EAPSPI

Pensions for the Public Sector

# ANNUAL REPORT 2010

# CONTENT

# FOREWORD

The key challenges for pension schemes in the first two decades of the new millennium are the demographic evolution and the volatility of the financial markets which increasingly became part of our investment strategy following the financial and economic crisis of the last few years. Thus adequacy and sustainability of pensions are overarching issues of today's pension policies for both: statutory pension schemes of the first pillar and supplementary pension institutions – and therefore for all members of EAPSPI. It is hardly surprising that the Green Paper of the Commission dealt with these problems and analysed those issues and questions in a broad-based approach. More than 1,600 contributions received by the Commission during the consultation phase between July and November 2010 show the relevance of those topics for all of us. Pensions will remain on the Commission's agenda because the follow-up document, the White Paper, has already been announced for the third quarter of 2011.

The role of EU regulation is steadily increasing for statutory and supplementary pension institutions. In 2010 there were various new developments apart from the Green Paper: Supplementary pension schemes and their supervisors will face the new European authority EIOPA as from the 1 January 2011. The ECJ-judgement of 15 July 2010 on social partners' rights and the free market has generated many questions to be solved in the near future. With regard to statutory pensions, the new regulatory framework of social security coordination became applicable as from 1 May 2010 after a long lasting discussion especially about technical details. These rules will result in further improvements for mobile workers in Europe and replace the former Regulation 1408/71 after almost 40 years.

Despite the increasing importance of EU-law for statutory and supplementary pension institutions, the core competence will remain in the hands of the Members States and the social partners. Reciprocal knowledge of the problems and answers found in other countries is not only interesting but helpful and important in finding our own solutions at national level. The country reports in this second edition of EAPSPI's annual report therefore are meant to foster the mutual exchange of information and to offer possible solutions for our own national schemes.

Wolf R. Thiel
Chairman

Hagen Hügelschäffer
Secretary General

# THE NEW REGULATORY FRAMEWORK OF SOCIAL SECURITY COORDINATION

### Regulations governing social security coordination

The new regulatory framework of social security coordination – the Regulation 883/2004 (basic Regulation) and the Regulation 987/2009 (implementing Regulation) – became applicable the 1 May 2010.

Those regulations constitute the third set of regulations governing social security coordination since the inception of the European Community in 1958, following Regulations 3/58 and 4/58 and the current Regulations 1408/71 and 574/72.

The new regulation will apply to all EU nationals who are insured under national law, whether they are employed, self-employed, students, civil servants, pensioners or indeed, non active.

### Main characteristics of the new regulations: Coordination not harmonization

The new regulation respects the characteristics of national social security legislation, by creating a system of coordination, and does not harmonise the systems. In the framework of coordination, Member States retain their own rules. However, Community law imposes certain rules and principles so as to ensure that application of the different national systems does not harm persons who exercise their right to free movement.

### New regulations main goals

**Broader scope**

- Coverage of all citizens who are subject to the social security legislation of a Member State, including non-active persons;
- Creation of new benefits such as equivalent paternity and pre-retirement benefits;
- Reinforcement of the right to export social security benefits;
- Introduction of the concept of “temporary affiliation”, when the institutions of different Member States are unable to agree on which is applicable. This offers access to treatment and sickness insurance benefits under a statutory scheme during this period.

### Modernisation

Regulation 883/2004 has introduced a new system to harmonise the electronic exchange of information between all Member States known as Electronic Exchange of Social Security Information (EESSI). Under this system a series of Secure Electronic Documents (SEDs) are used between Member States in a common secure network to exchange information and give effect to the principle of enhanced cooperation between Member States. The SEDs will contain all the relevant information obtained from the workers successful application form. The contents and layout of the SEDs have as yet to be finalised by the Administrative Commission. There will be a two year transition period, from 1 May 2010 to 30 April 2012, for Member States to move from the paper based exchange of information to a fully electronic system.

### Simplification

Developments at Community level, specially the judgements of the Court of Justice have made the coordination rules complex and lengthy.

- **Shorter -** The new regulatory framework is shorter than the old one.

- **"Easier" to understand articles -** Special provisions concerning the various categories of benefits were simplified and some seldom applied provisions were abolished. This Regulation stipulates that all persons residing in the territory of a Member State are subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.

### Important Items

**Determination of the applicable legislation**:

- The rules which determine which legislation is applicable in a cross border situation have been made clearer and more coherent.

- The regulations repeat that a person should be subject to the legislation of only one Member State at a time. In addition, the *lex loci laboris* principle holds that, as a general rule, the legislation which is applicable is that of the Member State in which the person pursues his/her activity as an employed or self-employed person. Title II of the Regulation contains particular rules, such as rules for civil servants, who are subject to the legislation of the Member State to which the administration employing them is subject or for persons who are employed or self-employed in several Member States.

- Persons who are normally employed in two or more Member States are subject to the legislation of the Member State of residence if they pursue a substantial part of their activity in that Member State. If they do not pursue a substantial part of their activities in the Member State of residence they are subject to the legislation of the Member State in whose territory the registered office or place of business of their employer is situated. However, in the case of self-employment, a person is subject to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State. If the person does not reside in one of the Member States in which he/she pursues a substantial part of his/her activity, he/she is subject to the legislation of the Member State in which the centre of interest of his/her activities is situated.

### Principle of good administration

Regulation 883/2004 also introduces the principle of good administration. The institutions must respond to all queries within a reasonable period of time and must in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Regulation. Besides, in the event of difficulties in the interpretation or application of this Regulation, the institutions involved must contact one another in order to find a solution for the person concerned.

In return, the persons concerned should inform the institutions about any change in their situation which may affect their claim to benefit.

### Transitional period

**General Rule:** The Member States and their institutions had until 1 May 2010 to implement the new regulations.

### Exceptions

- To take account of the needs of certain Member States to adapt their own systems, provision has been made for a transition period of two years for the electronic exchange of data. By May 2012, however, all of the Member States should be using this technique to exchange information between social security institutions and for all areas covered by coordination.

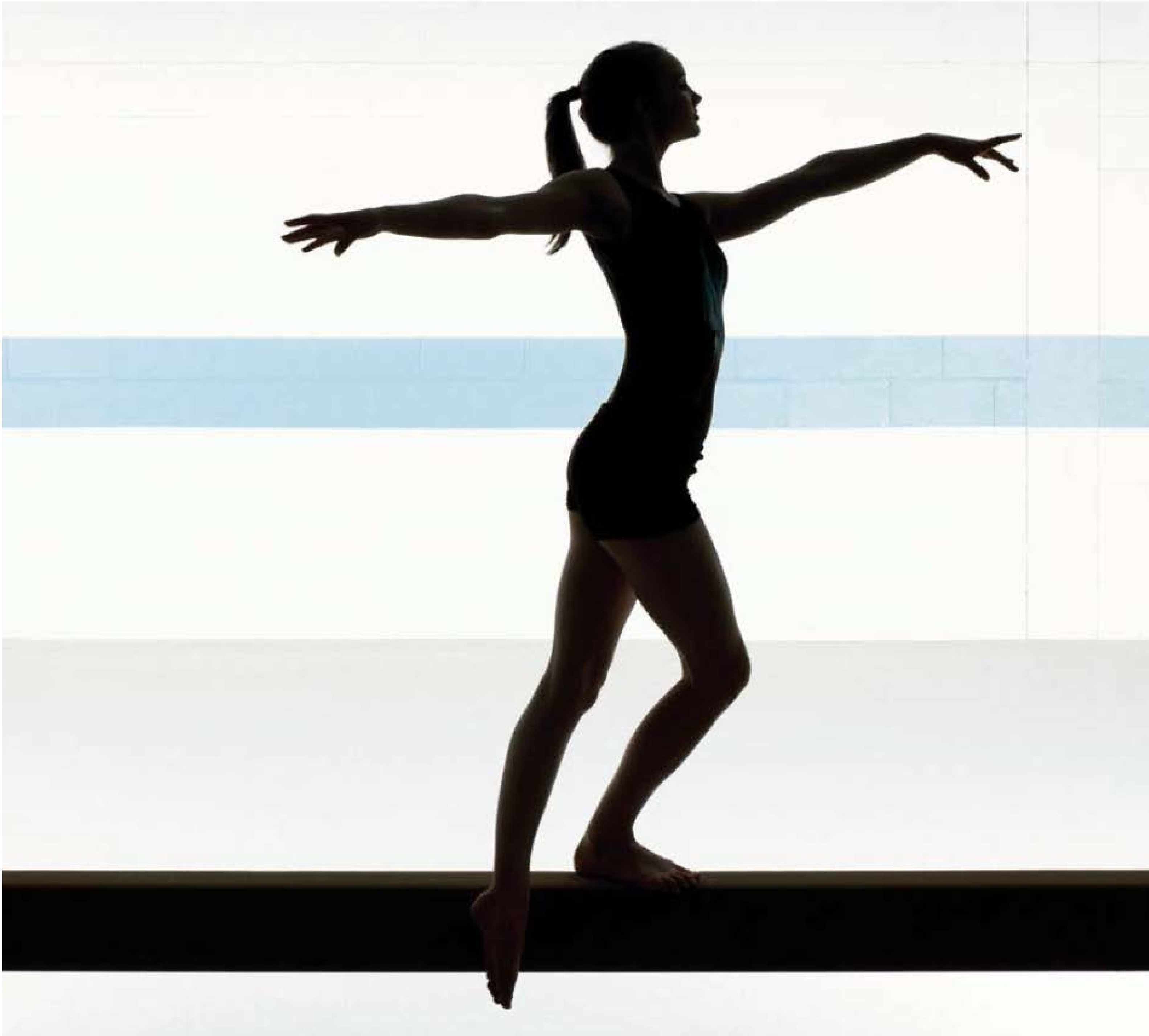
- Regulation 883/2004 also provides for a transitional period of maximum 10 years during which a person remains subject to the legislation of a Member State determined in accordance with Title II of Regulation 1408/71 (the worker may ask to be subject to the legislation applicable under the new Regulation).

### Third country nationals

It is important to note that the provisions of Regulation 1408/71 will continue to apply with regard to third-country nationals, as the new Regulation will only apply to them once the Member States have agreed to enlarge the scope of application to that extent. The provisions of Regulation 1408/71 will also continue to apply in relation to Norway, Iceland, Liechtenstein and Switzerland, as agreements with those countries still have to be concluded with regard to the application of Regulation 883/2004 for workers moving within the EEA and Switzerland.

Vasco Costa
CGA, Portugal

# EUROPEAN SYSTEM OF FINANCIAL SUPERVISION



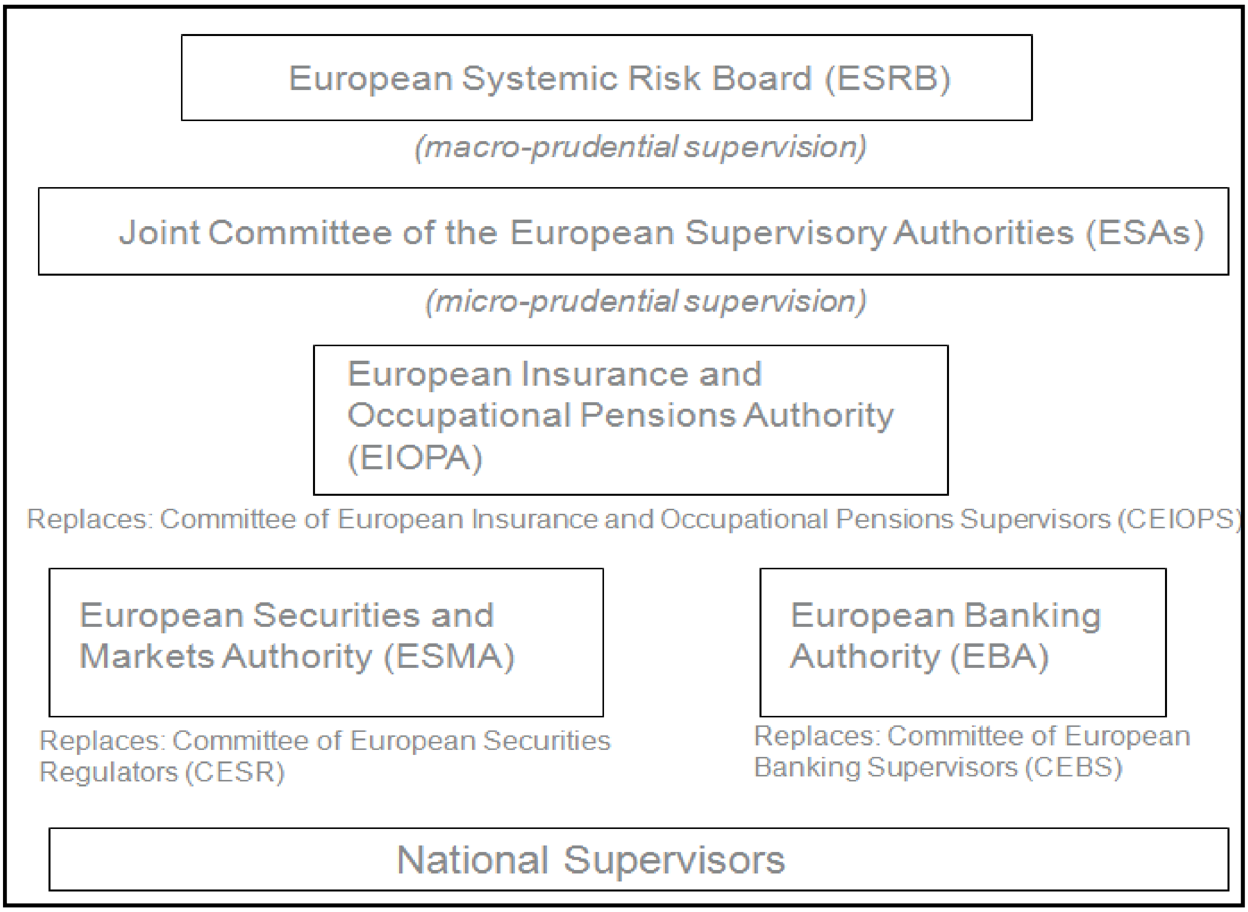
## European system of financial supervision

After almost two years of intensive discussions, the European Parliament passed the new financial supervisory framework after having reached a compromise with the Council. This new framework should eliminate deficiencies in the structure of financial supervision that were exposed during the financial crisis.

**Calendar**:

| | |
|---|---|
| **November 2008**: | The De Larosière-Group was appointed to give advice on the future of European financial regulation and supervision. |
| **25 February 2009**: | The De Larosière-Report was issued, formulating the need of strengthening the supervisory framework in order to reduce the risk and severity of future financial crisis. |
| **March to May 2009:** | The Commission issued communications with proposals to bring forward a draft legislation to create the so-called European System of Financial Supervisors (ESFS) and ideas about a possible architecture for such a new supervisory framework. |
| **19 June 2009:** | The European Council confirmed the need for the establishment of a new ESFS. |
| **23 September 2009:** | The Commission presented proposals for the legal framework of the new supervisory framework. |
| **January to July 2010:** | Comments from the European Central Bank (ECB), the European Economic and Social Committee (EESC), the Committee for Economics and Monetary Affairs (CEMA), the European parliament (EP) and the Economic and Financial Affairs Council (ECOFIN) were taken into account. |
| **22 September 2010:** | The EP voted and passed the new supervisory framework for the financial regulation of the European Union (EU). |
| **17 November 2010:** | The Council adopted the legal texts establishing the European Systematic Risk Board (ESRB) and three new supervisory authorities. |
| **1 January 2011:** | The ESFS came into force, after two years and one month since the consultation started. |

The new European System of Financial Supervisors (ESFS) is composed of the following different bodies:




**The European Systemic Risk Board (ESRB)** deals with the macro-prudential supervision. It monitors and assesses risks to the stability of the financial system as a whole and gives early warnings of the systemic risks and recommendations for recovery actions. However, the ESRB does not have any binding legal authority. The seat is in Frankfurt. It has a decision-making body, the General Board, assisted by a Steering Committee. Another body, the Secretariat, is responsible for the day-to-day issues of the ESRB, providing high-quality analytical, statistical, administrative and logistical support. Finally, there is an Advisory Scientific Committee and an Advisory Technical Committee, providing advice and assistance on issues relevant to the work of the ESRB.

**The Joint Committee of the European Supervisory Authorities (ESAs)** coordinates the activities of the single ESAs that deal with the micro-prudential supervision. The different ESAs are:

**The European Banking Authority (EBA)** that replaces the former Committee of European Banking Supervisors (CEBS).

**The European Securities and Market Authority (ESMA)** that takes the role of the former Committee of European Securities Regulators (CESR).

**The European Insurance and Occupational Pensions Authority (EIOPA)**, replacing the former Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). EIOPA is competent for insurance/reinsurance and for the occupational pension sector. Like the other ESAs, EIOPA is an EU body with legal entity. It is seated in Frankfurt and is represented by its Chairperson. The composition of EIOPA is as follows:

- **Board of Supervisors**: It is a decision-making organisation composed of the heads of the relevant competent authorities in each one of the Member States (MS), with some other members acting as observers only, representing the Commission, the ESAs and the ESRB.

- **Chairperson:** It is a full time position appointed by the Board of Supervisors.

- **Management Board**: It has an advisory role, it's own budget and work-programming tasks. It is composed of the chairperson of EIOPA, plus representatives of the Commission and the national supervisory authorities.

- **Executive Director:** It is a managing position. The Director has the right to participate in the meetings of the Board of Supervisors and of the Management Board, but with no voting right.

- **Board of Appeal:** It is a joint body of the three different ESAs, to whom the parties affected by the EIOPA decisions can appeal, and after it, to the European Court of Justice.

The **competences** of EIOPA are the following ones:

- Development of binding technical standards and interpretative guidelines, to be approved by the Commission.

- Development of guidelines and recommendations for national supervisory authorities to apply the uniform application of EU-law.

- Binding decisions in cases of disagreement within colleges of supervisors in matters of cross-border IORPs.

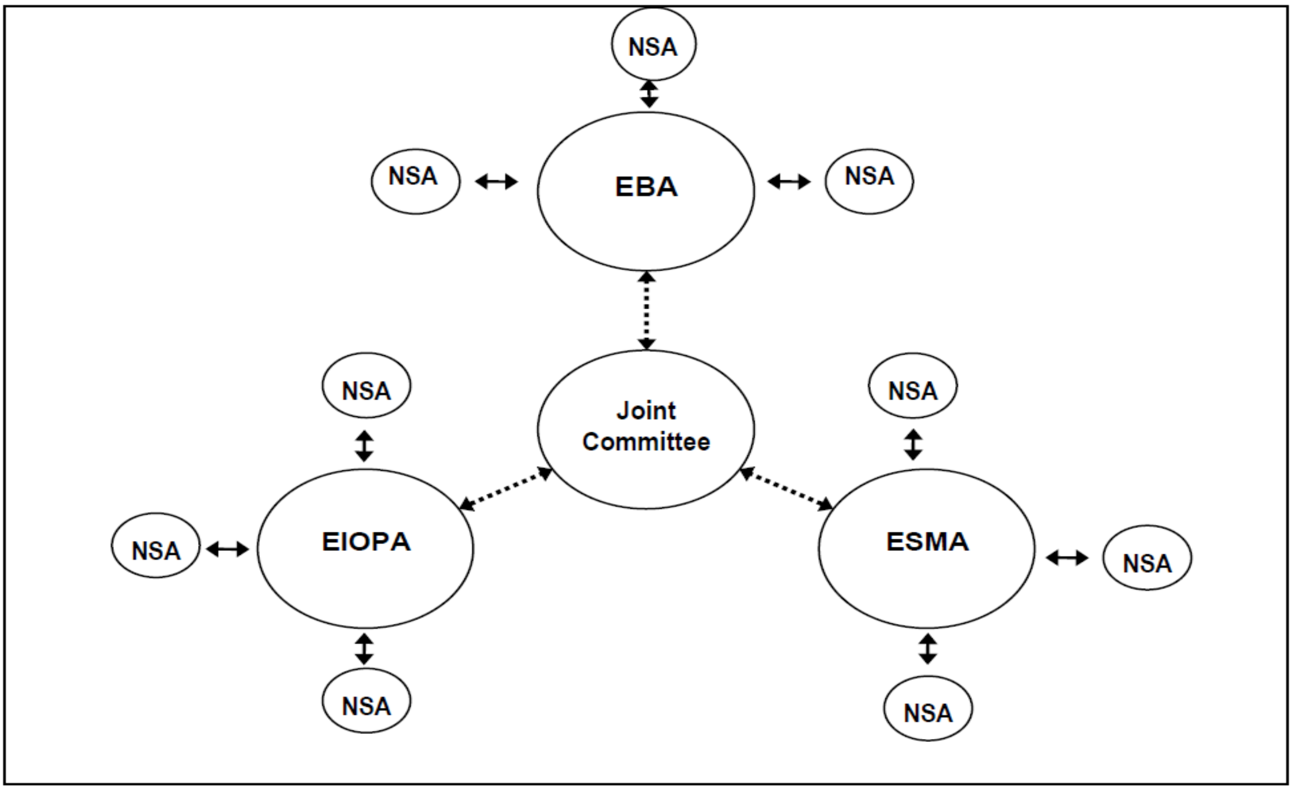
- Intervention in case of a manifest breach of EU law. In this case the Commission makes a binding decision on the national authority following a recommendation of EIOPA.

- Coordination in case of crisis.
- Collection of micro-prudential information.

Since the new supervisory framework has an impact on existing substantive law, all provisions affected by the new framework and its new Authorities are adopted by means of the so-called “Omnibus-Directive”. The amendments of the Directive 2003/41/EC, the IORP-Directive, are to be found in its Article 4.

The cooperation between the different ESAs and the NSAs (National Supervisory Authorities) “below” these new EU-organisms can be described by means of the following graph.

Werner Zarbach
VBV, Austria




Source: MEMO/10/434 of the European Commission – DG Internal Market – 22 September 2010

# THE GREEN PAPER ON PENSIONS

# GREEN PAPER

On 7 July 2010, the European Commission published the Green Paper "towards adequate, sustainable and safe European pension systems". This Green Paper was elaborated under the chairmanship of the Directorate General (DG) Employment, Social Affairs and Equal Opportunities in cooperation with the DG Internal Market and the DC Economic and Financial Affairs. This broad-based cooperation within the European Commission demonstrates that the issue of pensions has got a larger dimension than the mere social aspect.

**Green and White Paper**

A **Green Paper** is a document issued by the Commission as a preparatory text in order to promote a broad discussion on a specific issue among the different MSs and stakeholders involved. A **White paper** is a follow-up document that contains specific recommendations for future (legal) initiatives.

The starting point of this document is the financial market crisis and the global economic recession that have left deep scars in many places, including pensions. The financial crisis has rekindled the old debate on the architecture of the right pension system. Advocates of the welfare state are calling for a U-turn in pension policies and a return to the dominance of the pay-as-you-go (PAYG) state-run statutory pension schemes. Funded pension arrangements are only gradually recovering from the financial crisis by showing a marked improvement in the first half of 2009. Nevertheless their importance will steadily increase due to the demographic evolutions in almost all European countries that show a rising longevity and mostly declining birth-rates. Additional pension savings will therefore be inevitable to avoid old-age poverty and to assure a certain living-standard after retirement. This, however, requires that scheme designs have to be reviewed to ensure future adequacy and sustainability.

Against this background, the Commission first addresses the issue of how adequate incomes in retirement may be earned and how to ensure that pension systems are sustainable in the long term. Another aspect is achieving the right balance between work and retirement. The Commission also resumes the discussion on how to remove obstacles to people who work in different EU countries. Another challenge addressed in the paper is making pensions safer in the wake of the recent economic crisis and making sure that pensions are more transparent thus enabling people to take informed decisions about their own retirement income.

Even though the Commission has set a strong European accent by starting this discussion at

EU-level, it *"does not question Member States' prerogatives in pensions or the role of social partners and it does not suggest that there is one 'ideal' one-size-fits-all pension design"*. Solutions are therefore to be found especially by the Open Method of Coordination (OMC), which is principally based on an information exchange and mutual learning. However, there are some areas also in the field of pensions in which the Lisbon-Treaty has attributed legislative competencies to the Community legislator.

In this Green Paper, the Commission has formulated 14 questions. The first four ones are treating all kinds of pensions without drawing any distinctions between state-run statutory pension schemes (of the so-called first pillar) and supplementary pension arrangements, whereas the other questions are focusing on supplementary workplace or private pensions.

These questions are addressed not only to the Member States or to the stakeholder institutions, but to any single person. The Commission therefore established an internet-based questionnaire with a maximum of 2,000 characters per answer to any single question. The consultation phase lasted from 7 July to 15 November 2010.

The next step will be the publication of a White Paper. According to the Commission's work programme 2011, this White Paper should be published in the third quarter of 2011. Since the Commission is of the opinion that *"… the incomplete and fragmented European framework of policy coordination and Regulation needs to be reconsidered holistically",* this White Paper obviously will not be restricted to supplementary pensions, but also be extended to other pillars. Apart from this White Paper, the Commission intends to review the IORP-Directive at a rather early stage in order to maintain a level playing field with Solvency II and to promote more cross-border activities in the field of supplementary pensions. Therefore, the Commission will probably send a so-called "Call for Advice" to EIOPA at the beginning of 2011 that will contain concrete questions for the review of the IORP-Directive. A draft modified IORP-Directive is expected later in 2011.

Being the predominant European issue of the year 2010, EAPSPI's working groups, and notably its Legal Expert Commission (LEC), have already started discussing the questions of the Green Paper. The results of these discussions were summarized in the document "Guidelines for a statement" of 14 October 2010. This paper was a working document for all those EAPSPI-members that intended to submit an answer to the Commission or that were asked by their national authorities or other (national) institutions how to answer the questions in this Green Paper. This document has deliberately become longer to provide the necessary explanations especially for those that are not familiar with some of these quite specific questions. EAPSPI's final and official statement of 8 November 2010 was later developed out of this working document. Both papers are available on www.eapspi.eu / News.

EAPSPI's answers to the Green Paper can be summarized as follows:

In the **introductory part** to the answers, the differences between pensions and saving products are highlighted as well as the fact that funded pension institutions did not create the crisis but were directly affected by the financial turmoil. Furthermore, EAPSPI highlights the uncontested responsibility of the Member States and of the social partners for the design of the pension scheme. Therefore, the Open Method of Coordination (OMC) seems to offer the adequate answers to the challenges stemming from the demographic evolutions.

In answering **question 1** how the EU can support Member States' efforts to strengthen the **adequacy of pension systems** and whether the EU should seek to better define what an **adequate retirement income** might entail, EAPSPI advocates for an analysis on the impact of the existing legal framework prior to any new legislative initiative. Community legislation related to workplace pension is quite recent. At the same time, there are 27 Member States with different pension schemes rendering any harmonisation almost impossible. Therefore, the promotion of the OMC seems to be a reasonable solution. With a view to a possible EU-wide definition of adequate retirement income, national idiosyncrasy comes into action and it does not seem to be a worthwhile attempt. Due to this fact, the adequate old-age standard of living implies more than the pure economic element of the retirement income, as medical and health services, care of the elderly, rental or heating support, are further important elements.

The answer to **question 2** whether the existing **pension framework at EU-level is sufficient for sustainable public finances** starts with the statement that pensions are a key element of public finances, but not the only one. As far as pensions are concerned, a distinction between national and EU-legislation has to be drawn. The EU legislative framework for statutory pensions does not affect the financial balance since the Regulations 883/2004 and 987/2009 only foresee the mutual recognition of insurance periods. Also supplementary pensions are covered by the IORP Directive and the EIOPA supervisory framework that should ascertain financial sustainability.

**Question 3** deals with **higher effective retirement age and increases in pensionable ages.** Pensionable age is a core competence of the Member States and social partners and should therefore not be overruled by EU-legislation. As far as the increase of the effective retirement age is concerned, national policies already offer solutions, such as the "sustainability factor" in Germany or Sweden, or automatic adjustments respectively bonus-malus systems. In order to inform citizens at the right time, a sound information policy is essential to inform about the need for change and to avoid unrealistic expectations regarding the future pension level.

The **"Europe 2020 strategy"** that also includes the aims to promote longer employment and to address age discrimination in the labour market **(question 4)** can additionally be used for pensions especially by fostering the OMC and the role of the social partners not only in the field of social cohesion generally, but more particularly for pension issues.

**Question 5** is the first one of this Green Paper that is exclusively addressed to second pillar institutions. **A modification of the IORP Directive to improve cross-border services** is presently not desirable since its full implementation was only achieved quite recently in 2007. Currently only very few cases of cross-border activity have been reported (78 out of 140,000 registered IORPs all over Europe). In this context, the introduction of a 28th regime (an independent regime besides the 27 MS national legislations) does not seem necessary.

**Question 6** ties up with the promotion of portability of supplementary pension rights by asking about the **scope of schemes covered by EU level action on removing obstacles for mobility.** Similar to its prior position paper to the proposal of the portability directive of October 2005 and to its Portability report of 2007 (both also available on www.eapspi.eu / News), EAPSPI endorses the concept of transferability of supplementary pensions to remove mobility obstacles if it is done according to the following conditions:

- Only funded pension schemes should be included.

- Transfer of the Cash Equivalent Transfer Value (CETV) only.

- Calculation of the CETV according to the former scheme's rules, and transfer into the new scheme's pension claims according to its own rules.

- Only complete transfers as a way of disengaging the former schemes from any future liability.

- Sound information for the mobile worker.

- No legal obligation for transferability at the moment, but establishing a step-by-step process at national level by taking existing national transferability rules into consideration.

**Question 7** contains further elements of the former proposal of the draft Portability directive (see above question 6) by asking whether **minimum standards and preservation of dormant pension rights plus a tracking service are preferable to transferability.** Minimum standards might not be the adequate solution as:

- Pension schemes are too different (140,000 registered IORPs in Europe).

- Costs might increase up to 35%, threatening Defined Benefit (DB) schemes in particular.

- The Green Paper acknowledges the differences among different pension schemes and the competencies of Member States and social partners.

- A tracking service could be useful, though at this stage it does not seem realistic at EU-level. Instead of it, and as a first step, national tracking services could be set up or promoted.

**Question 8 asks whether it is necessary to review the current EU-legislation to ensure a consistent regulation and supervision of the funded pension schemes and products.** EAPSPI's answer starts by pointing out the basic differences between pensions and saving products. These differences are the coverage of biometric risks, collective risk sharing with solidarity elements and access to large parts of the population frequently through mandatory participation by law or by collective agreements. Hence the creation of a "pensions" label could be convenient in order to differentiate them from other financial products and to have a common EU-level understanding of their characteristics.

The EU-legislation should not be modified at present. A revision of the IORP-Directive would come too soon (see statement to question 5). And since the new supervisory authority EIOPA still has to start its activities in 2011, it would be preferable to wait and analyse how this new structure will work in practice.

**Question 9 discusses how a European regulation or a code of good practice could help Member States achieve a better balance for pension savers and providers between risks and security and affordability.** Due to the differences of pension plans in Europe, a code of best practice seems preferable as a one-size-fits-all solution does not seem feasible. Additionally, a code of good practice offers the necessary flexibility for Member States and social partners when adopting the pension plans according to the particular situation they are faced to. About the risk, security and affordability balance for pension savers and providers, these targets could be achieved via different and complementary measures:

- Promoting the role of the social partners in the design of the pension plans.

- Fostering the representation of consumers in the supervisory entities of the pension funds.

- Introduction of sound risk-management systems.

- Establishing hybrid DB-/DC-schemes, as suggested by the Commission, could be a valid collective risk-sharing mechanism.

**Question 10 about the design of an equivalent solvency regime for pension funds** has already been discussed in the context of the extension of the Solvency II regime to IORPs. Therefore, the same arguments as in EAPSPI's former position papers of 27 November 2007 and of 27 November 2008 (downloadable from www.eapspi.eu / News) are brought forward again. As a starting point, the specific nature of the IORPs should be considered with characteristics such as their great efficiency (low internal costs), solidarity as one of their core elements, their social mission (capital gains attributed to their members), their high level of coverage (via labour agreements) or the different financing methods (funded/unfunded, DB/DC/mixed).

Apart from these general features, pension schemes have specific inbuilt security mechanisms that ensure their solvency position, like the flexible parameters in the pension plans, the inclusion of employers and employees – many times being paritarian – in the governance of the schemes (supervisory and directive bodies), the long run investment horizon (close to 25 years), or the ultimate responsibility for the fulfilment of the pension promise of the employers in some countries. As a fruitful contribution to this discussion, the suggestions of the European Actuarial Consultative Group in its report of May 2010: "Security in occupational pensions-Report of working party" could be considered. The underlying idea is the establishment of some basic principles at EU-level that are later defined by the Member States and the social partners.

**The enhancement of insolvency protection by EU legislation (Question 11)** would come too soon at present even though insolvency protection is necessary because of the rising importance of supplementary pension schemes. The arguments are gathered in a CEIOPS of study 15 June 2009:

- Diversity of pension plans: DC/DB, different prudential rules and protection mechanisms of social and labour law.

- Current marginal implementation of the Pension Guarantee Schemes (PGS) at the national level in the Member States.

- Advisable previous assessment of the other protection mechanisms included in the supervisory, social and labour law at national level.

- Additional costs for the insolvency protection could end up in reduced pension benefits.

- Public sector IORPs sometimes face a different scenario as other pension institutions because in some Member States their sponsors cannot become insolvent.

**Question 12 discusses whether there is a need for modernising information disclosure requirements for pension products.** The following facts are to be considered:

- Sound information is necessary when dealing with a pension saving decision, no matter if the scheme is occupational or statutory.

- Individual financial education at any age of the individual needs to be fostered in order to allow particular assessments of the possible future situations. However, financial education of large parts of the population is not always possible.

- Many public sector pension schemes have recently increased their information efforts for employers and employees according to the previous aims.

**The development of a common approach for default options about participation and investment choice (question 13)** does not seem to be feasible due to the differences between pension schemes. However it could have positive outcomes if the possibility of opting-out on the part of the employee is allowed as real life seems to suggest. Former studies of various international organisations and experts could be useful in the context of an exchange of best practice.

The Green Paper closes with **question 14 by asking whether the policy coordination framework at EU level should be strengthened. An alternative could be the establishment of a monitoring platform for all aspects of pension policy.** EAPSPI supports the idea of a coordinating framework via the OMC as it offers a common working procedure while leaving sufficient leeway to Member States and social partners. About a possible monitoring platform, the further development of the Commission's Pension Forum is a good opportunity since it has existed for 10 years and represents Member States and stakeholder organisations.

Hagen Hügelschäffer
EAPSPI

# THE EFFECT OF THE LISBON TREATY ON PENSIONS

# LISBON TREATY

The EU primary law traditionally has a quite limited influence on social policy in general terms and on pensions in particular. The Treaty of Rome of 1957 especially wanted to foster the economic cooperation within the EU by means of the four fundamental Freedoms of goods, capital, services and persons. Social policy was therefore only a secondary aspect linked to the free movement of persons even though the Community legislator already adopted the first coordination regulation in the field of social security in 1958.

A turning point was the Treaty of Maastricht of 1992 that contained a protocol about social protection, which was later integrated into the Treaty of Amsterdam as Art. 137 ff. Its main elements were the definition of standards for labour contracts, the promotion of the social dialogue and the adoption of the principle of subsidiarity.

In spite of this evolution, social protection still remains as a core competence of the Member State; a fact that also the Commission has recently recognised in its Green Paper on pensions of July 2010 (see previous section). However, the influence of Community law is steadily increasing in the field of social protection because of the growing number of directives as secondary law especially for second pillar institutions, the jurisprudence of the European Court of Justice (ECJ) and the introduction of the Open Method of Coordination (OMC).

**The Open Method of Coordination (OMC)**

The OMC was first mentioned in the White paper of the Commission on Growth, Competitiveness and Employment of December 1993. The OMC is a kind of "soft law", which intends to promote certain targets without any legislative procedure in some areas where the European legislator does not have any competencies. Usually it is done by establishing guidelines or best practices via studies or consultations launched by the Commission or by detailed but non-binding recommendations. The final aims of the OMC are the promotion of the social dialogue and the adoption of not-compulsory rules for the social security reforms in the Member States. The OMC is now part of the Lisbon-Treaty as Art. 156 of the Treaty on the Functioning of the European Union (TFEU).

The Lisbon Treaty entered into force as on 1 December 2009. It only modifies the former legal framework since the initially intended European Constitution failed due to the negative referenda in France and in the Netherlands. The Lisbon Treaty establishes a double framework with the

Treaty on the European Union (TEU) replacing the former EU Treaty with the rules about the basic structures and principles of the EU. The Treaty on the Functioning of the European Union (TFEU) substitutes the former EC Treaty and provides detailed rules about the different policy areas and the functioning of the EU-institutions. Finally, the Lisbon Treaty contains 37 protocols with further detailed explanations, of which the Protocol n° 2 about the application of the principles of subsidiarity and proportionality is important also for the pension sector.

**The principles of subsidiarity and proportionality (Article 5 TEU)**
According to the principle of subsidiarity the Union shall act – in areas which do not fall within its exclusive competence – only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States either at central or at regional and local level, but rather be better achieved at Union level. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaty.

With respect to social policy, the TEU starts with a commitment to social progress and a social market economy, to a fight against social exclusion and discrimination, and towards the promotion of social coherence and protection (Art. 3 TEU). As a consequence of it, the Lisbon-Treaty foresees own EU competencies in the field of social protection as a target apart from economic goals. Art. 5 of the TEU limits the competence of the EU only to those issues that are predefined in the Lisbon-Treaty by respecting the principles of subsidiarity and proportionality. Otherwise, the Member States remain competent (Art. 4).

The predefined competencies of the EU legislator in the field of social policy is nowadays enshrined in Art. 151 ff. of the TFEU. Apart from some exceptions they already have been part of the prior version, the Treaty of Amsterdam. The importance of social policy has not been upgraded by the Lisbon-Treaty.

However, the TFEU establishes a new legislative procedure with different majority requirements that might become important for further legislative projects in the field of social protection. Formerly, the EU-Treaty principally required unanimity in the Council for the adoption of legislative act. This principle of unanimity is now replaced by the principle of qualified majorities for ordinary legislative procedure for nearly all policy areas – including social protection. Hence, any new legislative proposal is expected to pass easier than before since it cannot be stopped by the veto of only one Member State.

The Lisbon-Treaty, however, has included a control of the principles of subsidiarity and proportionality by the national parliaments (Protocol n° 2 of the Lisbon-Treaty). In case of doubts of the simple majority of the national parliaments about the compliance with the principle of subsidiarity, the draft legislative act under the ordinary legislative procedure must be reviewed. The Commission then has to declare in a reasoned opinion why she chooses to maintain the proposal. If a majority of the EU legislator (i.e. the European Parliament and the Council) is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration. Hence, the Lisbon-Treaty has established a counterweight to the lower thresholds of the ordinary legislative procedure.

Hagen Hügelschäffer
EAPSPI

## JURISPRUDENCE

### Discrimination on grounds of age

To follow the jurisdiction regarding discrimination on grounds of age, allows pension providers to draw conclusions about their own design of age limits, e.g. to enter or leave a scheme. In the case David Hütter vs. Technische Universität Graz (C-88/08), the European Court of Justice (ECJ) decided that excluding professional experience acquired before the age of 18 constitutes age discrimination which cannot legitimately be justified.

Mr. Hütter was recruited by the Technische Universität Graz after having completed a period of apprenticeship there. His professional experience he had acquired before the age of 18 was not considered in his grading according to the relevant Austrian law. This lead to a different salary compared to colleagues with the same professional experience but older age. Mr. Hütter therefore brought an action for compensation from the TU. The Austrian Supreme Court referred to the ECJ the question whether this legislation can be justified in the light of the Directive on equal treatment in employment and occupation (2000/78/EC).

The ECJ decided that the Austrian legislation introducing differences of treatment on grounds of age at which professional experience was acquired establishes discrimination directly based on age. The two aims of the Austrian legislation

- to encourage the pursuit of secondary studies and
- to promote the integration of young people who have pursued vocational training into the labour market

are legitimate but cannot justify the discrimination because they are contradictory in that way that one measure cannot pursue both aims simultaneously. The criterion of age at which previous experience is acquired applies irrespective of the type of education pursued and therefore does not appear appropriate for achieving the aim of not treating general education less favourably than vocational training. In addition, non-accreditation of experience acquired before the age of 18 applies without distinction to all public employees, whatever the age at which they are recruited. Since this rule does not take into account people's age at the time of their recruitment, it is not appropriate for the aim of promoting the entry into the labour market of a category of workers defined by their youth.

The ECJ decided therefore that the Austrian legislation contravenes Directive 2000/78/EC because of discrimination on grounds of age.

### Discrimination on grounds of gender

Is it legally appropriate to link insurance risks to a person's sex or is this discrimination on grounds of gender? The answer to this question might also have an effect on many occupational pension schemes. Currently, men are offered higher annuity payments by insurance companies, as actuarial calculations have them living shorter lives, despite charging women the same price for the insurance product. An annuity bought with € 50.000 would currently pay € 200 a year more to men than to women.

Directive 2004/113/EC prohibits discrimination on grounds of sex in the access to and supply of goods and services. Art. 5(2) of Directive 2004/113 also in principle prohibits sex from being taken into account as a factor in calculating insurance premiums and benefits in respect of insurance contracts which were concluded after 21 December 2007. However, a derogation in the directive allows Member States to permit sex-specific differences in insurance premiums and benefits in so far as sex is a determining risk factor and that can be substantiated by relevant and accurate actuarial and statistical data.

The consumer organisation Association Belge des Consommateurs Test-Achats and two private individuals brought an action before the Belgian Constitutional Court for annulment of a Belgian provision transposing the Directive. Thereupon, the Belgian Constitutional Court asked the ECJ to rule on the compatibility of the derogation in Directive 2004/113 with higher-ranking law.

In her Opinion of 30 September 2010, Advocate General Juliane Kokott takes the view that it is legally inappropriate to link insurance risks to a person’s sex because it is incompatible with the principle of equal treatment for men and women under European Union law.

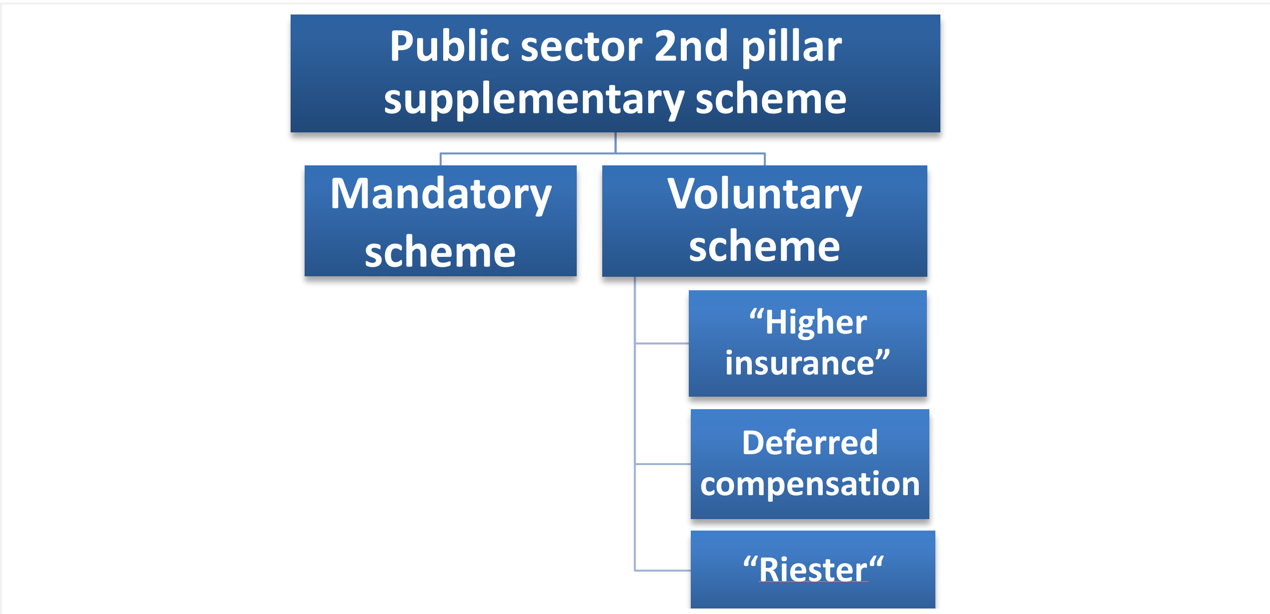
Differences between people, which can be linked merely statistically to their sex, must not lead to different treatment of male and female insured persons when insurance products are developed. Moreover, many other factors also play an important role in the evaluation of insurance risks. Thus, the life expectancy of insured persons is above all strongly influenced by the economic and social conditions, such as, for example, the kind and extent of the professional activity carried out, the family and social environment, eating habits, consumption of stimulants and/or drugs, leisure activities and sporting activities. In that connection, the Advocate General points out that gender is a characteristic which, like race and ethnic origin, is inseparably linked to the insured person as an individual and over which he has no influence. In addition, a person’s gender, unlike, for instance, his age, is not subject to any natural changes. She therefore proposes that the ECJ should declare the relevant derogating provision in Directive 2004/113 to be invalid.

For reasons of legal certainty the Advocate General however proposes that the declaration of invalidity should only have effect for the future, and suggests a transitional period of three years following the delivery of the judgment. In its judgment of 1 March 2011, the ECJ follows the Attorney General’s view that taking into account a person’s gender for risk calculations constitutes discrimination. The derogation was to be reviewed five years after 21 December 2007 but given that the Directive is silent as to the length of time during which those differences may continue to be applied, Member States in fact are permitted to allow insurers to apply the unequal treatment without any temporal limitation. Accordingly, the ECJ sees a risk that EU law may permit the derogation from the equal treatment of men and women to persist indefinitely. The derogation therefore works against the achievement of the objective of equal treatment between men and women. Consequently, the ECJ rules that the derogation from the general rule of unisex premiums and benefits is invalid with effect from 21 December 2012.

### Social Partners' rights vs. the free market

In a ruling that may affect other occupational pension systems based on collective agreement, the ECJ has entered new territory having to balance the social partners' rights and the free market. The ECJ decided that large German local authorities or local authority undertakings must tender occupational pension services (C-271/08, ruling of 15 July 2010). Local authorities, which in 2004 had more than 4,505 employees, which in 2005 had more than 3,133 employees and which in 2006 and in 2007 had more than 2,402 employees, have breached EU regulations on free trade and services (public procurement) by having chosen automatically pension providers via collective agreement without an EU-wide public call for tenders.

Public employees in Germany benefit from an employer-paid mandatory occupational pension employer-paid mandatory occupational pension system based on collective agreement. In addition to the mandatory system, public employees are given the opportunity to make contributions out of their salary into a voluntary scheme which offers three different options: a "higher insurance" of the mandatory scheme, a "Riester" contract (German insurance product including subsidies and tax relief) and deferred compensation.



The German collective agreement on deferred compensation for the local sector (TV-EUmw/VKA) awards framework pension contracts on deferred compensation to public sector supplementary pension institutions, savings banks or local government mutual insurers. According to the ECJ, the freedom of collective bargaining and public procurement law have to be well-balanced. However, the freedom of collective bargaining must not "erase" public procurement based on freedom of establishment and to provide services. Agreements of the social partners which would have been less obstructive to the latter would have been possible. The social partners can be involved in a selection process of pension providers even if a public call for tenders is issued. In addition, the selection of pension providers for deferred compensation concerns working conditions only rather marginally – working conditions are excluded from public procurement rules – but the selection process via collective agreement totally invalidates public procurement law and consequently the freedoms to provide services and of establishment.

What are the consequences of this ruling? Directly affected by the judgment are only big employers exceeding the relevant EU threshold values. This will be very few of the more than 11,000 local authorities in Germany. The existing individual contracts on deferred compensation of the employees which are not subject-matter of the ruling, are valid and remain untouched. Affected by the judgment are the framework group insurance contracts between local authorities and undertakings and the pension providers. These contracts will have to be terminated. In the mean time, the social partners have the right to transform the judgment by finding an agreement that will respect both EU-regulation on public procurement and freedom of collective bargaining.

Eva Kiwit
AKA, Germany

# CROSS-BORDER ACTIVITIES

## Mobile researchers: challenge and opportunity for supplementary pension institutions

### Occupational pensions and mobility, a recurrent issue on the European agenda

For several years EU Member States have not been able to agree on portability of pension rights within the framework of a directive on occupational pensions. In its Green Paper on pensions the European Commission has put the issue of mobility back on the agenda again. There can be no doubt that the freedom to work in any European country is one of the fundamental freedoms of the European citizen. The more occupational pensions become an indispensable part of old-age pensions for European citizens, the more existing occupational pension rights or schemes could be an obstacle to professional mobility. Admittedly professional mobility is not yet a mass phenomenon in Europe. But in light of demographic change and of globalisation, increasing mobility will be essential on the European market, if the EU intends to remain a key player in international competition. Irrespective of future developments, mobility is already a significant requirement in certain professions, in particular in sciences, research and health. In these sectors, most employees work for public law institutions. In many European countries researchers in public service participate in occupational pension schemes such as in France, the Netherlands, Great Britain, Ireland, Sweden and Germany. The same applies to researchers in Swiss universities. Therefore public sector supplementary pension institutions must also find answers to the mobility challenge.

### A European partnership for researchers

Excellent scientists are crucial for the European Union to meet the challenges of the future. It is therefore not surprising that in its Green Paper, the Commission takes scientists as the typical example of the need to handle the consequences of professional mobility with respect to pension provision[1]. Developing and building the European Research Area is a pan-European issue and the European Commission has been working for some time on the topic of how to attract young generations of scientists. The Member States of the European Union have therefore agreed on a partnership for researchers, proposing various measures to improve working conditions for scientists in Europe. Alongside topics such as "more attractive working conditions and improvement of training for scientists", the Commission is also focusing on "social security" and on "supplementary pensions for researchers".

### Cases where occupational pension provision can be an obstacle to professional mobility

The issue is to promote the mobility of scientists. To recognize the fields of action, it is certainly worthwhile to take a close look at emerging problems. In what situations may a job change

[1] Green Paper *"Towards adequate, sustainable and safe European pension systems"*, Footnote 28, page 12 in the English version, point 3.3.2 “Mobility of Pensions”

have negative effects on researchers` occupational pension claims?

In principle, frequent job changes can result in loss of pension rights in the following cases:

- a scientist often works with short-term employment contracts, meaning that he/she will later have to claim the benefit of many small pension rights in many different institutions;
- the employment contracts are often so short that the required vesting or pre-qualifying periods set forth in the regulations are not reached (resulting in pension gaps);
- a lack of information or lack of awareness of accrued pension rights leads the scientist not to claim rights which in fact exist.

It is difficult to assess the frequency of these cases. There is a genuine risk of forgetting membership dating back several decades. The increasing number of enquiries from young researchers shows that their professional careers are increasingly marked by a series of fixed-period contracts in different institutions and countries. Although scientists are a highly qualified customer group, many feel lost due to the complexity of old-age pension provision issues (also see the brochure of the German University Rectors Conference: “Mobility without Security?” 2009). Professional mobility can, therefore, give rise to negative impacts.

## Creation of a pan-European pension fund for researchers

The Commission has favoured the idea of a pan-European pension fund[2] for researchers since its first communication on a partnership for researchers. The results of a feasibility study ordered by the Commission were published in July 2010[3]. They did not come as a surprise: the fund is said to be feasible and to be wanted by employers. But this conclusion does not apply unrestrictedly: Firstly creating a pan-European fund for scientists may be worthwhile for employers who do not yet offer an occupational pension, but not for employers who already invest in existing schemes. Secondly it has to be considered that a special fund does not guarantee unrestricted professional mobility. Very few scientists stay in research throughout their whole careers. Any change in their job could result in a new membership of other occupational pension schemes. That means claims against several institutions and the need for transferability will still remain.

Apart from that participation in the fund would be problematic for the large group of salaried scientific staff in the public sector. A compulsory membership in the pan-European fund for employers is legally impossible. Maintaining two funds simultaneously involves significant additional charges for employers who already invest in a scheme. These will be detrimental to the pension benefits of researchers in the long

[2] Communication from the European Commission of May 2008, COM(2008)317

[3]http://ec.europa.eu/research/era/areas/researchers/researchers_en.htm

run. Furthermore dividing the scientific staff of a given employer among several occupational pension schemes could give rise to an infringement of the equal treatment principle and contribute to unrest among employees. And not to forget the good level of pension benefits offered by public sector schemes might hinder researchers to opt for a new fund, if they had the right to.

## How mobility can be encouraged within the framework of existing schemes

The objective is the following: "*Pensions as flexible as any researcher"*. Improving the situation of researchers by achieving more professional mobility is, however, possible and sensible within the framework of the existing occupational pension systems. Researchers should not suffer any disadvantages to their pension because of being mobile. This calls for cooperation among the European pension institutions concerned. Examples of possible fields for such cooperation are:

1. Mutual transfer of the cash equivalent value (portability);

2. Removal of pension gaps by mutual recognition of membership periods;

3. Improvement of the information and consultancy offer for scientists.

**Cash equivalent transfer value**

Nowadays increased mobility is required in the course of scientific careers. That is why researchers have to change their jobs frequently during an extended period of their employment biographies. It is therefore entirely possible for a given researcher to accrue pension rights with over ten institutions. This could be considered as a factor discouraging this type of career. By transferring the cash equivalent value (CETV) from the previous scheme to the new scheme, it would be possible to reduce the number of pension institutions involved. This would allow scientists to better concentrate their pension capital, although there would still be few institutions affected. Such transfers can be undertaken only for vested and funded rights and in compliance with the applicable conditions of national law. They are not suitable for pay-as-you-go schemes, because there is no capital to be transferred. Transfers cannot be used either in countries, or for schemes, which have a final account system (meaning that the last scheme pays the entire pension to the beneficiary and receives a pro-rata amount from each of the other participating schemes). Even if transfers are not possible in all schemes and all countries, they can be part of the solution to improve professional mobility. This is all the more because the trend is towards DC schemes.

Many experts consider that portability involves a great deal of administrative work and that it is therefore costly. Because national framework conditions are very different, the objective of introducing portability throughout Europe is likened to solving a Rubik's cube. But looking at transfer conditions in EU member states, one finds many compatible systems which could or already implement transfers of pension capital[4]. And according to the old saying where there is a will, a way can be found. Irrespective of applicable law all funded schemes would be able to calculate the cash equivalent value of accrued rights and to transfer this capital in principle. As written in EAPSPI`s answer to the Green Paper on pensions, the CETV should be calculated according to the rules of the former scheme and later transferred into pension claims according to the rules of the new scheme. Transfers are permitted to disengage the former scheme from any liability and any transferability rules have to require sound information for the mobile worker. The last requirement might be the most expensive aspect of portability. But corresponding to the directive 98/49/EC outgoing clients should be informed anyway: “Employers, trustees or others responsible for the management of supplementary pension schemes shall provide adequate information to scheme members, when they move to another Member State, as to their pension rights and the choices which are available to them under the scheme[5] “.

Since the Green Paper on pensions, capital transfers have become a current issue again. Providing portability could be a less drastic measure to ensure better mobility for funded schemes compared with a harmonisation of rules governing acquisition and preservation of pension rights by means of a European directive**.** It would be difficult to create a regulation applicable for all the schemes. Thus, it would probably be a good idea to first let compatible schemes gain experience in this field (preferably within the framework of voluntary transfer agreements or standards), before generalising them according to the best-practice principle within the framework of a subsequent European regulation. Scientists would be a suitable pilot group to gain experiences on this field and pension institutions would have the advantage of reducing costly management of mini pension rights for a relatively large group of people.

**Recognition of membership periods**

Membership periods within an occupational pension scheme in the European research area could be added together, so that employees with short-term employment contracts could meet the conditions for pre-qualifying periods and other conditions of the same type governing final accrual of rights. Such regulations would have an impact only for schemes which apply pre-qualifying periods. Times could be added together by mutual recognition of periods worked so as to meet the required time frames. An example of this type of approach: mutual recognition of membership periods by supplementary pension institutions of the local and church sector and by VBL in Germany. It should be taken into consideration that this solution requires modifications of legal provisions or statutes and that in many countries

[4] In Austria and Great Britain, cross-border transfers are accomplished. Cross-border transfers are also legally permitted in the Netherlands provided that, among other conditions, the new scheme does not offer more generous terms for buyout than the Dutch scheme. German law does not specifically regulate cross-border transfers, but within Germany, cash equivalent transfers for vested rights are also allowed for determined ways of occupational pension.

[5] COUNCIL DIRECTIVE 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, Art. 7

only the legislator or the social partners will be able to implement such changes. At the end of the day, this approach would be comparable to the coordination set forth in Regulation EC 883/2004 for the state pension schemes.

**Improvement of the information offer for scientists**

Access to information and therefore assessment of the future pension claims are and will remain key aspects of pension provision. It is precisely for mobile employees that it can be difficult to obtain such information. This can be due to language barriers, but even more so to the different schemes which the people concerned need to be familiar with. The greater the number of pension providers in the career of a researcher, the higher the risk that certain accrued rights will not be claimed, either owing to lack of knowledge or due to the expected insignificance of the rights.

### First steps: Compiling the occupational pension guide

In agreement with stakeholders in the scientific sector (amongst others, the German Federal Ministry of Education and Research), VBL is currently launching a project to assess the current conditions and consequences of researcher mobility in terms of occupational pensions in the European research area. First of all, there will be a complete "Map" of occupational pensions for salaried scientists with research institutions in Europe funded by public budgets. Compared to the studies conducted until now, this map will list the existing pension institutions, with the most significant characteristics of the schemes (products, portability, funding and the essential legal basis). The necessary information will be made available on the internet.

The guide can serve as a starting point to remove obstacles to mobility of researchers among existing occupational pension schemes. After the compilation, we will be able to compare the legal bases and see how cash equivalent transfers can be implemented, or identify other forms of cooperation in the fields mentioned. This will allow us to prepare concrete proposals and to debate them. In principle, these proposals will not be restricted to the EU, but could also concern researchers in third countries with great significance in the research landscape.

### Web information for scientists

Regarding the information offer for scientists, it should be easy to obtain improvements. For researchers who wish to work in Germany, the German EURAXESS service centre with the Alexander von Humboldt Foundation and VBL intend to cooperate to extend the information offer on the theme of pensions. In most EU Member States, there are national EURAXESS service centres which offer arriving and departing researchers information on various topics. This network could be a suitable place to post and link targeted information concerning occupational pension schemes. It would be also conceivable to create an information portal on the occupational pensions of scientists.

Another possible instrument facilitating mobility could be a Tracking Service System, which is also mentioned by the Green Paper on pensions. The disadvantage of such systems lies in the fact that data entry and storage are costly and the objective of a pan-European tracking system appears very ambitious.

## Conclusion

Mobile researchers are important for Europe. A pan-European pension fund would not in itself eliminate obstacles to mobility. Depending on the structure and organisation of such a fund, problems related to transfers and to different benefit schemes will remain. Therefore it is entirely possible and necessary to foster mobility within the framework of the schemes concerned. We should work together to contribute to that objective. Researchers are not the only party concerned by such issues. If the competition for the best brains gets stronger the conditions of supplementary pensions will become more important. It is therefore not only in the interest of researchers that public sector supplementary pension institutions find answers to the challenge of professional mobility.

Claudia Wegner-Wahnschaffe
VBL, Germany

# TAXATION ISSUES

### Lisbon Treaty

The construction of a European Constitution with the idea of a new and uniform structure of the EU and creation of a legal personality failed due to negative referenda in France and the Netherlands in 2004. In reaction the Lisbon Treaty took a step back and only modified the existing legal framework. One of the critical points among others was in this context the EU tax policy. As a result of a first negative referendum in Ireland, the Council approved the following declaration on 18/19 June 2009: *“The Lisbon Treaty will not have any consequences for tax policies for the Member States.”* This declaration shall be integrated into the Lisbon Treaty as an additional protocol with the next enlargement of the EU.

There are further specific provisions of fiscal nature regarding the environment (Art. 192 § 2 TFEU), Energy (Art. 194 § 3 TFEU), the movement of capital between Member States and Third Countries (Art. 65 § 4 TFEU) and the harmonisation of indirect taxes (Art. 113 TFEU). But all these policy areas have no impact for pensions.

Summarised, the Lisbon Treaty causes no amendments in the field of pension taxation.

### International Workers

International workers (e.g. researchers) live and work in different countries. According to most treaties, the income from employment is taxable in the country of employment and will be exempted from taxation in the home country. This has to be reported in the tax return of the home country.

Generally, international workers accrue pension rights at a pension fund established in the country where they work. If it is an EET-system, the contributions are exempted from tax. The taxed payments of the pension are according to most treaties taxed in the home country. However, there are specific rules for pensions paid by, or out of funds created by government institutions in a country (accrued during government service).

Georg von Hinüber
AKA, Germany

# COUNTRY REPORTS

# AUSTRIA

One of EAPSPI's main targets is the information exchange between its member institutions. Even if the challenges for pension systems are more or less comparable in Europe, there still remain sometimes significant differences in the single countries. Hence, EAPSPI's working groups now invite external or internal speakers who give an overview about the current problems and discussion in the different countries. These country reports allow all participants of the working session to get an idea of the particularities of the single countries and to identify whether the suggested solutions could be adopted for the own scheme.

## Austria: The way from a single to a multi-pillar approach

### Introduction

As in many countries the Austrian pension system is based on a three pillar approach. Austria`s pension system is dominated by the first pillar, the public pension system, which is mandatory and benefit oriented. It provides for old age and invalidity pensions as well as for indirect benefits such as survivors' and orphans' pensions. The second (occupational pension schemes) and third pillars (individual pension provision) used to play a minor, albeit increasing role.

The twofold demographic challenge – increasing life expectancy and low fertility rates – has put Austria`s pension system under pressure. The recent pension reforms were triggered by the need to alleviate the budgetary pressure stemming from the age structure of the Austrian population.

### Civil servants' pensions

Civil servants have also been affected by far-reaching pension reforms. The most noteworthy are the pension reforms of 1997 and 2000, the pension sustainability reform of 2003 and the pension harmonisation reform of 2005. Whereas civil servants born before 1955 are less affected by these reforms and can therefore reach a generous pension level of up to 80% of their last salary, those born after that deadline are faced to fundamentally modified conditions with view to their pensions. The most far-reaching consequences are for those civil servants born after 1955 who joined the civil service after the 1 January 2005. They are now covered by a general-type scheme instead of the special scheme for civil servants. In order to compensate their future lower pension level, the latter groups benefit from second pillar pension provisions.

### The second pillar in Austria

Pension Funds in the second pillar (occupational pension schemes) were introduced in Austria only from 1 July 1990. This late introduction was mainly due to the generosity of the first pillar. Occupational pensions are intended as a supplement to the state scheme. The form of the employers' commitment is voluntary and offers a host of possibilities. It is possible to choose a defined contribution scheme or a defined benefit scheme. The contribution and benefit amount is, in principle, negotiated freely.

Any pension fund institution is required to take on the legal form of a public limited company. The compulsory benefits are old-age and survivor pensions. The payment of disability pensions is optional, but generally the institutions also provide such benefits. Should the accrued rights not exceed a value of € 10,800 (2011) at the end of an employment contract or when a member retires, the member may choose to receive a single lump-sum settlement.

**Bundespensionskasse as service provider for second pillar pension provisions**

The Austrian pension fund institution Bundespensionskasse was founded in 1999 at first only for the employees of the federal state of Austria. At a later stage, it has extended its services for the workers of other state-related employers. From 2009, Bundespensionskasse also covers the supplementary pensions of the Austrian teachers who are employed by the different regions (Länder). Currently, Bundespensionskasse has approximately 203,000 insured persons, but only about 10 pensioners. This – still quite favourable – relationship between participants and beneficiaries is due to the fact that the pension plan has been established quite recently and that pensioners get a lump sum settlement if the future pension does not exceed a total value of € 10,800 (see above). Bundespensionskasse, which is the second largest pension institution in Austria in terms of participants in its fund, is entirely owned by the Republic of Austria.

The basis of the pension plans of Bundespensionskasse are mainly collective agreements that were renewed in 2009. All of them are funded DC-schemes with employers' contributions that are calculated on the basis of 0.75% of the employees' gross salaries. The assets are managed according to the Austrian Pension Fund Act (*Pensionskassengesetz* – PKG) and according to the prudent-person principle. During the last decade, Bundespensionskasse has achieved a better performance on average than the total market of Austrian pension funds, multi-company and company pension funds.

In spite of the huge number of insured persons, Bundespensionskasse has got a very small number of staff with only two members of the board of management and three employees. In addition there is a supervisory board of twelve persons. Six of them represent the Republic of Austria as the owner whereas the remaining six persons are delegates from the union of civil servants. Due to the small number of employees, most of the administrative tasks are awarded to external private-sector service providers.

Dr. Johannes Ziegelbecker
Bundespensionskasse, Austria

# NETHERLANDS

### Pensions in the Netherlands: Change on the horizon

The financial crisis has had an enormous effect on pension funds all over the world, but in the Netherlands these institutions face an extremely serious situation due to the legal funding requirements: Dropping financial markets and dropping interest rates directly translate into dropping funding ratios. Complex investment strategies and/or assets have been blamed for it, but in most of the cases they were not responsible, as the pension funds have been generally prudent. Anyway, the Dutch pension system is now not sustainable due to the need for rising contributions, because of the changing funding ratios, and because of the higher life expectancy.

At this moment in time, these two problems i.e. the increasing life expectancy (pensions to be paid during longer periods in the future), and the current system not being shell-proof, are the main discussion issues at STAR, the Dutch labour Fundation, where employers and employees on a national level in the Netherlands try to work out a common vision on these problems in order to advise the government. While the fundamental characteristics of the system will undoubtedly be maintained, a new balance between ambition, certainty, solidarity and costs should be reached. As an example of the situation, at the start of 2007 the average funding ratio was between 140/145%; the increasing life expectancy reduced it by 10/15% between 2007 and 2010; the low return on investments meant an extra 10% reduction; and finally, the valuations with the reduced interest rates lowered the funding ratio by another 25/30%, ending up in the present 90/95%.

The STAR advice has been to settle a new pension contract, considering:

- Confidential problems.

- Economical (external) problems: The increasing life expectancy and its consequence of more and more pension years should be attacked not by rising contributions but by linking pension age or years to the life expectancy. There should not be any insufficient funding ratios if the burden for future generations is to be avoided, and it could be achieved via the higher pension age and/or the lack of indexation, both for old pension rights. The other economic problem, the return on investments and contributions, meant that in the recent past the insufficient funding ratio was caused by the financial shocks, with the contributions not being an instrument on its own due to their level, while the solution of stabilizing them at 2009 level seems to be a wise measure, accompanied by the lack of indexation or deduction for the pension rights, which will anyway be reduced by inflation.

- Institutional (internal) problems: Issues on valuation and interest rates. The contract defines the interest rate nominal guarantees, the risk free rate; and at the present moment, the volatility and the development of the interest swaps should be considered. In the short term, the use of different interest rates to perform the valuations could be part of a solution; in the long term, a different pension contract seems to be a need.

Cyril Savelkoul
APG, The Netherlands

### The Norwegian “Government Pension Fund Global”

Petroleum activities have generated considerable revenues for Norway since petrol was first discovered in 1969.

In 2006, the Government Pension Fund Global (GPFG) was established. The Fund is a continuation of the Petroleum Fund. The Norwegian government transfers its share of the country’s petroleum revenues to the fund. The government simultaneously withdraws the expected long term annual real return on the fund. At the end of the first half of 2010 the market value of the GPFG was NOK 2 800 billion (approximately 350 billon Euros).

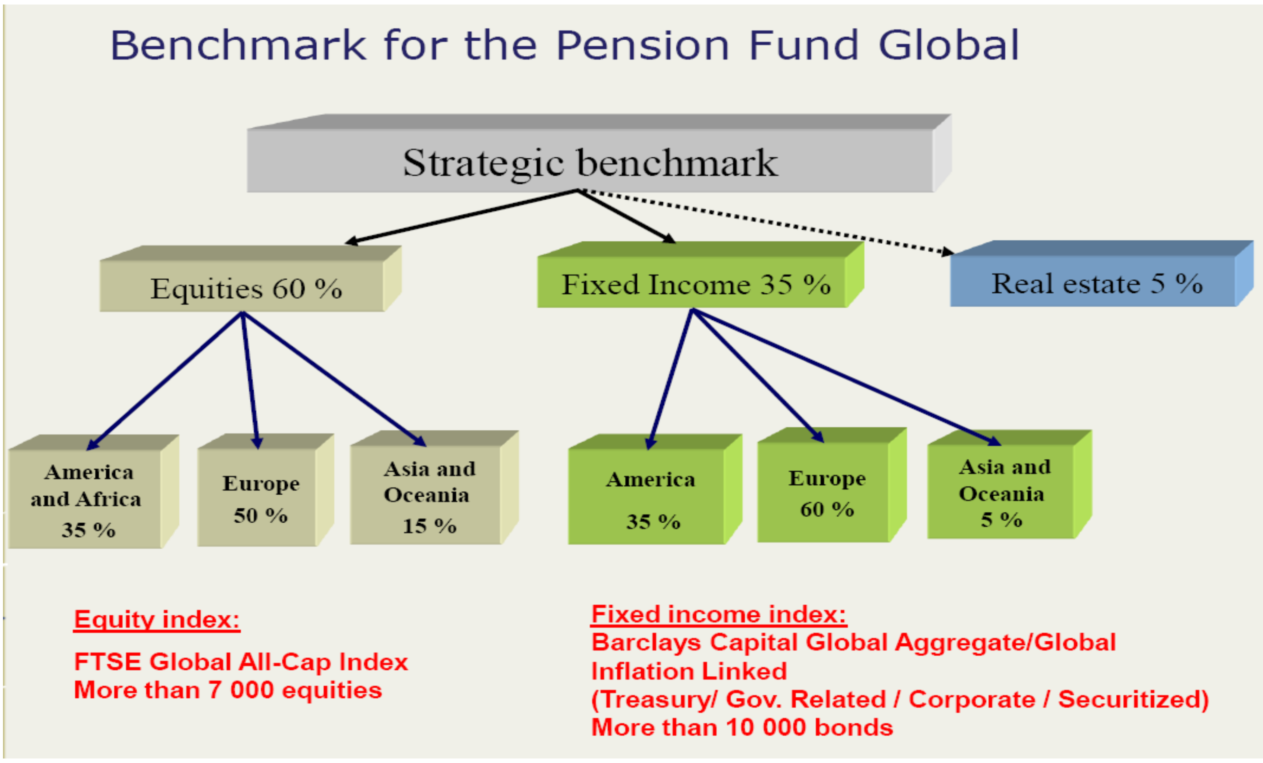
The money in the GPFG is not earmarked for any specific purpose. Nobody has a direct claim on the money in the Fund. Money from the GPFG is transferred only to the Central Government budget and from there into the Norwegian economy. The amount to be transferred is determined during the preparation of the annual budget and is guided by the fiscal rule.

The purpose of the GPFG is to support government saving in order to finance the pension expenditure of the National Insurance Scheme and long-term considerations in the spending of government petroleum revenues.

The Ministry of Finance is responsible for the management of the Fund. The operational management of the Government Pension Fund Global is delegated to Norges Bank. The management is carried out in accordance with regulations given by the Ministry of Finance. The GPFG is not a separate legal entity and does not have its own executive board or administrative staff.

Through the investment strategy, the Ministry of Finance seeks to take advantage of the characteristics of the Fund. The Fund’s investments have a very long time horizon. The strategy is therefore based on assessments of expected long-term returns and risks. Importance is also attached to broad diversification of investments over different regions, asset classes, sectors and companies.

The Ministry of Finance has determined a strategic benchmark and limits for the permitted divergence between the Fund’s actual investments and the benchmark. The strategic benchmark is a detailed description of how the Fund’s assets should be invested. The benchmark is divided between equities (60 %) and fixed income (40%), and across three geographical regions, see Figure 1.  Going forward, the fixed income allocation will be reduced gradually in favour of a real estate allocation of up to 5%.




**The strategic benchmark of the GPFG.**

Source: Norwegian Ministry of Finance

The Ministry of Finance believes broad reporting on the asset management is important. The benefit of transparency has the following aspects:

- Builds trust and confidence – domestically and internationally;
- A precondition to secure public support for sound management of petroleum wealth;
- Has disciplinary effect on management by exercising pressure to deliver sound financial returns and by minimizing the risk of bad governance and corruption;
- Contributes to stable international financial markets.

A good financial return over time depends on sustainable development in economic, environmental and social terms. By virtue of the Fund's long-term investments in a large number of the world's companies, it follows a responsibility and an interest in promoting good corporate governance and safeguarding environmental and social concerns.

The Fund shall be managed in a responsible manner that takes factors relating to corporate governance, environmental and social issues into due consideration. The instruments the Fund has at its disposal shall be used with a view to:

- promote good corporate governance and sustainable development;
- contribute to the portfolio companies respecting fundamental ethical norms;
- promote organization of financial markets which safeguard the Fund's financial interests;
- preclude investments which is in conflict with international law;
- avoid investments in companies involved in grossly unethical activities.

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# PORTUGAL

## The reform of the Portuguese public pension system: Reasons and results

**Introduction**

Ensuring long-term sustainability of public finances has steadily become a main political priority in most developed countries. Both technological progress and lower fertility rates have increased the ratio of dependants to contributor, while tight budgetary constraints and additional pressure to increase spending in areas such as health care, have compelled public authorities in many developed countries to reform their social security systems.

**The convergence of the public employees' pension scheme with the private sector**

In Portugal, the scenario was even more acute given the generosity of the overall pension regime, but in particular the public employees' pension system. Until 2005, public employees hired until 1993 were entitled to keep their last wage after they retired as long as they had at least 36 years of contributory payments. Furthermore, pensions were indexed to the evolution of public wages, causing pension levels to also increase over the years. When an increasing number of public employees entitled to full pension started retiring, the pressure on the system became unbearable.

Therefore, in 2005, a further convergence of the public employees' pension scheme with the private sector's one occurred. In 2006, a major overhaul of the system was imposed and an agreement was reached based on new rules for the calculation of pensions and for their indexation over time.

In particular, a sustainability factor was established such that the calculation of the pension dynamically reflected changes in life expectancy, while the yearly update of pensions became indexed to consumer inflation, depending on the GDP growth and the value of the pension.

**Implications of demography on pension expenditure**

Portugal, like other European countries, has been deeply affected by ageing population. In particular, in the last 30 years, a deteriorating birth rate and gains in life expectancy led to a significant shrink in age cohorts below 30's and an increase in those between 30's and 60's and also in the oldest ones.

Migration flows have also had a role in the demographic structure: Portugal experienced significant net migration flows out of the country in the 50's and 60's followed by net migration inflows after the former colonies independence in the 70's. In the last decade, net inflows intensified, with emigrants belonging to older age cohorts returning to Portugal and with the entrance of immigrants mainly from Eastern European countries, Brazil and former Portuguese colonies in Africa. The change in the demographic pyramids yields an increasing old-age dependency ratio, which has duplicated between 1960 and 2007, while life expectancy at 65 grew around 4 years in the same period. Social security schemes therefore have revealed a signify cant increase in their pension liabilities as a share of GDP, in particular in the last decade.

**The new rule for updating pensions**

This new rule determines that, from 2008 on, the annual adjustment of pensions is linked to an effective change rate of the Consumer Price Index (CPI) and also to the effective growth of GDP, which affects the social security revenue pattern. This means a change from recent years, where there have been pension increases significantly higher than inflation, above all as a result of the rise in the minimum pension level. The new rule brings pension updates within a regulatory framework, removing the discretionary element.

**Additional penalty for early retirement**

Another measure – within the scope of the so-called "promotion of active ageing" – consists in introducing a disincentive to early retirement, with a bigger financial penalty for retirement prior to the legal retirement age, but computed on a monthly basis (0.5% for each month of anticipation) instead of on a yearly basis (4.5% per year).

**Promoting active ageing**

Aside from the reform measures included in the projections there are other measures aimed at promoting active ageing. Namely for long contributory careers, the no-penalty retirement age can be reduced one year for each of the three years of the contributory career above 30 years at the age of 55. Beneficiaries can retire, without penalty, at the age of 64 with 42 years of contributions, at the age of 63 with 44 years of contributions, at the age of 62 with 46 years of contributions and so on.

When claimed after 65 years of age (with more than 15 calendar years of earnings registration and, at most, 70 years of age), the pension is increased by applying a monthly rate to the number of months of effective work completed between the month the pensioner reaches 65 years of age and the month of the pension beginning. This means, for instance, that an individual with 65 years that decides to postpone retirement for one year will get a 3.96% bonus if he has a career of 20 contributory years or 12% in the case of having 40 contributory years.

**Effects of the recent reform measures**

This reform measures, by their nature, will provide effects essentially in the long run. According to the projection results for both subsystems, those measures will allow for a reduction of less than 1 percentage point of GDP in 2020 but around 4 percentage points by 2060.

Another important feature is that the peak year for pension expenditure in now within the projection horizon (2053) while in the scenario before the recent reform, measures show that the pension expenditure trend was continuously increasing. Given the assumptions regarding demography and employment, which foresee a progressively higher employment rate for older workers as a result of the measures designed to promote active ageing, the contributions revenue trend tends to stabilise from 2040 onwards.

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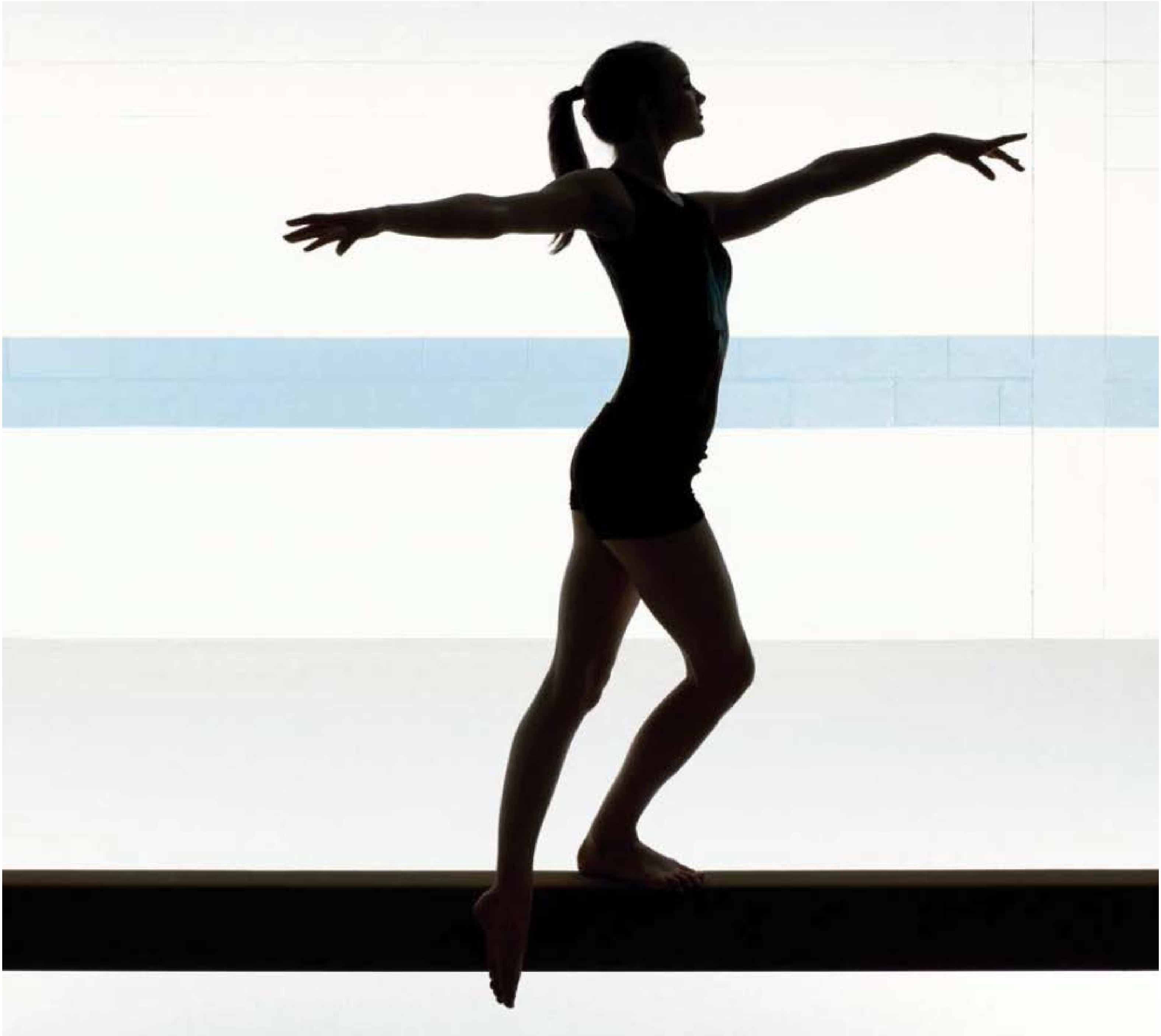
# ANNEX



### EAPSPI's working groups and its permanent members

EAPSPI's working groups are treating all issues related to pensions. They are therefore of paramount importance for the work and information exchange within the association. EAPSPI has established a Legal Expert Commission (LEC) with the main focus on legal affairs and a working group on Portability that analyses the feasibility of cross-border transfers of supplementary pension rights. Two further working groups deal with the issues of Taxation and of Asset management.

The working groups are open to all EAPSPI members and observers. The working groups usually meet twice a year and discuss the occurring developments both within their countries and at international and at EU level as well as the impact for their pension institutions. But their work is not limited to a mere information exchange. If necessary, the working groups draft position papers especially on European issues that concern all EAPSPI members. Thus, EAPSPI is able to formulate a common position of the public sector pension institutions towards the European institutions, but also towards national authorities and other entities.

### The Legal Expert Commission (LEC)

The Legal Expert Commission (LEC) studies the legal impact of pension related documents issued by European and other institutions, e.g. World Bank, OECD and other (inter)national think-tanks, on EAPSPI's members. When appropriate, the LEC prepares position papers on certain topics with an overall interest for EAPSPI's members. The LEC may also cooperate with other working groups in setting up position papers to be sent to the European institutions (Commission, Parliament) and to other stakeholders at national and EU level.

In 2010, the LEC was composed of the following permanent members (alphabetic order):

- Vasco Costa / Carlos Alberto de Almeida Rosa (CGA, Portugal)
- Aitor Emaldi (Elkarkidetza, Basque Country)
- Sonia Geilert (Valida Pension, Austria)
- Hagen Hügelschäffer (EAPSPI)
- Eva Kiwit (AKA, Germany)
- Anne Perälehto-Virkkala (KEVA, Finland)
- Tim Pullman (CDC, France)
- Cyril Savelkoul (APG, The Netherlands - chairman)
- Wolfgang Schulz-Weidner (ESIP)
- Björn Selander (KPA, Sweden)
- Trond Tørstad (KLP, Norway)
- Werner Zarbach (VBV, Austria)

### The Portability working group

The mission of the Portability working group is to analyse the feasibility of cross-border transfers of supplementary pension rights and to elaborate solutions helping the European Commission, but also other interested institutions and stakeholders in this field, to foster the transferability and thus the free movement of workers within Europe. Accordingly, the Portability working group consists of representatives of only supplementary pension schemes.

In order to achieve these aims, the Portability working group first analysed the existing legal situation in various European countries as far as transferability is concerned. In a next step, basic principles that are valid both for pay-as-you-go and for funded supplementary pension schemes are to be set up. At a further stage, the working group studies the possibilities how to establish practical solutions for transferability between different countries.

Members of the Portability working group are:

- Bjørn Hamre (KLP, Norway)
- Georg von Hinüber (AKA, Germany)
- Hein Leenders (APG, The Netherlands)
- Allan Paldanius (KEVA, Finland)
- Johan Sjöström (KPA, Sweden)
- Jari Sokka (KEVA, Finland)
- Klaus Stürmer (AKA, Germany – chairman)
- Claudia Wegner-Wahnschaffe (VBL, Germany)

## The Taxation working group

This group observes developments concerning the European and national tax legislation as well as the jurisdiction of the European Court of Justice (ECJ) in the field of taxation and analyses the impact of these evolutions on EAPSPI's institutions. The working group considers how taxation policies affect pension schemes for public employees. Taxation in the wider sense encompasses not only tax relief, but also, for example, any limits on contributions and accrual, the opportunity to commute pension for lump sums and the flexibility to "wind down" towards retirement.

This working group is composed of the following members:

- Ian Clapperton (SPPA, Scotland – chairman)
- Aitor Emaldi (Elkarkidetza, Basque Country)
- Cecilia Froste (KPA, Sweden)
- Joep Heijmans (APG, The Netherlands)
- Hagen Hügelschäffer (EAPSPI)
- Johan Janssens (SdPSP, Belgium)
- Susanne Nauclér (SPV, Sweden)
- Johan Sjöström (KPA, Sweden)

## The Asset Management working group

This working group is a forum of experts for an in-depth exchange of best practise in order to help members to compare their asset management activities and to learn about the challenges and solutions for other institutions. The initiative was based on a proposal of the Board of Directors at the beginning of 2008, after the subprime crisis burst but some time before the financial crisis worsened. The scope of the working group's activities is not restricted to the sole issue of assets even if the name of this working group might lead to this conclusion. Together with the LEC, the discussion about new solvency and supervisory rules will also have to be observed and analysed thoroughly by this working group.

The following members belong to this most recent working group of EAPSPI:

- José Carlos Garay (Elkarkidetza, Basque Country)
- Sofia Hagman (KPA, Sweden)
- Dr. Volker Heinke (AKA, Germany)
- Bjørn Hamre (KLP, Norway)
- Hagen Hügelschäffer (EAPSPI)
- Dr. Jean Pfitzmann (ASIP, Switzerland)
- Tim Pullman (CDC, France – chairman)
- Björn Selander (KPA, Sweden)

### About EAPSPI

EAPSPI is an association of 24 public sector pension schemes from 16 European countries that are responsible for more than 28 million active members and pensioners in the public sector. The connecting factor of EAPSPI's members is therefore the public sector in Europe: they cover either the basic pension schemes for civil servants or the supplementary schemes for public employees.

EAPSPI's main purpose is to enable its members to improve the mutual knowledge of their institutions and that of the social systems of their respective countries. EAPSPI actively takes part in the construction of a social Europe. EAPSPI's members analyse ways and means of improving services offered to their clients (pensioners, active members and employers) by learning best practices from other institutions and by analysing the impact of EU law for national pension schemes. To achieve this purpose, EAPSPI promotes exchanges of expertise and information through working groups, conferences, seminars, information letters and direct contacts between members.

The role of EAPSPI is not limited to a mere information exchange. The importance of EU law in the field of pensions is steadily increasing. Therefore, EAPSPI also offers a common platform for the pension institutions of the public sector towards the European institutions, such as the Commission, the Parliament and other stakeholders at EU level. However, EAPSPI is not a pressure group. EAPSPI merely aims to position itself as a pension expert in order to demonstrate the effects especially of new legislative projects. Hence, EAPSPI develops relations and interacts with European institutions and other international organisations.

E A P S P I
Pensions for the Public Sector

European Association of Public
Sector Pension Institutions

Association Européene
des institutions de retraite
du secteur public

Europäischer Verband
der Versorgungseinrichtungen
des öffentlichen Dienstes

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