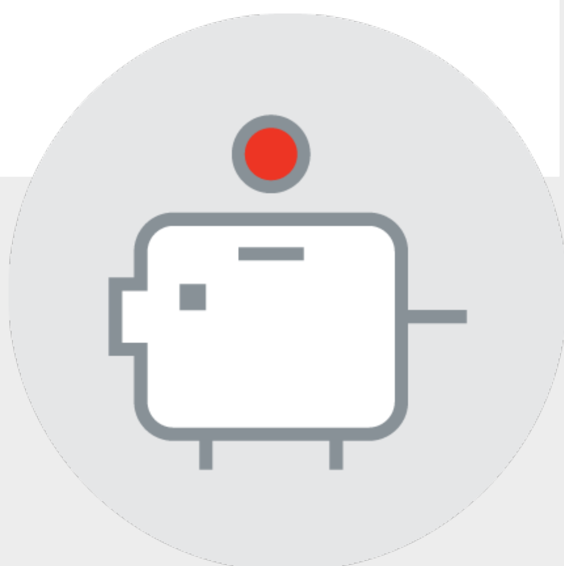
Ius Laboris Belgium Global HR Lawyers
Claeys & Engels

Newsletter: **Pension wake-up call**

March 2016

Table of contents

1 Variable interest rate for the calculation of the AOP guaranteed return.............. 2
2 Obligatory minimum death coverage for deferred plan members........................ 6
3 Definition of "retirement"....................... 8
4 Retirement age = Legal retirement age 8
5 Age payment occupational pension 9
6 Prohibition of early retirement incentives 11
7 Active pensioners 13



Dear reader,

After lengthy and apparently difficult negotiations, the Group of 10 reached an agreement on 16 October 2015 on the guaranteed return and the death coverage for deferred plan members (also called "sleepers"). The "Act of 18 December 2015 guaranteeing the durability and social character of occupational pensions and reinforcing the occupational character with regard to state pensions" (the "Act") implemented this agreement in legislation. The Act entered into force on 1 January 2016.

The Act executes an important element of the government agreement. By determining that the occupational pension can only be taken up at the time of legal retirement (taking into account an exception and transitional measures; see below), the legislator aims to encourage employees and independent workers to work longer. As the age of the state pension increases and the conditions upon which one can retire early are becoming increasingly strict, the age at which an employee or independent worker is able to enjoy a replacement income in the form of a (state and/or occupational) pension will be increased as well. Most employees and independent workers will have no choice but to work longer.

We hope you enjoy the read!

1 Variable interest rate for the calculation of the AOP guaranteed return

1.1 Context

The AOP (the Act on Occupational Pensions) guaranteed return implies that the **organiser** (employer or organiser at industry level) has to guarantee a minimum return on certain contributions to the occupational pension plan. For personal contributions, this minimum guaranteed return is applicable to three types of pension plan (defined benefit plans, defined contribution plans and cash balance plans) and was calculated, as from the entry into force of the AOP (1 January 2004) until the end of 2015, based on a fixed annual interest rate of 3.75%. For employer contributions, the guaranteed return applies only to the defined contribution and cash balance plans. These were calculated based on a fixed annual interest rate of 3.25% until the end of 2015. During the first five years after affiliation, the guaranteed return is replaced by the indexation of the contributions (unless this would lead to a higher amount).

For deferred plan members, a 0% guaranteed return applies to defined contribution and cash balance plans. In the event that the deferred plan member transfers his vested reserves later or upon retirement, he is at least entitled to the amount that was guaranteed in accordance with the AOP guaranteed return at the time he left the plan.

The guaranteed return does not have to be guaranteed annually or at any point of time, but only at the time of an individual transfer of the vested reserves after departure, retirement or the revocation of the pension plan. With regard to the financing of the guaranteed return on the personal contributions, an annual control has to take place as well as any additional contribution in the event of a deficit. In general, additional contributions do not have to be made in the event of a deficit regarding the guaranteed return on employer contributions but in practice, these additional contributions are (often) required by insurers.

The financial crisis **put enormous strain** on the AOP guaranteed return. Considering the low profits on the financial markets, it was no longer possible for insurers to guarantee an interest rate for branch 21 group insurances (i.e., group insurances with a guaranteed return) that corresponded with the interest rates used for the calculation of the AOP guaranteed return (3.25%/3.75%). As from 2012 the insurers decreased the interest rates several times, recently in some cases as low as 0.5%. In practice, this means that the employers (organisers) have to make up the difference between the actual return provided by the insurer and the AOP guaranteed return. For employers who have to report under the international accounting standards IFRS/IAS 19, some auditors require, since the decline of the interest rates, that additional provisions be included in the balance sheet.

After months of negotiations, the social partners agreed upon a **revision of the AOP guaranteed return** at the end of 2015 (agreement of the Group of 10 of 16 October 2015). This agreement is implemented by the Act.

1.2 Entry into force

The new rules apply as from 1 January 2016. For the application of the horizontal or vertical method upon modification to the interest rate for the AOP guaranteed return (see subsection 1.4.1), an important side-note has to be made, namely that this method will also be applied to contributions and reserves dating from before 2016.

1.3 Changes

1.3.1 What doesn't change?

The **existing scope** of the AOP guaranteed return **is maintained**. This means that:

- the AOP guaranteed return continues to apply to personal contributions in the three types of pension plan (defined benefit plans, defined contribution plans and cash balance plans) and to employer contributions in defined contribution and cash balance plans;
- the 0% guaranteed return for the deferred plan members continues to apply;
- the AOP guaranteed return is calculated only on the share of the contributions that was not used for death or invalidity coverage (i.e., the retirement savings) and - for employer contributions - on the share that was not used to cover the costs which are capped at 5% of the contributions;
- the AOP guaranteed return applicable in the first 5 years will be replaced by an indexation of the contributions (unless this would lead to a higher amount).

1.3.2 What has been modified?

The most important changes are (i) the interest rate for the calculation of the AOP guaranteed return and (ii) the introduction of specific rules for the application of a modification to the interest rate.

First of all, there is **only one interest rate for personal and employer contributions** as from 1 January 2016.

This is a **flexible interest rate** linked to the return on the bond market and which will be determined annually on 1 January based on a formula laid down in the AOP. The interest rate is equal to a certain percentage of the average return (on 1 June) on Belgian linear bonds ("OLOs") on 10 years over the last 24 months. For 2016 and 2017 this percentage is 65%. As of 2018 this will be increased up to 75% and as of 2020 up to 85%, provided that the National Bank of Belgium (which is the supervising authority for insurance companies) gives a positive advice about the insurable level thereof (comparison with the maximum interest rate for life insurances).

As from 1 January the interest rate is determined based on this formula. Only if there is a (positive or negative) difference of at least 0.25% with respect to the interest rate of the previous year will the interest rate be modified. However, there is a **minimum interest rate of 1.75%** and a **maximum interest rate of 3.75%**.

For **2016** the interest rate for the calculation of the AOP guaranteed investment return (for personal and employer contributions) is equal to the minimum of **1.75%**, as published on the FSMA website on 29 December 2015. As from 2017 the interest rate is published annually before 1 December by the FSMA on its website.

1.4 How is the modified interest rate to be applied?

1.4.1 Horizontal and vertical method

The Act adds rules to the AOP concerning the **application of the interest rate in case of modification**. These rules differ depending on the pension provider responsible for the management of the pension plan and the contractual obligation the pension provider undertakes with respect to the organiser (obligation of result versus obligation of means). The intention is to match these rules with the method that the pension provider uses in the framework of its contractual obligations. However, it is important to make a clear distinction between the AOP guaranteed return borne by the employer (organiser) and the contractual guaranteed interest rate of the

pension provider. The Act in no way affects the contractual guaranteed interest rate of the pension provider: contractual obligations of the pension provider require unaltered compliance.

The AOP provides two methods to calculate the AOP guaranteed return of the employer: the **horizontal method** and the **vertical method**.

The horizontal method is applicable to pension plans that are managed by a pension provider who contractually guarantees a certain result until the retirement age (in practice only in certain branch 21 group insurances). When the interest rate changes, the new interest rate will only be applicable to the contributions that are made or that are due after the modification. The old interest rates remain applicable to the contributions that are made or due before the modification and this until departure, retirement or revocation of the pension plan. This is the "method of subsequent purchase considerations" in insurance terms. The method is presented in the following table *(assuming a defined personal contribution of EUR 10 and a defined employer contribution of EUR 100 used to cover the section pensions and without taking into account the costs):*

2014	EY EUR 10	3.75%	➡	3.75%	Until retirement age
	ER EUR 100	3.25%	➡	3.25%	
2015	EY EUR 10	3.75%	➡	3.75%	
	ER EUR 100	3.25%	➡	3.25%	
2016	EY EUR 10	1.75%	➡	1.75%	
	ER EUR 100	1.75%	➡	1.75%	
2017	EY EUR 10	(1.75%)	➡	(1.75%)	
	EY EUR 100	(1.75%)	➡	(1.75%)	

The vertical method is applicable to pension plans that are managed by pension providers that do not offer the aforementioned contractual guaranteed result (in practice within a branch 23 group insurance or within a pension fund (IORP)). If the interest rate is modified, the new interest rate is applied, as of the modification, to the contributions that are made or due after the modification and on the existing reserves. This is the so-called savings account method. The method can be presented as follows (*assuming a defined personal contribution of EUR 10 and a defined employer contribution of EUR 100 to cover the section pensions and without taking into account the costs*):

2014	2015	2016	2017
EY EUR 10			
ER EUR 100	reserves		
	EY EUR 10		
	ER EUR 100	reserves	
		EY EUR 10	
		WG EUR 100	reserves
			EY EUR 10
			ER EUR 100
3.75% - 3.25%	3.75% - 3.25%	1.75%	(1.75%)

This means that the method is not neutral and the AOP guaranteed return of the employer will evolve in the future in a different manner, according to the pension provider managing the pension plan and its contractual obligation towards the employer (organiser).

1.4.2 Is the applicable method optional?

For **existing plans** (on 1 January 2016) **the method is determined by the Act** based on the pension provider managing the pension plan and its contractual obligation towards the employer (organiser) as explained above.

For **new plans** introduced after 1 January 2016, the employer (organiser) can **choose which method to apply**. This has to be mentioned in the pension plan rules. If nothing is mentioned, the default rules as described in subsection 1.4.1 apply. For new plans it would therefore be possible to still choose the horizontal method if the pension plan is managed by a pension fund. However, such choice would need to be carefully considered by the employer (organiser) and looked at in the long run. In short term, the horizontal method could indeed be more interesting for the employer (organiser), given the current low interest rate (which will probably stay low in the years to come). When the interest rate increases, this method will become less interesting for the employer (organiser), without him having the possibility to transfer to the vertical method if there is no transfer to a different pension provider (see subsection 1.4.3). The administration connected to the

horizontal method must also be taken into account.

In any event, the method has to be mentioned in the yearly transparency report as of 2016.

1.4.3 Impact on the method in the event of modification to the implementation of the pension plan or change of pension provider

Once the method has been determined, it can **only be changed if the implementation and the management of the pension plan change**. This could be the case when the employer (organiser) entrusts the management of the pension plan to a different pension provider with a different type of contractual obligation, or when one transfers to another type of management. This could for example be the case if the employer (organiser) transfers the management from an insurer (branch 21 group insurance with guaranteed interest rate) to a pension fund (with an obligation of means). This will also be the case if the management continues to be entrusted to the same insurer, but there is a transfer from a branch 21 group insurance (with guaranteed interest rate) to a branch 23 group insurance (without guaranteed interest rate).

The Act makes a distinction depending on whether or not the execution of the pension plan entails a collective transfer of reserves.

If there is **no collective transfer**, the modification will apply only to the new contributions made or due after the modification.

If the modification does entail **a collective transfer**, the new method applies to new contributions made or due after the modification and on the contributions and reserves dating from before the transfer, capitalised based on the old method until the date of transfer.

2 Obligatory minimum death coverage for deferred plan members

2.1 Context

The Group of 10's agreement of 16 October 2015 provides a minimum death coverage for the deferred plan members.

Deferred plan members are plan members who left their employer and have opted, at the end of their employment contract, to leave with the pension provider (pension fund or insurance company) of their former employer the vested reserves which they have accrued in the pension plan of their former employer during their employment.

Legislation did not provide a minimum death coverage for deferred plan members. For that reason, they often no longer had death coverage after they left their vested reserves with their former employer after departure (without modification to the pension promise). One consequence was that when a deferred plan member died before retirement, his beneficiaries could not claim the vested reserves that were left with the pension provider of the former employer.

For this reason, the social partners wanted to adapt the legislation. The Act renders it possible for a plan member who chose to leave his vested reserves with the pension provider of the former employer (without modification to the pension promise) and not to transfer them to a welcome structure, to opt for payment of the vested reserves to his beneficiaries in case of decease. The intention is that the departing plan member can opt for such a minimum death coverage with no medical examination. The plan member will have to finance the death coverage himself, but he will be able to do this at a collective rate which is more favourable than an individual rate.

2.2 Entry into force

The minimum death coverage for deferred plan members entered into force on 1 January 2016.

The obligation to offer minimum death coverage applies *only* to departures as from 1 January 2016. The new minimum death coverage does not have to be offered to the deferred plan members who left the plan before 1 January 2016.

The formal modification to the pension plan rules (if necessary) must be made by 31 December 2018 at the latest. The organiser does have time to formally modify the pension plan rules until 31 December 2018, but he must be ready as from 1 January 2016 to offer the deferred plan members the minimum death coverage and the additional information in the event of departure (see subsection 2.3 and 2.4).

2.3 New option in the event of departure

Before 1 January 2016, the plan member had the following options when departing:

- (i) to transfer the vested reserves to the pension provider of the new employer, on condition that the plan member is affiliated to the pension plan of the new employer;
- (ii) to transfer the vested reserves to a pension provider that divides the total profit between the plan members in relation to their reserves and limits the costs in accordance with the rules determined by RD;
- (iii) to leave the vested reserves with the pension provider of the ex-employer "*without modification to the pension promise*";
- (iv) to transfer the vested reserves to the welcome structure of the former employer if the pension plan rules of the former employer provide for that

possibility. A welcome structure is a separate set of plan rules that is independent of the actual pension plan rules of the former employer.

The Act adds a new option to this list for plan members that leave the plan as from 1 January 2016. As from 1 January 2016, a departing plan member can also opt:

(v) To leave the vested reserves with the pension provider of the former employer, with a minimum death coverage equal to the vested reserves (or in the words of the Act: "*with no modification to the pension promise other than a death coverage corresponding to the amount of the vested reserves*").

2.4 Additional information upon departure

In order to ensure that the plan member can make a reasoned choice upon departure, and so that he can understand what will be paid to his beneficiaries upon his death, the information that has to be provided to the plan member upon departure, has been extended.

As from 1 January 2016 the following new information requirements apply:

- The new option with minimum death coverage must be added to the options that must be communicated to the departing plan member.
- Insofar as they can be calculated, the exit letter has to indicate the amount of the vested benefits if the plan member opts for the new minimum death coverage.

  The choice to maintain minimum death coverage has an impact on the amount of the vested benefits, which is the actual occupational pension (lump sum) that the deferred member concerned will receive in the event he does not die before retirement. The "cost" of the minimum death coverage is deducted from the amount of the vested reserves (by no longer granting a so-called "mortality gain"). In other words, if one opts for the minimum death coverage, the amount of the occupational pension (lump sum) will be lower than if one opts to leave the vested reserves in the pension fund *without* opting for a minimum death coverage.
- As for the other options (see point 2.3), it also has to be indicated what the *amount* and the *type* of the death coverage is in the event that death coverage is maintained.

  This information should allow the plan member to evaluate whether the death coverage is sufficient compared with the minimum death coverage he can opt for as from 1 January 2016.

2.5 Deadline to opt for the new minimum death coverage

The plan member has a period of one (1) year to opt for the minimum death coverage:

- In general, the plan member has to inform the organiser or - if the pension plan rules provide for this - the pension provider of his choice within thirty (30) days following the communication regarding the different options.

  If the plan member does not make a choice within these thirty (30) days, it is assumed he has opted to leave his vested reserves with the pension provider of his former employer "*without modification to the pension promise*" and thus without a minimum death coverage.
- The new Act provides that the plan member can, after the period of thirty (30) days has elapsed, still opt for the minimum death coverage equal to the vested reserves during the following eleven (11) months.

2.6 Also in the event of departure because the conditions for affiliation are no longer met

Since the Act of 15 May 2014 regarding various provisions, the event that an employee no longer meets the eligibility conditions of the plan rules, also qualifies as a departure without this coinciding with the termination of the employment contract. For instance, this could be the case when an employee is promoted to executive and for that reason can no longer remain affiliated to the pension plan for employees, because he will be affiliated to the pension plan for the executives.

In that situation, the consequences of the departure (among others, financing of the AOP guaranteed return and the notification concerning the destination of the vested reserves) are postponed to the date of actual termination of the employment contract. The Act of 15 May 2014 did provide that, if death coverage would cease to exist due to such departure, and the plan member concerned could not benefit from any other death coverage, the plan member could opt to transfer his reserves to the welcome structure and have death coverage there.

As from 1 January 2016, the Act removes the possibility of transfer to a welcome structure for such departures. The new option with minimum death coverage should, as from 1 January 2016, **always** be offered to employees when their affiliation to a pension plan ends because they no longer meet the affiliation conditions of the plan, even if they have another death coverage under the pension promise.

The pension provider has to inform the plan member of, among others, the right to a minimum death coverage. If the plan member lets the period of thirty (30 days) during which he had to indicate whether he wanted this minimum death coverage pass, it is assumed that he did not opt for this death coverage. The plan member can however still opt for this death coverage during an additional period of eleven (11) months.

3 Definition of “retirement”

The Act introduces the concept of “retirement” in the Act on Occupational Pensions (AOP). There is retirement when the plan member takes up his state pension (possibly early) with regard to the professional activity that gave rise to the occupational pension accrual (e.g., the state pension as employee when it concerns an occupational pension accrued as an employee).

In short, there is “retirement” in the occupational pension scheme when there is “retirement” for the state pension.

The link between the state pension and the occupational pension forms the key of the reforms regarding occupational pensions that are discussed below.

4 Retirement age = Legal retirement age

4.1 What’s this all about?

Pension plans determine the retirement age in their pension plan rules. If the plan member continues to work beyond the retirement age, the plan member continues to accrue rights. The retirement age is particularly important in the context of defined benefit plans because this is the age used to calculate the vested benefit. The vested reserves are calculated starting from that age, by applying a discount factor.

Pension plans introduced after 2007 are obliged to provide for a retirement age of (at least) 65 years. Pension plans introduced before 2007 can still provide for a retirement age that is lower (at least and in most cases age 60). Hence, in these plans no actuarial discounting will be done once the retirement age is reached. However, as from the

retirement age, the vested benefit of the active plan member still accrues according to the additional service (insofar as the maximum past service has not been reached) and any salary increases.

4.2 Increase of the retirement age

The AOP determines from now on that the retirement age cannot be lower than the legal retirement age. Currently, the legal retirement age is 65 years, and as indicated in subsection 5.2.1, this will be increased to 66 years as from 2025 and subsequently to 67 years as from 2030.

The new retirement age is immediately applicable to pension promises that are introduced as from 1 January 2016. These plans cannot provide a retirement age that is lower than the legal retirement age.

Existing pension plans that currently still provide for a retirement age lower than 65 years will have to be adapted for new plan members as from 2019. The retirement age for that population will at least have to be equal to the legal retirement age, which will still be 65 years at that time.

When the retirement age of an existing pension plan is adapted, this new retirement age (also for the population that entered into service before 2019) cannot be lower than the legal retirement age applicable at that time.

5 Age payment occupational pension

5.1 Previous rules

Until 31 December 2015 a plan member could claim his pension lump sum or annuity as from 60 years if the pension plan rules provided for this possibility. This possibility is generally reserved for deferred plan members or active plan members that actually left the company as from 60 years. After all, an active employee accrues pension rights as long as he is employed by the employer.
The possibility for early retirement as from 60 years had as a consequence that the occupational pension could often be taken up before the plan member legally retired. Depending on the age at which the occupational pension was taken up, the plan member could be sanctioned (in a limited way) tax wise, but early take-up in itself was not prohibited.

Conversely, it was also possible that a plan member took early legal retirement, but only took up his occupational pension at a later age, for example in order to benefit from further accrual of the vested reserves up to the retirement age of the plan or to benefit from the favourable tax rate applicable to taking up the occupational pension at 65 years.

5.2 New rules

5.2.1 Basic principle: legal retirement = occupational retirement

To emphasise the complementary character of occupational pensions, the Act connects the occupational pension (lump sum or annuity) and the legal retirement. Taking up the state pension implies taking up the occupational pension.

Early legal retirement (and hence the early payment of the occupational pension) will in future only be possible if the following career and age conditions are fulfilled:

Year	Minimum age	Career condition	Exception for long careers
2016	62 years	40 years	60 years if career of 42 years 61 years if career of 41 years
2017	62.5 years	41 years	60 years if career of 43 years 61 years if career of 42 years
2018	63 years	41 years	60 years if career of 43 years 61 years if career of 42 years
2019-…	63 years	42 years	60 years if career of 44 years 61 years if career of 43 years

The legal retirement age (this is the retirement age upon which no career conditions apply) will be increased in future as well. Currently the legal retirement age is 65 years, as from 2025 this will be increased to 66 years and subsequently to 67 years as from 2030.

The occupational pension is paid upon actual legal retirement (early or not). Hence, an earlier payment of the occupational pension is in principle no longer possible. Furthermore, the payment of the occupational pension will be obligatory when the legal retirement (early or not) effectively takes effect.

However, there has to be a link between the occupational pension accrual and the state pension accrual. When a civil servant with a mixed career can claim his civil servant state pension earlier for example because of career credits, then the occupational pension will only be payable when his state pension as an employee takes effect (and not at the time when he can claim his civil servant state pension).

5.2.2 Exception and transitional measures

There is only one exception to the principle that the occupational pension is (only) paid at the legal (early) retirement:

Exception: if the (early) retirement conditions are met

The pension plan rules can provide that the occupational pension can be paid when the plan member reaches the legal retirement age (65 years) or when he meets the conditions of early retirement, but does not retire.

Aside from that, there are also two important transitional measures:

Transitional measure 1: persons who are close to retirement age in 2016

For those who had a legitimate expectation based on the existing pension plan rules that they would be able to take up their occupational pension before they would legally retire (early), some transitional measures are provided. Depending on their age (in 2016) they will be able to take up their occupational pension at the following age:

Age at 31 December 2016	Age at early retirement
58 or older	60
57	61
56	62
55	63

Beware: taking up the occupational pension at this age (without legal retirement) is only possible if the pension plan rules as applicable before 2016 provide for that possibility.

Transitional measure 2: UCA in the framework of an existing reorganisation plan

Employees who benefit from the unemployment with company allowance scheme (UCA - the former “bridging pension”) can in principle only retire legally at the age of 65. However, they could claim early payment of their occupational pension based on the aforementioned transitional measure 1.

For those who benefit from UCA in the framework of a reorganisation, an additional exception applies:

Former employees who:

- are dismissed at the earliest at the age of 55;
- with a view to entering into the unemployment with company allowance scheme;
- in the context of a reorganisation plan;
- that was filed with the competent minister of work before 1 October 2015;

can receive payment of their occupational pension at the age of 60 if the pension plan rules applicable before 2016 provided for this possibility.

5.2.3 Communication towards the pension provider regarding legal retirement

The pension provider has to be informed about the retirement of the plan member at least 90 days before the retirement of the plan member. For active plan members, this obligation lies with the organiser, while deferred plan members have to inform the pension provider themselves. The objective is that this communication will be done by the non-profit organisation Sigedis as from 2017.

6 Prohibition of early retirement incentives

6.1 What’s this all about?

Some pension plan rules provide measures that encourage early retirement or early payment of the occupational pension. For example, for those who retire early or benefit from UCA (bridging pension), the negative impact on the occupational pension accrual is softened or even cancelled out.

An example of this is an additional contribution/allocation of additional amounts in the framework of a defined contribution or *cash balance* plan. Some defined benefit plans provide for the recognition of additional service in the pension formula or in a favourable early retirement regime in the event of departure or retirement before the legal retirement age. A favourable early retirement regime could for example entail that the benefit at the retirement age of the plan does not discount (“zero reduction”) or will only be discounted in a more favourable way (linear instead of actuarial) in the event of early retirement. In this way, the impact of the departure or retirement on the occupational pension benefit is softened or even entirely cancelled out.

Usually these measures are limited to the active plan members. Unless the pension plan rules provide otherwise, these favourable measures do not give rise to additional vested reserves.

6.2 New rules as from 2016

6.2.1 Absolute nullity

Measures in occupational pension plans that encourage early departure or early retirement before the legal retirement age are in conflict with the legislator's intention to increase the actual retirement age. Indeed, they represent *incentives* to retire early.

The Act stipulates that provisions that aim at and/or result in:

- the elimination or limitation of the consequences of departure or retirement before the legal retirement age on the volume of the pension benefits;
- the allocation of additional benefits because of departure or retirement;

and thus lead to an increase of the vested benefits or rights or any other additional benefit because of the retirement or departure are absolutely null and void.

Hence, new incentives that encourage early retirement (departure or retirement) are prohibited as from 2016 and existing measures that are provided in current pension plan rules can no longer have effect. The consequence of the absolute nullity is that the early retirement incentives are deleted, so to speak, even if the plan rules are not formally modified. Moreover, they do not have to be dynamically managed.

This prohibition does not cover provisions in pension plan rules or agreements that provide that the period covering the indemnity in lieu of notice is taken into account for the accrual of benefits or leads to the payment of contributions as if the plan member had remained in service during that period.

The prohibition of early retirement incentives cannot lead to decrease of the reserves vested at 31 December 2015. This could only have been the case if the pension plan rules explicitly determine that vested reserves are being calculated on these early retirement incentives.

6.2.2 Transitional measure

Plan members who are or will be 55 years old in 2016 can however still benefit from the early retirement incentives that were provided in the pension plan rules before 2016. Because of the increase of the age upon which payment of occupational retirement is possible (see 5.2.1 above) the effect of the early retirement incentives will in any event already be reduced. Indeed, those who reach the age of 55 years in 2016 will only be able to claim payment of their occupational pension as from the age of 63 years so that the early retirement incentives will only have effect during the period between the age of 63 and 65 years.

6.2.3 Active vs. deferred plan members

In the margin of the new rules an end is put to the discussion of the early retirement incentives to the benefit of the active plan members only. Recently, the FSMA urged certain pension providers to extend these incentives to deferred plan members. Concrete action plans were put on hold in the autumn of 2015 pending the new act. The preparatory works of the Act confirm that these early retirement incentives may be reserved to the active plan members. The Act states that the pension plan rules can determine who can benefit from the early retirement incentives, meaning only the active plan members or the active and the deferred plan members.

7 Active pensioners

The Act determines that people who continue to be professionally active after their (early) legal retirement do not continue to benefit from the occupational pension promise (or solidarity promise connected thereto). Here, the legislator links the legal and the occupational retirement as well, so those who continue to be professionally active after the legal retirement also no longer accrues legal pension rights.

Those who are retired on 1 January 2016 and are affiliated to an occupational pension plan continue to accrue occupational pension rights.

Brussels
Boulevard du Souverain 280
1160 Brussels
Tel.: 02 761 46 00
Fax: 02 761 47 00

Liège
Boulevard Frère Orban 25
4000 Liège
Tel.: 04 229 80 11
Fax: 04 229 80 22

Antwerp
City Link
Posthofbrug 12
2600 Antwerp
Tel.: 03 285 97 80
Fax: 03 285 97 90

Ghent
Ferdinand Lousbergkaai 103
box 4-5
9000 Ghent
Tel.: 09 261 50 00
Fax: 09 261 55 00

Kortrijk
Ring Bedrijvenpark
Brugsesteenweg 255
8500 Kortrijk
Tel.: 056 26 08 60
Fax: 056 26 08 70

Hasselt
Luikersteenweg 227
3500 Hasselt
Tel.: 011 24 79 10
Fax: 011 24 79 11

Partners with you.

The Claeys & Engels Newsletter is intended to provide you with ad hoc information regarding new regulatory and case law developments. The Newsflash does not contain any legal analysis. Please contact our lawyers should you have any question or require any advice. Claeys & Engels is a civil company with the corporate form of a SCRL | Boulevard du Souverain 280, 1160 Brussels, Belgium | RPM Brussels 0473.547.070.