

**Pension funds in the European debate
and within the multilevel decision-making of the
European Union**

Mariachiara Esposito and David Mum

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Introduction

The issue of retirement provision has gained more attention on the European level since the open method of coordination was introduced at the Lisbon European summit in 2000. The European institutions are now showing greater concern for the convergence and coordination of pension policies, and more interest in pension reforms at national level, as a result of major changes that have taken place in the economic and monetary policy sphere.

Several European Councils, from Lisbon to Barcelona, have highlighted the challenge of an ageing population. The Stockholm European Council in March 2001 laid the ground for the open method of co-ordination on pensions, which was finally launched by the Laeken European Council in December 2001 on the basis of eleven common objectives.¹

The finalisation as well as the conception of the monetary union and the implications for the functioning of the internal market have caused the finance ministers to tackle common challenges in the field of quality and affordability of public finance. They observe not only the balance of public finances, but also the structures of public budgets in the individual member states.

That is why, in facing the common challenge represented by ageing populations throughout Europe², the question of co-ordinating pensions reforms has come to be regarded as extremely important by the European Union.

Concerning supplementary pensions, there are two spheres of intervention, and thus two levels of concern, namely the rights of the workers and the legal framework for institutions of occupational retirement provision. These two levels are dealt with in separate directives and approaches at European level.

Looking at the reasons which have motivated the European institutions to deal with the pensions issue, let us try to understand the perspective through which legislative steps have been put in place and, in particular, which of the two above mentioned *levels* (rights of workers and rights of investors) have been the subject of concern and have seen concrete development.

Furthermore, and following the current tendency of approaching discussion about any policy reform at European level within the debate carried out by the Convention, this paper will be divided into two main core chapters: the first still linked to what is established within the framework of the existing norms and rules set up by the treaties (up to the Treaty of Nice); the second geared more to the perspective of what would be more likely to happen in a future Europe having experienced major institutional reforms.

¹ Council 2003, p. 5.

² "In Europe one person in three will be at least 60 years old by 2050. And one in ten over 80. The vast majority women" - Anna Diamantopoulou's speech: '*Address to 2nd UN World Assembly on Ageing*', Madrid 8 April 2002.

1. The place of the debate in the overall framework of the European Union's competences

The need and the importance of tackling the issue of supplementary pension rights for workers are attributable to the aim of enhancing workers' mobility and to the increasing importance that European member states tend to give to supplementary pensions. Some member states respond to the phenomenon of the ageing population by seeking to upgrade the relevance of the second and third pillars in old age provision and thereby introducing a new balance of risksharing between society and individuals. Moreover, labour markets characterised by ever greater flexibility call for greater mobility on the part of workers who should then be in a position to benefit from stronger transferability of pension rights.

The recognition of the need for co-ordination and convergence, in general terms, of the national strategies in the field of retirement provision was stressed in several communications presented by the Commission in the years 2000 and 2001³ in which a clear reference was expressed to the goal of affordable and sustainable pensions, indispensable for the EU socio-economic development.

The need for coordination has also been stepped up in relation to second-pillar pensions where ambitions and initiatives have been put forward in three basic fields, namely, social, economic and legal.

As far as the social field is concerned, the main actor is represented by the DG Employment and social affairs acting to make it easier for workers to move from one country to another within the European Union. In the economic field, the core work lies in the action of DG Internal market, envisaging initiatives for the functioning or establishing of the internal market of services and capitals, including the retirement provision products and schemes based on the funded system. And in the legal field, it is important to underline the role played by the European Court of Justice in terms of decisions within the competition policy domain and the principle of equal treatment and equal remuneration for men and women and between workers of the different member states and their possibility to be covered by occupational pension schemes.

The initiatives of the European commission on the topic of occupational pensions have related to three different issues: the establishment of an internal market for institutions of occupational retirement provision; the harmonisation of the taxation of occupational pensions; and the question of portability and transferability of pension entitlements.

1.1. Conceptual framework and legal instruments

As background against which the actions related to the social field have taken place, it is important to mention first of all a basic Regulation adopted by the Council – regulation 1408/71⁴ – on the application of social security systems to employed workers moving within the

³ Following the Communications from the Commission in those years it is important to mention the Document "*Quality and viability of pensions: Joint report on objectives and working methods in the area of pensions*", report by the Social protection Committee and the Economic Policy Committee (14098/01), as endorsed at the Employment and Social Policy Council on 3 December 2001.

⁴ This Regulation is completed by the Regulation 574/72 which establishes the implementation rules for the member states.

Community. “Its dual purpose is to avoid double payment of contributions in respect of workers who move from one Member State to another and to ensure that benefits are payable across the European Union to these workers and their survivors by any one Member State corresponding to the worker’s contribution and affiliation history in that Member State and having regard, if necessary, to the worker’s contribution and affiliation history in other Member States.”⁵

This regulation created the basis for some coordination also in the field of retirement but its main purpose was to allow mobility for workers without loss of their rights under first-pillar pensions. Accordingly, this coordination covered only public pension rights.

There was another previous Regulation⁶ – 1612/68 – very general in scope, which was more related to the supplementary systems of retirement provision. This regulation states that a worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers as regards working and employment conditions (dismissal and remuneration in particular) because of his nationality.

This was the only legal instrument by means of which the European institutions had tackled the issue of supplementary pensions in the effort to implement article 48 of the Treaty of Rome on the free movement of workers. Only gradually did a widening of the focus take place from the social security systems to the recognition of the increasing importance of supplementary systems. By the beginning of the nineties the European institutions had realised that the question of the rights of workers to second-pillar pensions had to be tackled since this second tier was becoming more important in many member states. The turning point for the introduction of the debate at European level can thus be represented by the Communication from the Commission to the Council on 22 July 1991 on the place of supplementary retirement provisions systems and their influence on the principle of free movement of workers.

Concerning the *economic field*, the background scenario on which further progress has been built up is mainly constituted by the work conducted by DG Internal market and financial services (ex DG XV) during the first years of the last decade. In a speech of 2 July 1990, Sir Leon Brittan, Commissioner of DG XV at that time, remarked that “the London stock exchange was dominated by the British pension funds and that in order to achieve a common financial market it was no longer possible to avoid integrating supplementary pensions and pension funds”⁷. This was the impetus for several important documents in the field, which created the first serious and direct initiatives of the European institutions on the side of retirement provision from the point of view of freedom of capital movements and free delivery of services. A working document of October 1990, published by the Commission on the “achievement of internal market in the field of private pensions”, provided the first basis for the subsequent attempts to draw up a directive on pension funds to respond to the previous lack of concern which had become apparent towards this issue. This working

⁵ Com 19.4.2001, p.5.

⁶ Council Regulation (EEC) No 1612/68 of 15 October 1968 on the free movement of workers within the Community [Official Journal L 257 of 19.10.1968].

⁷ “L’Europe à la retraite”, La Lettre de l’Observatoire des Retraites, Mars 1999 n.11, p.10.

document, in fact, dealt with three different freedoms that pension funds should guarantee: freedom for delivery of services for the managers of the pension funds; freedom for investment of pension funds across the EU; freedom for trans-European pension funds affiliation (first idea of pan-European pension funds). The introduction of these themes had its impact on the development of the debate concerning the approval of the directive on institutions for occupational retirement provision that will be analysed in chapter II. Other important initiatives at this stage were represented by the creation of a network of experts, within the Commission, which started working, from 1992 onwards, on the aspects of both financial and social impact of the increasing importance of the second pillar of retirement provision in Europe.

Focusing now on the legal field, we can underline the importance of another aspect that was established mainly through the work of the Court of Justice of the European Community. Starting from the assumption that the attitude of the Court has always been in the sense of widening the field of application of the European law, this is very relevant in the case of the retirement provision issue. This attitude was helpful in empowering the European Union, at the expense of the member states, to intervene in the field. In particular, the Court of Justice acted to ensure the respect of articles 119 of the Treaty of Rome (concerning equality between men and women) and articles 85, 86, 90 (regarding freedom of competition). As far as the equality principle is concerned, there was an important contribution from the side of the Court when it affirmed that occupational pension systems are considered as “pay” and must therefore be the focus of a strong concern as regards the application of the principle of equal pay among workers. As we will see, the gender issue will become a very important topic especially for those actors involved in the social dialogue, who will fight for the inclusion of prudential rules and social considerations when dealing with the rules governing institutions for occupational retirement provision.

Somewhat paradoxically, in distinguishing between social security pension systems and occupational pension systems, the Court has established that the equal pay principle can be applied only to the latter, because the first was not considered as an element of pay.

1.2. The input from the Commission

With the introduction of the above-mentioned communication from the Commission on supplementary pension rights in 1991, the DG Employment and social affairs expressed for the first time the awareness of the lack of European norms protecting migrant workers’ loss of their rights on occupational pensions with the consequent recognition that this risk constituted a strong obstacle to workers’ mobility. Starting out from this first step, the Commission has subsequently shown a great initiative in pushing the debate ahead despite the series of failures for the approval of a directive on this theme. After several years, the dossier, including all the reflections about the issue, was finally delivered to the so-called “high-level group” headed by Madame Simone Veil. This group found a way to circumvent and to overcome all national blockages by limiting the ambitious character of the debate and reducing the discussion mainly to the issue of how to protect and to maintain the acquired rights of workers in case of change of employer within the same country. Some other coordination of rules for the pension funds was suggested, together with the proposal for the creation of a European Forum of pensions (which was set up in the year 2000). In line with these new proposals from the “Veil group” the Commission submitted another proposal for a

directive, namely “on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union”.⁸ This proposal, adopted by the Council in June 1998, was based on four main clauses that member states had to implement at national level: 1) the maintenance of the acquired rights of workers moving to another country at the same level as those of workers changing employers within the same country⁹, 2) the guarantee for trans-European payments, 3) the possibility for migrant workers to keep affiliation to the original country scheme, 4) the principle of obligation of information towards affiliated workers¹⁰.

Besides this directive, the second half of the nineties saw the Commission involved in the preparation of another very important document within the field of pensions. Moving once again from the social arena of workers’ rights to the economic perspective of the internal market, we have to mention the Commission’s initiative in the form of the Green paper “towards a single market for supplementary pensions” published on 10 June 1997.

This document gave rise to extremely wide debate among different levels of actors involved in the socio-economic field in Europe. The most important idea contained in the green paper can be expressed as follows: given the deterioration of the basic schemes for retirement provision in Europe, despite the development of supplementary pensions, it will not be sufficient to tackle the financial problems that retirement systems will meet because of the phenomenon of the ageing population, and this second pillar and, in particular, pension funds can offer a possible and useful instrument for maintaining the level of retirement provision in Europe. “If current policies towards pensions are not changed, there will be an inevitable increase in state spending on pensions to pay for the increased number of pensioners.”¹¹

The Green Paper believes that fund managers should be given the freedom to invest in the assets they consider the most appropriate for their particular pension fund and that this freedom should be exercised within a Single Market. This assumption is evidently and strongly related to the role that pension funds will play in the financial market. But, besides this financial market-led approach, the Green Paper also tackles the items of taxation and facilitating the free movement of workers.

The debate generated by this document and its promoter Mario Monti, who became commissioner of DG XV at that time after Sir Leon Brittan, sought a path to a synthesis and a compromise between the two main and opposite visions as regards pension systems: the “liberal states”, in order to bring them to accept some tax harmonisation, and the “regulatory states”, in order to press them to agree on the advancement of liberalisation of capital. Only through this compromise, based on the revision of fundamental principles of the structure of

⁸ Directive n. 98/49/CE approved by the Council on 29 June 1998.

⁹ The directive did not call into question those schemes which, as in Germany, imposed a minimum working period within the company in order to acquire pension rights.

¹⁰ Despite the comprehensive character of this directive the Council rejected another clause, proposed by the Commission, on equal tax treatment of contributions of workers paying in the Home member state (where the pension fund is located) from the Host member state (where the company and the members are located) *Commission press release 5 June 2002: “Commission welcomes Council agreement on proposed Pension Funds Directive”*.

¹¹ COM 1997, p.1.

social protection at national levels, was it possible to arrive at a concrete project for a directive on pension funds.

1.3. The inter-institutional dialogue: the influence of the member states through the role of the Council, the role of the European Parliament

As regards the role of the other European institutions in the field of pensions and their relations with the Commission and its initiatives, it is important to stress the increasing interest shown by the European Council in the area of social policy in general and, accordingly, in the specific area of pensions. Since the Lisbon summit in March 2000 the European Council orientations have become increasingly precise from the point of view both of content and co-ordination power and also of timing. In fact, after that summit, it was decided to hold an additional European Council meeting each year to focus specifically on social preoccupations, thereby creating the opportunity to deal with the pensions issue on a regular basis.

Looking, on the other hand, at the role played by the Council of Ministers, we find the expression of the different national positions represented in two compositions of the Council: the ECOFIN (ministers of economy and finance) and the Council in the form of social affairs ministers¹². These two bodies have not, however, acted at the same level of importance. The fact that the ECOFIN Council has been something of a forerunner in giving consideration to the question of retirement provision systems has contributed to a situation whereby the economic and financial aspect has been the EU's most important angle of approach to the issue, so that the problem has been perceived as that of the financial sustainability of pensions in a context of ageing population. The work of the Economic Policy Committee (EPC) is also very important. The EPC has provided detailed analysis of the economic situation and the structural policy of the Union in order to investigate the potential for employment growth in the Community. In this respect, the EPC set up a working group to examine the impact of ageing on public finance, namely pension systems, and the group's conclusions exerted considerable influence on the Lisbon European Council, while the report¹³ produced by the group in 1999 gained much attention and was discussed during the Nice European Council (December 2000).

The Treaty of Nice also gave juridical status to the high-level group on social protection, renaming it the Social protection committee. In this way, the Council of social affairs ministers also began to gain as much consideration as the EcoFin Council, proving how the issue of social protection and pension systems had come to acquire a high status at European level.

The parallel progress witnessed in the pensions field since the beginning of the year 2000, at the level of both the Council and the Commission, indicates that the interinstitutional dialogue between the European institutions produced some more coherent and concrete results. In such a context, the input from the European level obviously had to take into consideration the ongoing evolution of retirement provision systems at national level. In

¹² The Council is assisted, in the field of pensions, by the work of three specialised permanent committees: Economic Policy Committee, Social Protection Committee, Employment Committee.

¹³ "Progress report to the Ecofin Council on the Impact of ageing populations on public pension systems".

relation to pensions, the European institutions had to be particularly careful to present initiatives to strengthen coordination of the pension systems in a manner likely to encounter a common and positive response from the side of highly differentiated systems among the member states.

The conflict between the so-called “insurers” and “pension funds” summarises in broad terms the two extremes at which member states can be placed according to their pension systems. The main representative of the “insurance culture” is France, while countries such as United Kingdom, Ireland, or The Netherlands, belong to the “pension funds” culture. At European level, the first approach is represented by the CEA Comité européen de l’assurance (CEA) and the second one by the European Federation for Retirement Provision (EFRP).

The EFRP, created on the initiative of the British pension funds, is basically the voice of the pension fund managers and works to achieve maximum freedom of management of pension funds, regarding this freedom, in turn, as a guarantee of higher rates of return enabling greater corporate competitiveness that is beneficial for the economy at large. This idea goes together with the principle that retirement provision has to be managed in a long-term perspective and to entail the possibility of investing in a diversified way, both geographically and economically, thereby increasing the advantages and benefits for the retired people themselves.

The CEA, meanwhile, fights for the equal application of prudential rules to both the insurers and the pension fund managers, claiming that pension funds must be subject to the same European directives regarding life insurance, which are far more binding and ensure the same level of competition for pension fund managers and insurers. Under this approach guarantees and state bonds are the preferred types of investment.

The contrasts between member states adhering to these different cultures and models have been one of the main reasons for the failure of a directive on pension funds that was proposed, as we have seen, back in 1991. The Commission was forced to withdraw its proposal due to the impossibility of reaching majority in the Council.

Following other developments, and in particular the Green paper “towards a single market for supplementary pensions” of June 1997, some important communications were issued by the Commission in the year 2000.¹⁴ The member states were once again urged to find common answers to common challenges, despite the deep differences between their pension systems.

In particular with its Communication “Une approche intégrée au service des stratégies nationales visant à garantir des pensions sûres et viables” of July 2001, the Commission established a number of objectives and working methods that have to be implemented at national level in the field of pensions (following the Göteborg European Council of June 2001).

These recent developments somehow mark a borderline between a period in which the pension funds issue was faced in a less systematic way and by means of several separate and quite isolated attempts to create convergence between the member states and a period in

¹⁴ Communication on “L’évolution à venir de la protection sociale dans une perspective à long term: des pensions sûres et viables” (October 2000) and Communication on “la contribution des finances publiques à la croissance de l’emploi: améliorer la qualité et la viabilité” (December 2000).

which a consensus seems to have been established in favour of a proper strategy for reforms and changes in the pensions field, at least from the standpoint of methodology and involvement of the different actors concerned by this policy field.

On 12 November 2003 a European Parliament Pension Forum (EPPF) was set up – possibly to compensate for the fact that the parliament plays no key role in the process of open coordination – to facilitate the regular exchange of ideas on pensions and related developments between MEPs and stakeholders in the field of retirement provision.¹⁵ The Pension Forum deals with first-pillar pensions, but also with the question of the implementation of the directive on Institutions of Occupational Retirement Provision.

2. The current agenda: most recent developments for a comprehensive approach to safe and sustainable pensions

We can consider the European Council of Nice, held in December 2000, as the turning point for the introduction of a European strategy also in the field of pensions, in a context where the debates on future institutional reforms of the European Union were being, in broad terms, consolidated.

It was on that occasion, in fact, that the strategic orientations discussed at the Lisbon summit in March 2000 were formally recognised through the approval of the European Social Agenda.

In defining the action priorities for the following five years in all social policy fields, this agenda focuses on some specific measures to be taken in the pension area under the category of actions included in the priority defined as “modernisation of social protection”. This was a very important step, even though it should not be forgotten that the orientations listed in the field of pensions were extremely general in scope. The most important aspect was the accent placed on the promotion of co-operation and exchanges between member states in the field of pensions, in order to achieve safe and sustainable pensions, the same concept which was subsequently more explicitly emphasised and defined once again in the above-mentioned Commission communications of July 2001. It is true, in fact, that while it may be claimed that the social protection agenda has gained some momentum since the Lisbon summit, it is also true that it remains politically and institutionally fragile.

On the one hand, we have a situation in which interest in the retirement provision issue has been stepped up at both the economic and the social level, creating the basis for a more comprehensive approach. At the social level, the Lisbon objectives show special concern for social preoccupations by including the “answers to the ageing population and the strengthening of social cohesion” among the main challenges faced by the EU. At an economic level, the accent is clearly placed on the control of public finances, in accordance with the principles coming out of the Growth and Stability Pact.

On the other hand, in such a context, also characterised by the links with the developments following the Luxembourg process and the definition of the *Broad Economic Policy Guidelines*, drawn up each year by the EcoFin Council in response to the Commission

¹⁵ [Http://www.cea.assur.org/cea/v1.1/actu/pdf/uk/actu154.pdf](http://www.cea.assur.org/cea/v1.1/actu/pdf/uk/actu154.pdf).

recommendation, the connection between the economic and social aspect of social protection, and in particular of pension systems, needs to be reinforced.

The real meaning of seeking common solutions in the face of the need for financial resources to cope with the widespread challenge of the ageing population, and the emergence of new social risks and needs in a context of greater mobility, must be represented by a process in which Europe enables the member states to develop pension reforms indicative of concrete and broad objectives. In this sense Europe should be leading a comprehensive strategy for the achievement of a sustainable and safe level of retirement provision in the Union as a whole.

2.1. New procedures

Within the new European approach to social policy known as the open method of coordination, whose methodological foundations were formally laid down at the Lisbon summit, there is also a specific methodology with regard to pensions.

“The Stockholm European Council in March 2001 laid the ground for the open method of co-ordination on pensions. This process was finally launched by the Laeken European Council in December 2001 on the basis of eleven common objectives under the three headings: safeguarding the capacity of systems to meet their social objectives, maintaining their financial sustainability and meeting changing societal needs.”¹⁶ Both the Employment & Social Affairs Council and the EcoFin Council, besides the European Councils of Laeken and Barcelona, agreed on *11 common objectives and a working method for European co-operation in the field of pensions*.

This method is most often used where EU Treaty powers are limited, in a context where this new instrument of soft law – which, since the Luxembourg process, formalised by the Amsterdam Treaty, had already been applied in the employment field – is aimed at deepening and developing policy co-ordination at EU level.

The open method of coordination is a mutual feedback process of planning, examination, comparison and adjustment, on the basis of common objectives, of the member states’ policies. The effectiveness of the process depends on the development of common indicators, benchmarks, and targets, accompanied by peer review and exchange of good practices, in order to facilitate mutual learning and monitor progress towards agreed goals.

As far as pensions are concerned, the procedure consists of a “fairly light process, where member states report to each other every three or four years on how they include commonly agreed objectives in their national policy, with a yearly update which will make it possible to integrate common conclusions on pension policy into the Broad Economic Policy Guidelines drawn up by the Union every year”¹⁷. The convergence emphasis built into this methodology is evident and the definition of a set of pension indicators has reinforced this approach, while increasing its visibility and liability. The National Strategy Reports on Pensions, containing details of the steps being taken by the member states to meet the eleven common objectives,

¹⁶ Joint Report 2003, p. 5.

¹⁷ Frank Vandenbroucke (Minister for Social Affairs and Pensions – Belgian federal Government), “*The EU and social protection: what should the European Convention propose?*”. Paper presented at the Max Planck Institute for the Study of Societies, Cologne, 17 June 2002, p.9.

were submitted in September 2002, and the Commission subsequently analysed these reports with a view to assessing to what extent the eleven common objectives were being achieved.

These common objectives refer to the adequacy of pensions, the financial sustainability of pension systems and their modernisation in response to changing societal needs. The attention to the image of an integrated approach is apparent not only to the institutional actors involved in this process but also from the coherence which emerges from an analysis of the eleven objectives¹⁸. The results of the reports on pensions have to be integrated into the Broad Economic Policy Guidelines, an instrument in the hands of the EcoFin Council. This could mean that the financial aims acquire greater importance than the adequacy of pensions.

The member states agreed to draft a National Strategic Report on pensions, the first one by September 2002, in which to present their efforts and results at national level, and to start developing detailed indicators for the future monitoring of actions in the field of pensions.

The first Joint Report of the Commission and the Council on adequate and sustainable pensions also contains mention of supplementary pensions. Concerning the relative importance of supplementary pensions the report states: “In the United Kingdom and the Netherlands these represent about 40% of pensioners’ income, representing roughly a pension expenditure equal to 5-6 percentage points of GDP. In Denmark and Ireland second-pillar pensions amount to about 25-35% of pensioners’ income; while in Belgium, Luxembourg and Sweden this share is in the range of 10-25%. In the remaining countries of the EU, the share of second-pillar pensions is currently below 10% and is almost negligible in a few countries (GR, F, A). The importance of second-pillar pension schemes is expected to increase in most countries as the development of such schemes is encouraged and a greater share of current workers pay contributions to such schemes.”¹⁹

The report assesses the directive on institutions for occupational retirement provision as a major step towards reduction of the risks for funded pension provision through effective supervision and prudent asset management.

The report also states the urgency of a modernisation of the second pillar, as “atypical workers continue to be less well covered by occupational schemes and, in many Member States, workers who change jobs tend to end their careers with reduced occupational pension rights compared to workers who remain with the same employer.”²⁰ “Both statutory and occupational pension schemes need to be adapted to more flexible forms of employment and greater mobility by improving access to pension rights and enhancing their portability.”²¹

¹⁸ For instance, the first common objective states that member states should “ensure that older people are not placed at risk of poverty and can enjoy a decent standard of living...”. According to the sixth objective member states should also “reform pensions systems in appropriate ways taking into account the overall objective of maintaining the sustainability of public finances...”.

¹⁹ Joint Report 2003, p.78.

²⁰ Joint Report 2003, p.8.

²¹ Joint Report 2003, p.86.

Since occupational pensions tend to be less redistributive, the poorest pensioners have not benefited from the growth in private and occupational pensions.²²

This is also a problem as regards the gender issue. Statutory pension systems recognise career breaks for raising children. There are also some occupational schemes with stronger solidarity elements which do award pension credits for such periods. In defined-contribution schemes women may receive lower pension benefits due to the use of gender-specific actuarial factors. The report concludes that the increasing importance of supplementary pension provision might have an adverse impact on equality between men and women, although access to occupational pension schemes is being improved in many Member States.²³

In the Broad economic policy guidelines for the period 2003–2005 the Commission states that reforms of pension systems should be forcefully pursued in line with the broad common goals agreed by the Gothenburg and Laeken Councils. The joint report on Member States' pension strategies was welcomed by the Brussels spring European Council in March 2003 which concluded that to secure the sustainability of adequate pensions more wide-ranging and ambitious efforts are necessary. To address the budgetary impact of ageing in a timely manner, full use should be made of the current window of opportunity before the effects of ageing are felt more forcefully.

In particular, according to the Commission's recommendations, member states should over the coming three years ensure a further decline in government debt ratios "in view of the cost of ageing". An amendment by the parliament, which related the need for debt reduction to "meeting changes in societal needs and ensuring sustainable and modern welfare states as well as safeguarding high quality and universal access to social security and pension schemes" was not adopted by the Council.²⁴

The Commission and the Council urge member states to reform their pension systems in pursuit of certain core goals: they should make the pension system cope better with demographic developments and expected increases in life expectancy and they should "encourage longer working lives by modifying incentives embedded in pension and tax-benefit systems that encourage early withdrawal from the labour market and by restricting access to early retirement schemes."²⁵ The parliament proposed an amendment – also not accepted by the Council – which suggested "to increase the effective retirement age through voluntary decisions by workers, and give incentives to companies in order that they do not reduce employment of older workers."²⁶

The Commission and the Council also recommend to increase funding and improve, where necessary, access to supplementary pension schemes and ensure the safety of such benefits,

²² Joint Report 2003, p.38.

²³ Joint Report 2003, p. 94.

²⁴ Council recommendation of 25 June 2003 on the broad guidelines of the economic policies of the Member States and of the Community (for the 2003–05 period).

²⁵ COM 2003, p. 14.

²⁶ COM 2003, p. 54.

while increasing transparency between contributions and benefits. The parliament's amendment, which recommended the "elimination of tax obstacles to the cross-border provision of these schemes" did not find its way into the Council position.²⁷ Finally, supplementary pension systems should be adapted to more flexible employment and career patterns as well as to individual needs, including the portability of pension benefits.

2.2. Directive on the activities of institutions for occupational retirement provision and the dispute about prudential rules

The directive on the activities of institutions for occupational retirement provision was adopted, on 13 May 2003, by the Council which agreed on the text adopted by the parliament at its second reading on 12 March 2003. A move to reject the common position was lost with 156 vote in favour and 3838 against.

The Member States have to implement the directive within 24 months. The first specific proposal from the Commission, namely on activities of IORPs, is dated 11 October 2000.

This Directive is a major part of the European Commission's Financial Service Actions Plan, which aims at creating a single market for financial services by 2005. Compared to the Directive on safeguarding the supplementary pension rights of employed and self-employed persons moving within the European Union, the Directive on pension funds focuses on the role of the institutions for occupational retirement provision from an economic and financial perspective. The directive is also communicated as a means in the context of scaling back the public pensions systems. Internal Market Commissioner Bolkestein stated that "Pension Funds and comparable institutions can play a useful role in helping to tackle the pension time bomb. This Directive will enable them for the first time to take full advantage of the Internal Market."²⁸ The directive itself states: "Since social security systems are coming under increasing pressure, occupational retirement pensions will increasingly be relied on as a complement in future."

The consensus expressed by the Commission towards this political agreement does not depend solely on the fact that the Council has agreed on a position setting the way for the evolution of the procedure²⁹ which led to the directive, but also on the evaluation that the text approved by the Council included the substantial approach and principles of the Commission's proposal.

An important purpose of this directive consists of enabling institutions in one member state to manage company pension schemes in other member states.

The concept of "prudential framework" can differ very widely according to the idea one has of prudential rules and to the role they can play to represent a form of control on pension funds managers' freedom. The member states build a system of mutual recognition of each others' prudential supervision. A single pension fund needs to report to one supervisor no matter where it operates in the EU.

²⁷ COM 2003, p.54.

²⁸ Ibeuropa 6661 14.3.2003.

²⁹ According to art.251 of the Treaty the procedure implies a second step, that is a second reading, already undertaken, leading to a common position of the Council to be then forwarded to the European Parliament.

In real terms, the main target of this political agreement is constituted by the managers of the pension funds rather than the future pensioners.

Concerning the definition of benefits of IORP there is no obligation for the institutions to cover biometric risks and to provide life-long rents. This has been a point of conflict between member states and different political representatives within the parliament. The adopted compromise is only one of formulation. The directive states that IORPS “should generally provide for the payment of a lifelong pension. Payments for a temporary period or a lump sum should also be possible.”

In fact, the basic idea of this Directive is to enable institutions for occupational retirement provision to reap full benefits from the internal market and the monetary union and the best instrument to achieve realisation of this principle is considered to be the dismantling of administrative constraints and the elimination of the costs which make the management of pension funds too costly through low returns.

The Commission has claimed to be particularly pleased about two elements of the text approved by the Council: the maintenance of the Commission’s twin objectives of security and affordability of occupational pensions, on the one hand, and the maintenance of the autonomy of organisation and efficiency of the national pension systems, on the other.

Regarding the scope of the Directive, book reserves schemes, where benefits are paid by the employer directly to the employee from company funds, continue to be excluded; nor does the directive cover pay-as-you-go schemes.

From the point of view of prudential framework, the rules required concern mainly the fact that the funds have to hold sufficient assets to cover their commitments. The institutions must at all times hold sufficient and appropriate assets to cover the technical provisions. Cross-border operations, in particular, are required to be fully funded at all times.

The supervisory authorities of the home member state (where the pension fund is located) and the host member state (where the enterprise and the members are located) are required to cooperate.

The directive opens up the possibility of pan-European pension funds. Multinational companies might achieve significant savings by pooling their pension funds schemes in a single fund, rather than running different funds in each member state. The Commission estimated that a large multinational could save up to 40 million EUR if it pooled the various schemes of the 15 member states in a single fund.³⁰ The EFRP even published a “conservative” estimate of savings for multinationals of 3 billion EUR a year.³¹

From the point of view of investment rules, a qualitative approach is followed through the introduction of some general qualitative principles which define the concept of prudence. The ‘prudent person rule’ is laid down, which states that the allocation of assets must be decided in the light of the liabilities entered into by each fund and not in the light of a single set of quantitative rules. This means a huge deregulation concerning the investment rules of many member states. More detailed, quantitative rules are possible only if prudentially justifiable

³⁰ ibeurope 6661, 14.3.2003.

³¹ EFRP 2003, p. 21.

and within very strict conditions and limits. The prudent person principle leads to a deregulation of investment rules, because member states cannot prevent institutions from investing up to 70 % in shares. The investment rules adopted by the Directive are very similar to those of the member states with very liberal investment requirements such as Denmark, Ireland, Luxemburg, the Netherlands, the UK or Sweden.

The European Economic and Social Committee demanded even more liberal investment rules. An opposing demand, which stated that the liberal rules contain too much risk for an old-age security system, remained a minority position.³²

As will be evident, this directive concerns numerous economic aspects regarding the activities of IORPs, but the term ‘socially prudential rules’ is not clearly expressed. That is why it is important to analyse the reaction coming especially from the most important social actors.

The ETUC states that occupational pension schemes should not be considered as an alternative solution to the problem of the viability of public pension systems.³³ As regards the directive, the ETUC regrets that the Joint Council did not take into account its demands, in particular the participation of social partners in the funds and the choice of the management body, the need for sustainability criteria and the obligation to cover biometric risks.³⁴

The ETUC has always advocated, as far as pension funds are concerned, the Code of good practice³⁵ it established with EURESA. The principle in question relates to the participation by the trade unions in the management of pension funds.

As expressed also in reaction to the Council political agreement on the Directive on pension funds, the ETUC has remarked the persistence with which the workers’ representatives continue to be excluded from the management and control institutions of the pension funds.

The Code of good practice, which constituted a response to the green paper on supplementary pensions drawn up by the Commission in 1997, considers such participation a fundamental prerequisite for the socially responsible management of occupational pensions. This implies, added to the concerns expressed in recent contributions and that were already at issue by that time (such as atypical workers’ rights or equality of access and benefits for both men and women), an attention to continuous information and transparency from workers’ representatives to the affiliated workers, besides the training of the representatives involved.

These demands show how trade union concerns are based on social ethical criteria which should guarantee an adequate level of security and protection to future pensioners, beyond a more superficial level of security arising from the economic efficiency that results from freedom of investment and absence of constraints for the managers of pension funds in the financial market and in the EU internal market.

³² ESCS 28.3.2001.

³³ Resolution adapted by the EC 13/14.12.2000.

³⁴ ibeurope 6644, 12.3.2003, Resolution of EC 13/14.12.2000.

³⁵ “Code of good practice for the management of pension funds”: a Euresa document supported by the European Confederation of Trade Unions (1998).

On the other hand, UNICE, the organisation of industrial and employers' confederations of Europe, strongly favoured the "prudent man principle" and the liberalisation of pension fund activities, which should reduce capital costs, raise returns of the pensions funds and alleviate pressure on public pension schemes. Quantitative restrictions should be used only to the least extent and for the shortest time possible.³⁶ The directive is described as win-win-win directive: employees would benefit from higher retirement benefits, employers from lower pensions contributions and the economy via venture capital and relief of pressure on the public pension schemes.³⁷

The Economic and Monetary Affairs Committee approved a series of amendments to the Council Common Position regarding the IORP directive.³⁸ One amendment tried to introduce a transitional period of five years for those Member States which do not currently operate the prudent person principle. This amendment was not finally adopted. Other amendments sought to strike a balance between making such schemes attractive to the pension funds and at the same time ensuring social benefits to cover, for example, provisions for survivors or disability, albeit with due respect for subsidiarity and benefits offered by state pension schemes.

The tax treatment of pension funds

Another policy field where progress will be particularly important for the follow-up of this directive and for the development of pensions policy at European level is the tax package. Following the communication from the Commission of April 2001 'on the elimination of tax obstacles to the cross-border provision of occupational pensions', the steps to be undertaken by the Council in this field become fundamental.

A major problem for workers' mobility is that conditions for tax recognition of schemes vary widely across the Union. Taxation also prevents cross-border provision of occupational pensions because of tax discrimination and system diversity.

There are three systems of taxation:

Most member states have the EET-System which exempts contributions and capital gains and taxes the benefits. Three member states apply the ETT-System which exempts the contributions and taxes capital gains and benefits. Finally two states operate a TEE-System, which taxes the contributions and exempts the capital gains and benefits.

Changes between member states can lead to double taxation, if an employee is working in a TEE State and retires to a EET State, as well as to non-taxation, if an employee works in an EET State and retires to a TEE State.

The Commission favours a broader application of the EET principle within the European Union. for a number of reasons: Firstly eleven member states use it already, secondly the tax deferral on contributions encourages retirement provision and thirdly it helps to cope with

³⁶ UNICE 20.9.2002.

³⁷ UNICE 6.3.2002.

³⁸ <http://www.ibeuropa.com/Database/6400/6560.htm>, 6568 21.02.03.

ageing as it reduces tax revenues today in exchange for higher tax revenues at the time when the demographic situation will have become more unfavourable.³⁹

But it has to be stressed that the EET systems vary widely among the different states as regards the conditions of tax deductibility (e.g. percentage of pay-roll, benefits levels). Progress in this field fails because Member States fear a loss of tax revenue.

Occupational pension taxation systems

	EET	ETT	TEE
Belgium	X		
Denmark		X	
Germany	X		X ⁴⁰
Greece	X		
Spain	X		
France	X		
Italy		X	
Ireland	X		
Luxembourg			X
Netherlands	X		
Austria	X		
Portugal	X		
Finland	X		
Sweden		X	
United Kingdom	X		

Source: COM, 19.4.2001, p. 7

Many member states do not allow tax deduction of pension contributions paid to a pension fund in another member state. The ECJ has *struck down* national restrictions in the Danner Case on 3.10. 2002 and in the Skandia/Ramstedt Case on 26. 6. 2003.⁴¹ In the latter Sweden refused deduction for the contributions paid to foreign pension providers. In both cases the Court decided in favour of the taxpayer.

³⁹ COM 2001, S. 19.

⁴⁰ The German 2001 pension reform introduced subsidies and tax incentives for saving in private pension schemes. So it is not true that Germany adopts only the TEE principle. In ten so-called Pensionskassen contributions of up to 4% remain income tax free, while benefits are fully taxable (EFRP 2003, p.62).

⁴¹ Schonewille, 2003.

The Commission point of view is that national restrictions impeding cross-border provision of occupational pensions without objective justification infringe the EC Treaty. The European Commission decided on 5.2.2003 to start an infringement procedure against six member states because they are discriminating against foreign pension funds. Belgium, Denmark, France, Italy, Spain and Portugal grant tax relief for contributions to national occupational pensions funds, but deny tax relief for contributions paid to foreign funds. These states have to modify their tax legislation, otherwise the Commission could refer the matter to the ECJ for a formal ruling. The Commission has sent a formal request to Denmark to amend its legislation, which is the second stage of the infringement procedure, and it has opened infringement proceedings against the other five mentioned member states.⁴² In July 2003 an infringement case was also opened against Ireland.⁴³

2.3. Transferability and portability of pension entitlements

In September 2003 the Commission called on the social partners to “adapt occupational pension schemes under their responsibility in such a way that workers who change jobs or interrupt their careers do not suffer undue losses of occupational pension rights.” This was the second stage of consultation, the first having been launched by the Commission on 12 June 2002.

According to Article 137 of the EC Treaty the Commission must, before submitting a proposal in certain fields which include social security and social protection of workers, consult the EU-level social partners on the content of the envisaged proposal.⁴⁴

The Commission believes that current rules represent a major obstacle to workers’ mobility.

The directive 98/49/EC ensures that posted workers can continue to make contributions to the pension funds in their member state of origin. But it fails to address “the obstacles to mobility linked to the conditions for the acquisition of rights, their preservation or their transferability.”⁴⁵ These obstacles are minimum ages, waiting periods before joining a scheme and minimum periods of membership” (vesting period). Workers may bear the inflation risk if acquired pension entitlements remain frozen in nominal terms or are not fully index-linked. Transferability may not be allowed, may be limited or the methods for calculating the value of the transfer may lead to reduced pension benefits.

The positions and contributions of the social partners ETUC and UNICE

According to the Commission, the employers’ organisations (UNICE, UEAPME, HOTREC) opposed the introduction of EU legislation on the conditions of acquisition, preservation and transferability of pension rights. According to UNICE the EU initiative should be limited to cross-border transfers, whereas the banking and insurance organisations (FBE, CEA, FIEC) supported a common framework, but demanded flexible instruments, such as recom-

⁴² Press Release 5.2.2003 IP/03/179.

⁴³ COM 15.9.2003, S. 7.

⁴⁴ COM 12.6.2002 IP/02/846.

⁴⁵ COM 15.9.2003., S. 2.

mendations. The employee organisations (ETUC, CEC, EUROCADRES), meanwhile, were in favour of a European regulatory framework.⁴⁶

Starting from the position adopted by the European Trade Union Confederation (ETUC) in relation to the Communication from the Commission to undertake the “first stage consultation of social partners on the portability of supplementary pension rights”, the draft ETUC response points out that the trade unions have issued strong calls for a “regulatory framework at European level which covers the financial, social and fiscal aspects of the implementation of occupational retirement schemes”⁴⁷.

Since the Helsinki Congress Resolution of 1999, the ETUC has been stressing the idea that migrant workers should not be penalised when moving within the Union and hoping to acquire or maintain pension rights.

The main points underlined by the ETUC concerned the possibility of cross-border membership, the abolition of waiting periods before the final acquisition of pension rights, the co-ordination of tax, statutory and supplementary pensions, together with the right to work.

A main concern for the trade unions is the question of access of part-time workers to occupational pension schemes.

Regarding the transfer of supplementary pension rights for migrant workers, this opportunity should be an option rather than an obligation and the Commission should grant a detailed regulatory framework of principles for such transfers dealing with the wide variety of schemes involved.

Furthermore, the ETUC makes a precise distinction on each issue to be tackled at cross-sectoral level and/or at sectoral level, thereby consolidating the value and the role to be played by the Social Dialogue and the instrument of collective agreement at European level.

The ETUC gives priority to the European social dialogue for the elaboration of the major principles. Should the other partners be unwilling to participate in such negotiations, the ETUC calls on the European Commission to assume its responsibilities and take the necessary measures to ensure the implementation of these principles. According to the ETUC measures such as “recommendations” or “codes of good conduct”, or even “examples of best practices”, would not provide a suitably effective response.⁴⁸ According to the ETUC the acquisition of occupational pension rights should be independent of the period of

⁴⁶ COM 15.9.2003, S. 8f.

UNICE: Union of Industrial and Employers' Confederations of Europe, UEAPME: European Association of Craft and Small and Medium-sized Enterprises, HOTREC: European Association of Hotels, Restaurants & Cafés in Europe, FBE: Fédération Bancaire de l'Union européenne, CEA: Comité Européen des Assurances, FIEC: European Construction Industry Federation, ETUC: European Trade Union Confederation, CEC: Confédération Européenne des Cadres, EUROCADRES: Council of European Professional and Managerial Staff.

⁴⁷ Draft ETUC response to the Communication from the Commission, “First stage consultation of social partners on the portability of supplementary pension rights”, p.1.

⁴⁸ ETUC, 16.10.2003.

employment in the company or in the country, the employee's age and his or her working time, or the amount of his or her salary.

The ETUC calls for a European regulatory framework because, given the diversity of the existing schemes, the absence of such a framework is likely to penalise workers migrating within the union.⁴⁹

UNICE welcomes the Commission's decision to consult the social partners but believes that the measures would go beyond cross-border issues as far as they tackle the conditions for acquisition, preservation and transferability of supplementary pension rights at national level. The EU initiative should remove obstacles to free movement without interfering with the organisation of supplementary pensions. UNICE opposes harmonisation and proposes that the EU level should foster portability by organising exchanges of experiences and information-sharing.⁵⁰ Therefore UNICE states in its reply to the Commission's second stage of consultation that it does not intend to open negotiations on these issues.⁵¹

Conclusions

The emergence of the pensions issue at the European level has been the result of two basic pressures. On the one hand there is the European input regarding the public pension schemes. This pressure comes in particular from the Commission and ECOFIN and aims to coordinate fiscal policy between the member states in view of the impacts of ageing on public deficits.

Accordingly, besides the requirements of the Maastricht Treaty and the stability and growth pact, also the structure of public expenditure and its probable development is surveyed on the European level through application of the open method of coordination.

On the other hand, the variety of national systems, particularly where supplementary pensions are concerned, represented an obstacle to the creation of an internal financial market. The DG Internal Market therefore promoted the "Directive on Institutions of Occupational Retirement Provision" as a means to create an internal market for financial services, this being an important component of the financial services action plan. This consideration was the most important impetus for the directive, whereas questions like the definition of benefits, covered risks and involvement of social partners in those institutions played a far less important or even negligible role.

In fact, as we have seen, the question of the institutions which manage occupational pensions is the arena in which economic, fiscal and social concerns are entangled. According to the ETUC the Directive should have included stronger attention to the rights of pensioners and workers from the point of view of sustainability criteria and the participation of the workers' representatives in the management, the control and the investment strategies of Pension Funds.

The major effect of the directive will be a deregulation of investment requirements, which is a necessity in creating an internal market for financial services. But, in order to enhance

⁴⁹ ETUC, Infobase europe 6011 16.9.2002.

⁵⁰ Infobase europe 6043 23.9.2002.

⁵¹ UNICE 2003, p. 5.

workers' mobility, the obstacles regarding different taxations, portability and transferability should be removed.

In relation to the first question the Commission has opened infringement procedures against discriminatory tax treatment; in relation to the second, the second stage of consultation of social partners remained without an outcome, because the employers' organisations were unwilling to open negotiations on these items.

The relative importance of occupational retirement provision in the member states remains extremely variable in terms of coverage and pension levels. Accordingly, even after the directive has come into force, there will be no single European model of old age provision. There are similar tendencies towards recommodification and privatisation of risks and an upgrading of second- and third-pillar pensions in the member states, but these processes evolve from very different starting points.

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