet its individual needs.

Practice has shown that some public and church sector occupational pension schemes have made significant progress in terms of risk management. Many started by focusing on the development of risk management in the fields of fund investment and actuarial mathematics, before extending risk management to other relevant fields. It is also noteworthy that large schemes, but also some average-sized schemes, already implemented a risk manage-

ment system as early as 2000/2001, which they have constantly improved since, although the legal provisions of § 64a of the VAG Act took effect only on January 1, 2008. All the schemes have ensured a separation between risk monitoring and risk-relevant fields, and all the schemes have created their own risk management manual.

4. Conclusion

Public and church sector occupational pension institutions in Germany have reacted to the increasing risks in their business environment and have agreed, on a voluntary basis, to establish and develop risk management. This system complies not only with the requirements of German law and of the Insurance Supervisory Authority, but also with the requirements of the 2nd pillar of Solvency II, whose extension to occupational pension institutions has been discussed for some time now. Development of risk management within a scheme is a continuous process spanning several years, that needs to be constantly adapted and fine-tuned. This additional protection is in line with the basic understanding of occupational pension schemes in Germany, that seek to ensure the highest possible level of security for employees and pensioners. Ultimately, it is partly thanks to this philosophy that occupational pension institutions have weathered the financial crisis relatively well.

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AKA / EAPSPI

RISK MANAGEMENT AND KPA PENSION – MAXIMISING OPPORTUNITIES AND AVOIDING THE PITFALLS

KPA Pension's risk management strategy is designed to deliver financial gains for our customers by taking advantage of opportunities and by spotting and avoiding pitfalls that would be loss making for companies and customers. This article primarily focuses on our experiences and thinking related to the management of operational risks.

Targets and risks – two sides of the same coin – but with the focus on targets

To avoid becoming too problem oriented it is important for an organisation to focus on targets i.e. what we want to do/achieve. Only then can you start identifying the most significant risks that can imperil reaching targets set. Starting with the risks can lead to a negative mind set with too great a focus on what is not working. In order to coordinate targets, risk exposure and budgets, KPA Pension includes an annually recurring business planning process:

- to set short (1 year) and long term (3 year) **targets**,
- to produce a **budget** for the coming year,
- to produce a long term economic **forecast** and
- to identify, evaluate and manage **risks**.

External and internal governing regulatory parameters

Risk management is subject to legislation governing Swedish companies and insurance companies. These laws and regulations are interpreted by the Swedish Financial Supervisory Authority (Finansinspektionen) that issues rule

and recommendations for finance companies.¹ KPA Pension is subject to a number of board resolved regulatory parameters concerning risk management.²

Different categories of risk – managed in different ways

As an insurance company, our very business concept is to accept risks, i.e. the company's role is to expose itself to **insurance risks**. And because KPA Pension is a pension company, insurance products make up a large part of our savings portfolio³. Our products also provide guarantees to our customers. This means KPA Pension also takes financial risks, whereby future pensions promised to customers could, in the event of unfavourable developments, exceed the company's capital assets. To which can be added **operational risks (and strategic risks)**. By operational risks we means losses due to internal process and IT systems related failings, human error (unconscious and deliberate), failure to comply with rules and regulations and negative brand related incidents,

¹ Finansinspektionen's general advice on the management and control of finance companies (FFFS 2005:1)

² *Investment guidelines* – this covers what securities can be invested in and how investments are to be broken down into different types of securities,

Guidelines for group wide risk management – these explain how risks are to be managed and who is responsible for what,

Guidelines for KPA Pension's internal controls – risk management is an important part of internal control as set out by COSO (Committee of Sponsoring Organisations of the Treadway Commission),

Compliance – the compliance officer has overall responsibility for ensuring that an organisation complies with rules and regulations and any risk related failure to comply with such,

Instructions for incident reporting – incidents can be symptoms of risks that ought to be addressed

Guidelines for outsourcing agreements – how risks can be managed when outsourcing

Instructions for the KPA Pension management organisation – this sets out the risk related roles and responsibilities of each respective vice president and other managers.

³ In principle, in the case of unit linked products the company has no financial risk exposure as this is borne by the customer.

e.g. rumours. Risks that a company would normally seek to minimise.

Financial risks

The goal with financial risk is to take as large a risk exposure as possible in maximising the return, while at the same time ensuring the company can still withstand significant adverse changes on the financial markets. This is monitored by stress tests (The Traffic Light tem⁴), which checks that a company can meet its obligations to its customers. The Swedish Financial Supervisory Authority sets specific minimum levels for share price falls and currency exchange rates and interest rates that each company must be able to withstand. Internal company specific requirements can be set that establish greater demands on stress tolerance than those specified by official statutory legislation.

Insurance risks

The insurance risks that KPA Pension take mainly consist of the risk that customers will live longer than expected such that pension annuities have to be paid for a longer period. Another obvious risk is that other commitments when calculating the liabilities to insurance policy holders do not correspond to reality (inflation, illness, operational costs, etc). In simple terms, you could say that the risk resides in underestimating future pension liabilities. Here too, there are detailed rules and regulations for how such liabilities to insurance policy holders are to be calculated. The Traffic Light System also specifies that a company must be able to withstand larger negative changes in undertakings entered into, i.e. calculations must be stress tested. Here too, a company can set itself

⁴ The Traffic Light System is a Supervisory Authority model for calculating how a company's capital base (both assets and liabilities) would be affected by various changes in share prices and currency exchange rates and interest rate changes on the financial market and changes in commitments when determining a company's liabilities to its policy holders.

higher requirements than those laid down by the Supervisory Authority.

Operational and strategic risks

Operational (and strategic) risks are primarily managed by making the risk perspective part of the company's annual business planning process. Risk management is divided into **risk assessment** and **risk treatment**.

Risk assessment includes identifying and evaluating risks. Such risk assessment is based on the probability of the risk crystallising and the consequences of the risk crystallising. Probability is quantified as a percentage (from 0 – 100 per cent). The consequences are monetarised, i.e. monetary amount ranges in SEK are set for the financial losses.⁵ I.e. a financial assessment of the impact on the company if the risk were to crystallise. Probability is multiplied by the consequence and each risk is given a risk level.

Risk level = Probability (%) x Consequence (SEK)

This risk level is used to prioritise risks, i.e. to differentiate between major and minor risks. Risk level is also used to assess what resources can reasonably be allocated to manage a risk.

Risk treatment entails producing proposed measures and to monitor these. Risk assessment and risk treatment are initially performed as part of the business planning process, and are then reviewed at least twice during the year.

⁵ Financial losses can be: lost revenues/sales and customers, increased operating costs, inefficient resource utilisation of available resources, negative impact on the brand, increased insurance payouts, increased insurance related provisions, poorer capital return, negative effect on personnel and damage to premises and inventories.

What risk objects are to be risk assessed?

In addition to organisational units that assess and treat risk exposure in their area of responsibility as part of the business planning process, this should also be complemented by risk and vulnerability analyses based on criteria that are classed as fundamental by management. Fundamental criteria are classed as such in order to be able to determine which risk objects should be risk assessed. The fundamental criteria used can vary from company to company.⁶ To ensure a company is able to manage its risk exposure, risk management should form a natural part of many different tasks:

- Risk management as part of sound internal management and control
- Risk management integrated into business planning and management
- Risk management as part of project management
- Risk management as part of process management
- Risk management as part of continuity planning
- Risk management to counter irregularities
- Incident reporting that can help detect risks
- Risk reporting as part of systems for facilitating whistle-blowing, and
- Risk management when the need arises (e.g. in the event of major change).

⁶ The magnitude of monetary amounts or number of transactions a process/system manages incidents occurring for a process/system, system/processes assessed as business critical in a continuity plan, errors and failings in a system/process highlighted by an external or internal audit, large projects or changes in existing process/system, operations that have been outsourced etc.

IT-related risks require specific expertise and management

Financial information is often a finance company's most important asset and this is held in IT systems. The stability and security of IT systems is accordingly very important. IT systems development is therefore crucial for finance companies, both to satisfy customer demands and also to pursue business efficiently and effectively. Risks associated with IT systems are often categorised from four different perspectives⁷: availability, confidentiality, accuracy and traceability.

Top-down or bottom-up?

How then should such risks be approached? Should you start by board and management looking at risks and then breaking them down level by level, or should you start with everyone considering the risks and then consolidating similar risks into larger risk groups. In the experience of KPA Pension, these approaches are not mutually exclusive. Top-down is necessary to gain a management perspective on the risks, to be able to see the risks in all areas and to be able to prioritise. When everyone makes their own risk assessment, it is not uncommon for specific individuals to conclude that the risks related to their own area of responsibility are the most important for the company. However, risk work and risk responsibility must form a natural part of a manager's role. If a manager is responsible for a certain business area, this also includes managing the risks within this area of responsibility.

However, does this approach not entail the risk of problems/risks that are known at employee

⁷ *Availability* – that systems are available when personnel or customers expect them to be,
Confidentiality – that the information is only accessible to users who need to access it,
Accuracy – that the information in systems is up to date and correct,
Traceability – that the information and changes to such are traceable.

level not being identified or that managers in striving to come across as proficient, playing down risks that ought to be reported upwards? Naturally, there is a risk of this happening. This is why the risk assessment and risk treatment that forms part of the business planning process (top-down) ought to be complemented by risk and vulnerability analyses (bottom-up) based on the fundamental criteria. The risk coordinator who heads the company's risk work then coordinates these risk analysis findings.

The company board is then notified via annual risk reviews at a board meeting where the results of last year's risk work are presented. A risk plan for the coming year is resolved on and current risks ahead of the coming year along with significant changes compared to last year are presented.

Challenges in risk work

Cooperation between different specialist areas of expertise

Risk work is often complex and involves cooperation with and between many different areas of expertise (risk managers, controllers, information security officers, compliance, IT specialists, actuaries, fund managers, people who order external services etc.). Initially, these various different specialists can each have a very different understanding of and insight into the value of good risk management. Having said that, risk can also provide a platform for these different skills sets to be able to work together.

Communication at different organisational levels

In addition to cooperation between different specialists at the same level, risk work managers also need to be able to communicate at all organisational levels, from employee, middle and senior management to board level.

Risk communication often requires IT systems support

Risk communication is a crucial part of risk work. For instance, in the case of a specific risk, ownership of this risk exposure is the responsibility of the business area manager. Measures to prevent the risk crystallising can lie outside the unit itself, possibly at the IT department or with an external supplier. Measures to manage the risk if it does crystallise can reside in a continuity plan held at senior management level. Furthermore, there can also be a number of internal controls that a process officer within the organisation is responsible for implementing. In larger organisations, IT support is required sooner or later to help information transfer and in delegating tasks between all the different parties and which also makes central monitoring of risk work more efficient.

Diligence and consistency

Diligence and consistency are crucial if risk work is to work well. There is always a risk that we humans think risk feels far too negative to work with, far too problem oriented and for these reasons, we focus too little on what can be expected to create problems in the future. However smooth and properly functioning risk work can create a sense of calm in an organisation as it means fewer serious errors occur and when they do, the organisation knows what needs to be done.

Cooperation with business operations

Risk work cannot be something that is the preserve of risk specialists alone. It is important that the company's business operations can take over the reins and make risk awareness a natural part of day-to-day operations. This is why the various forums that work with risk should also include representatives from business operations.

Coordination of activity plans for targets and risks

If you work with targets and risks there is always a list of measures that include things that need to be implemented. Often there are also other types of action plans/measures that make

up part of day-to-day operations (improvement proposals in quality assurance work etc). To avoid duplicating the same measures in several different places and that measures are not coordinated, consolidating different measures onto one single list or the same database is very efficient.

Aggregation of operational and strategic risks

At senior management level simple gauges that show the risk level in the company and how this is changing are always required. In the case of insurance risks and financial risks, the Traffic Light System provides a way of measuring and communicating risk that works. It is a bit more difficult when it comes to operational risks. Obviously you can simply aggregate the individual risk levels into a total whole risk level. However this can result in overestimating the total risk level as the same consequence from several different risks is often included several times. Here risk managers need to ensure that aggregating operational and strategic risks does not lead to unreasonable total consequences.

Large risks can be concealed behind low probabilities

The risk level for a risk can be small in relation to other risks, as the probability has been set low (e.g. 1 percent). One percent could be interpreted as the risk crystallising once every hundred years. A simplified financial analysis would say that the company should not allocate substantial resources for this risk exposure as the risk level is low. The risk would also appear low down in the order of priority on account of the low risk level. To avoid large risks being concealed behind low probabilities, risks with major consequences should always be highlighted even if the probability of crystallisation is low.

Large risks can be difficult to manage

Many risks with high risk levels, e.g. strategic risks, can be difficult to prevent or manage if

they crystallise. It can simply be the case that the company cannot control or influence the factors that cause the risk to crystallise. However it can still be good practice to include this type of risk (which is often dictated by external factors). For even if the company cannot influence the risk the company will be affected by the consequences of it, which will be a problem for the company and something that ought to be communicated to senior management and the board.

Future changes

The work being done in the EU which has resulted in the Solvency II Directive⁸ will largely dictate risk work in the coming years. The EU recommendations will form the basis for national legislation. For instance, Solvency II states that each company shall have an ORSA (Own Risk and Solvency Assessment). I.e. a statutory assessment of the company's capital adequacy plus a company specific assessment of the company's capital adequacy. This assessment must be wholly risk based. These regulations place greater and more detailed demands on risk work than before and require the findings of risk work to be made public and notified to the Supervisory Authority.

The management of risks creates opportunities. If a company does not manage risks it cannot take advantage of opportunities and achieve its targets, even when substantial resources are at the company's disposal.

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⁸ European Parliament and Council Directive 2009/138/EC of the 25 November on the taking up and pursuit of the business of insurance and reinsurance (Solvency II)

THE INFRINGEMENT PROCEDURE AGAINST GERMANY (C-271/08J) EVALUATION FROM THE SWEDISH PERSPECTIVE

1. Introduction

The report starts with the main content of the European Court's judgment. Then it analyses its significance in Germany, which was the defendant in the case.

2. Judgment of the European Court

Background

By its application, the Commission of the European Communities, requested the European Court to declare that because local authorities or local authority undertakings having more than 1,218 employees have awarded service contracts in respect of occupational old-age pensions directly, without a call for tenders at European Union level, to bodies or undertakings referred to in Paragraph 6 of the German collective agreement on the conversion, for local authority employees, of earnings into pension savings (the TV-EUmw/VKA), the Federal Republic of Germany has failed to fulfil its obligations, until 31 January 2006 under certain Articles of Council Directive 92/50/EEC⁹ relating to the coordination of procedures for the award of public service contracts and from 1 February 2006 under certain Articles of Directive 2004/18/EC¹⁰ relating to the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.¹¹

The background to the action was the right of a German employee to demand from his employer that the future earnings to which he is entitled, to a maximum of 4% of the relevant ceiling for the assessment of contributions to the statutory pension fund, are paid into an occupational old-age pension scheme on the basis of conversion of earnings.¹²

The provisions of this law stipulate that to the extent that entitlement to earnings is based on a collective agreement, conversion of earnings may be effected in respect of that entitlement only to the extent that a collective agreement provides for or permits such conversion.

Under the collective agreement for conversion of earnings for local authority employees in the public sector,¹³ the local authorities or local authority undertakings are responsible for implementing such conversion. The conversion must take place at external public sector pension institutions or be conducted by an undertaking in the Sparkassen-Finanzgruppe (savings bank group) or a local authority insurance body. Normally, all employees of local authorities or local authority undertakings are insured under a group insurance contract, which involves agreements on conversion of earnings with the above-mentioned establishments.

⁹ Article 8 in conjunction with Titles III to IV.

¹⁰ Article 20 and articles 23 to 55.

¹¹ The Commission redefined the subject matter of its action as undertakings with more than 2,697 employees, in 2004 and 2005, and more than 2,402 employees, in 2006 and 2007,

¹² Gesetz zur Verbesserung der betrieblichen Altersversorgung (Law on the enhancement of occupational old-age pension) as amended by the law of 2008 (BetrAVG).

¹³ There were actually two agreements: On 18 February 2003, the TV-EUmw/VKA was concluded between the Vereinigung der kommunalen Arbeitgeberverbände (Federation of Local Authority Employer Associations; 'VKA') and the Vereinte Dienstleistungsgewerkschaft eV (ver.di) (United Service Sector Union). The VKA concluded a similar collective agreement with another union, namely dbb tarifunion.

Employees covered by the collective agreement are granted the right to demand from their employer the partial conversion of their future entitlement to earnings into pension savings. Under the agreement, such a request must be made to the employer in writing. The agreement also provides that the employee is to be bound for a period of at least a year by the agreement with his employer concerning the partial conversion of his future earnings.

The TV-EUmw/VKA collective agreement entered into force on 1 January 2003. Paragraph 7 provides that the TV-EUmw/VKA may be terminated, on giving three months' notice, at the end of a calendar year, on 31 December 2008 at the earliest.

EU legislation on public procurement

Services in respect of occupational old-age pensions are covered by the EU's procurement directives (92/50 and 2004/18) and an invitation to tender must therefore be launched throughout the EU. The European Commission's action in this case was based on the fact that the German system for conversion of earnings included procurement of pension services, but the German State in this case had failed to fulfil its obligation to ensure compliance with the requirements regarding the procurement process as prescribed in the above-named directives.

Germany's argumentation

The German State opposed the action, and submitted three different arguments, which in brief involved the following:¹⁴

- The pension insurance contracts at issue fall within the employment relationships and do not therefore constitute public contracts. The nature and subject-matter of the contracts mean they fall outside the field of application of Directives 92/50 and 2004/18.

- Local authorities and local authority undertakings do not act as 'contracting authorities' within the meaning of the directives in this context, but as an employer and a payments office for the purposes of insurance contributions.
- Application of public procurement law to the award of the contracts at issue would be contrary to the autonomy of management and labour protected in Article 9 (3) of the German Basic Law (Grundgesetz).

The Court's answer

The Court recognises that the right to bargain collectively and form collective agreements confers special protection in international legal instruments, EU law (Article 28 of the Charter of Fundamental Rights of the European Union and Article 152 TFEU) and German basic law. The Court also emphasises that the German collective agreements in this case have a clear social objective.

However, these factors "...cannot, in themselves, mean that local authority employers are automatically excluded from the obligation to comply with the requirements stemming from Directives 92/50 and 2004/18, which implement freedom of establishment and the freedom to provide services in the field of public procurement." (pt. 41)

Furthermore, the Court asserts that exercise of the fundamental right to bargain collectively must be reconciled with the requirements stemming from the freedoms protected by the FEU Treaty and the fact that an agreement or an activity is excluded from the scope of the provisions of the Treaty on competition (the Court refers here to Case C-67/96 *Albany* and Case C222/98 *van der Woude* invoked by Germany) does not automatically mean that that agreement or activity is also excluded from the obligation to comply with the requirements stemming from the provisions of Directives

¹⁴ Both Denmark and Sweden intervened on Germany's behalf in the case, supporting these arguments.

92/50 and 2004/18 since those two sets of provisions are to be applied in different circumstances. Finally, the designation of bodies and undertakings which provide pensions does not affect "*the essence of the right to bargain collectively*" (pt. 49).

In light of the foregoing, the fact that the contract awards at issue follow from the application of a collective agreement does not, in itself, result in the present instance being excluded from the scope of Directives 92/50 and 2004/18 (pt. 51).

The question then arises of reconciliation of the requirements related to attainment of the social objective pursued here by the parties to the collective bargaining with the requirements stemming from Directives 92/50 and 2004/18.

It must be stated that Paragraph 6 of the TV-EUmw/VKA effectively disappplies the rules stemming from Directives 92/50 and 2004/18 completely, and for an indefinite period, in the field of local authority employees' pension saving.

The Court also states that it is possible to "reconcile application of the procurement procedures with the application of mechanisms, stemming, in particular, from German social law, which ensure that workers or their representatives participate, in the local authority or the local authority undertaking concerned, in the taking of the decision concerning selection of the body or bodies to which implementation of the salary conversion measure will be entrusted" (pt. 55).

The Court goes on to state the following:

- application of the procurement procedures cannot preclude the call for tenders from imposing upon interested tenderers conditions reflecting the interests of the workers concerned;

- the procurement procedures cannot preclude elements of solidarity. A call for tenders can specify the conditions to be complied with by tenderers in order to prevent, or place limits on, workers interested in salary conversion being selected on the basis of medical grounds;
- the Directives on public procurement contain rules enabling contracting authorities to satisfy themselves as to the professional ability and financial standing of tenderers.

It is to be concluded that compliance with the directives concerning public service contracts does not prove irreconcilable with attainment of the social objective pursued by the signatories of the TV-EUmw/VKA.

The Court then examines in detail whether the contract awards at issue fall within the conditions for application of Directives 92/50 and 2004/18. The Court notes that the employers exerted influence, at least indirectly, on the content of the relevant collective agreement. The agreement is of direct economic benefit to the local authority employer, who "shall be responsible for ensuring the provision of the benefits he has guaranteed even where he does not implement the scheme directly" (pt. 77) and who pays the premium to the engaged insurer. The Court also notes that the exception laid down for employment contracts in Article 16(e) of Directive 2004/18, which as a derogation from application of the directives concerning public service contracts must be interpreted strictly, cannot extend to a provision of services which, as in the present case, is founded on a contract between an employer and an undertaking providing pensions.

Finally, in examining whether the application thresholds for Directives 92/50 and 2004/18 have been exceeded, the Court concludes that

this has been the case.¹⁵

Consequently, Germany loses the case, having failed to fulfil its obligations under the procurement directives by not ensuring pension services provided to employees in the local authority sector were contracted in accordance with the EU's procurement directives.

3. Consequences of the case – a German perspective

The issue

The judgment is directed against the German State, which was the defendant in the case brought by the European Commission. Germany, as a member of the EU, must ensure procurement is conducted within the framework of the award of contracts to service providers for conversion of earnings based on a collective agreement under the statutory pension system.

The first question which arises is what the German authorities should do now that it is clear that the obligation to tender also applies to this form of employment-related conversion of earnings. It is obvious that there is a need to introduce new practice, but how?

The question can be clarified if we specify the conceivable interpretations with regard to the legal consequences of the judgment:

Firstly, the judgment could be seen to mean that the German collective agreement, to the extent that it applies to the conversion of earnings, has become invalid from the date on which the EU Court issued its judgment, namely 15 July 2010. In this case, it could be assumed that it is the responsibility of the German local authority employers, retroactively from 15 July 2010, to procure the insurance services which were previously agreement-based.

Secondly, the judgment could be said to mean that the German collective agreement must be terminated at the earliest opportunity and that the agreement ceases in accordance with what has been agreed or the provisions contained in German legislation.

Thirdly, the judgment could be said to mean that the agreement continues until its expiry date and that the judgment has legal consequences for future agreements, but not for the agreement already in force. The rationale behind this interpretation is the fact that the agreement already in force was signed in good faith by third parties and not by the German State. The parties have legitimate expectations that the agreement, which as stated above was signed in good faith and has a legitimate social objective, should remain in place.

Legal assessment

The judgment is directed against the German State, which now is obliged to remedy the legal situation which the European Court has ruled is not in conformity with EU law, in particular the current procurement directive 2004/18/EC. The German State has certain scope for review, as it is important to determine the best way of combining public procurement with labour market policy in the local authority.

As it is important to assess the direct legal consequences of the judgment, it should be made clear that the German State failed to fulfil its obligation to ensure that pension services are procured within the local authority sector. The question of what significance this will have for the current collective agreements and conversion of earnings agreements entered into between third parties can be illustrated by reference to the European Court's practice in Case C-503/04 on 18 July 2007, European Commission versus the Federal Republic of Germany, part of which is a follow-up of Cases C-20/01 and C-28/01 in the European Court. In Cases C-20/01 and C-28/01, Germany had failed to

¹⁵ See also the Opinion of the Advocate General dated 14 April 2010.

fulfil its obligations under the Council Directives concerning the award of public service contracts by failing to invite tenders for the award of the contract for the collection of waste water in the Municipality of Bockhorn and for waste disposal in the City of Braunschweig. The latter contract had been entered into in 1999 for a period of 30 years. After the judgment, Germany informed the Government of Lower Saxony that the provisions contained in the EU Directive concerning the award of contracts must be complied with in the future, but at the same time insisted there was no obligation under community law to terminate previously signed contracts. The Court did not accept Germany's interpretation, but held that a Member State has an obligation to take the necessary measures to comply with EU law and observe what has been decided in the European Court's judgment. Germany and several other countries had referred to the principle of legal certainty, the principle of protection for legitimate expectations, the principle *pacta sunt servanda* and the right to protection for property in claiming that a concluded agreement should not be affected by the European Court's judgment. However, the Court expressly stated that although the counterparty may invoke these principles against the contracting authority, the Member State may not invoke them in order to avoid compliance with the European Court's judgment.

In Case C-503/04, Germany also referred to the second paragraph of Article 2(6) of Directive 89/665/EEC¹⁶ (the Remedies Directive), which, by allowing national law to limit the powers of the bodies responsible for review procedures concerning the award of public contracts to awarding damages to any person harmed by an infringement of Community law on public procurement, specifically refrains from imposing

¹⁶ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

a requirement that contracts which have been properly concluded should be terminated. However, the European Court submits that this does not reduce a Member State's obligations under Article 228 EC, now 260 TFEU.

In this context, it should be noted that the Remedies Directive 89/665/EEC has been amended by the European Parliament and Council Directive 2007/66/EC¹⁷. In accordance with Article 2d, point 1, Member States shall ensure that a contract is considered ineffective by a review body independent of the contracting authority or that its ineffectiveness is the result of a decision of such a review body in certain other cases. In accordance with Article 2d, point 2, Member States shall ensure the consequences of a contract being considered ineffective are provided for by national law.

On this point it appears that Sweden and Finland have implemented the legislation somewhat differently. The new Finnish legislation is based on the Finnish market court deciding which of the contractual obligations the ineffectiveness ruling applies to.¹⁸ Ineffectiveness normally only applies to contractual obligations which still have to be performed.¹⁹ On the other hand, in Sweden the Government, in a legislative amendment which came into force on 15 July 2010 and ran counter to what many consultation bodies argued, implemented its proposal that the declaration of invalidity should be applied retroactively. This was justified as follows: "An overriding reason for retroactive application of the invalidity of all contractual obligations is that this would have a more preventive effect on contracting authorities and contracting entities than if the ineffectiveness were confined to the contractual obligations which

¹⁷ The European Parliament and Council Directive 2007/66/EC of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

¹⁸ See Amendments to the Act on Public Contracts 321/2010, which came into force on 1 June 2010.

¹⁹ See Section 96 of the Act referred to in the previous note.

still have to be performed. In addition, suppliers would generally be more interested in bringing action regarding invalidity of contracts if a successful action resulted in a new procurement process, with the opportunity of being awarded the entire contract, rather than the part that has still to be performed. Consequently, it is the Government's opinion that these overriding reasons provide the main argument for retroactive application of the invalidity of all contractual obligations."²⁰

An important provision in the new Remedies Directive is Article 2d, point 3: "Member States may provide that the review body independent of the contracting authority may not consider a contract ineffective, even though it has been awarded illegally, if the review body finds, after having examined all relevant aspects, that overriding reasons relating to a general interest require that the effects of the contract should be maintained." This provision has been implemented directly into national legislation in Finland (section 96) and Sweden (chapter 16, section 16). Point 3 also states that economic interests in the effectiveness of the contract may only be considered as overriding reasons if in exceptional circumstances ineffectiveness would lead to disproportionate consequences.

In light of this provision, it appears highly unlikely that the German collective agreement could be conceived as being automatically ineffective with retroactive effect from 15 July 2010. It is very unclear what this would imply for the employees who exercised their entitlement to conversion of earnings and pension savings.

The European Court's judgment expressly stated that the TV-EUmw/VKA collective agreement has a general social objective. It is therefore reasonable that the judgment cannot have a retroactive effect from 15 July 2010,

and that general interests require the situation to be managed in a way that is not detrimental to the insured employees' pension protection.

The judgment refers to the fact that the TV-EUmw/VKA may be terminated, on giving three months' notice, at the end of a calendar year (pt. 29). It appears reasonable to argue that the public employer party in the collective agreement, as a result of the judgment, is obliged to terminate the agreement in accordance with the said provision. Furthermore, it is the responsibility of the German State to ensure this is done. In this case, the agreement will be terminated on 31 December 2010 at the earliest.

Consequently, in my view, the agreement must be terminated in order to allow the parties to negotiate a new agreement, whereby pension providers are selected in a procurement procedure. There are many open questions, as it is important to determine how the new insurance protection will work, and the parties may well be forced to operate in the framework of the terminated agreement during a transitional period, although this does not affect my conclusion that the collective agreement should be terminated at the earliest opportunity in accordance with the agreement's termination provisions. However it is not inconceivable that the European Court's interpretation in the recently examined judgment also gives rise to a need for Germany to introduce new legislation concerning the procedure to be applied when combining collective agreements and the award of public contracts. German legislation on the award of public contracts has perhaps not been designed on the basis that it must also be capable of functioning in coordination with industrial relations negotiations in the public sector.

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²⁰ New remedies in the area of public contracts, Prop. 2009/10:180 p. 136, implemented by SFS 2010:571.