

EU Coordination of Pension Rights: present gaps and future scenarios

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EU Coordination of Pension Rights

- The Project and its aims;
- EU legal framework;
- Two decades of national reforms;
- Present gaps (due to mismatches) and technical problems
- Future scenarios (synoptic table)

The Project and its aims

- What is the current EU Framework on Pensions and its impact on the free movement of persons?
- How has this framework been affected by two decades of pension reforms at national level?
- What are the main gaps in EU legislation ?
- A specific focus is placed on the technical problems related to the mapping of supplementary schemes.
- What is the most promising strategy to plug such gaps and to improve protection of pension rights ?

The Project

- Review of EU legal framework
- Review of the literature on Pension reforms
- Survey on 'Scope of the coordination of Pension Systems'
- Updating of the map of EU countries pension schemes (based on CEIOPS 2010).
- Synoptic table about future strategies to improve coordination and portability

EU Coordination in the field of Pensions: the Legal Framework

| | Regulation 883/2004 | Directive 98/49/EC | Portability Directive (Draft Proposal) |
|----------------|--|--|---|
| Obj. | To simplify and modernise Reg 1408/71 | To protect members of supplementary pension schemes | To remove obstacles to the acquisition, preservation, and transferability of supplementary pensions |
| Material Scope | All legislation on old-age benefits In social security branches | Supplementary pensions | Supplementary pensions |
| Funding | PAYG and FF | FF, Book Reserves, PAYG | FF, Book Reserves, PAYG |
| Exclusion | Contractual provisions | Schemes covered by Reg 1408/71 | Schemes covered by Reg 1408/71 |
| Provisions | Aggregation of periods Pro-rata Prevention of benefits overlapping Expoertability of pension rights | Equality of treatment Exportability Adequate information No transferability | Acquisition of supplementary pension rights Preservation of dormant rights Transferability of benefits (then removed) Adequate information |

EU coordination of Pension rights, main challenges and reform trends

- Population Ageing
 - Cost-containment (indexation; retirement age; actuarial principle)
- Adequacy/Labour Market Transformations
 - Modernisation (contribution credits; minimum benefits; minimum contributions)
- Viability/Economic and Employment Growth
 - Cost-containment
 - Modernisation (shift from contributions to taxes; role of pension funds)

EU coordination of Pension Rights: Two decades of Reforms

| | <i>1st Generation Multi-pillar</i> | <i>2nd Generation Multi-pillar</i> | <i>1st Generation Social Insurance</i> | <i>2nd Generation Social Insurance</i> |
|---------------------------|---|---|---|---|
| Public schemes' goal | Basic protection (poverty prevention) | Salary savings (some adequacy) | Salary savings (some adequacy) | Salary savings (some adequacy) |
| Private schemes' coverage | Mandatory or quasi-mandatory | Mandatory | Voluntary | Quasi-Mandatory |
| Earnings-related schemes | (mainly) Private | Public/private | (mainly) Public | (mainly) Public |
| Countries | UK, NL, IRL, DK | PL, SK, HU, EE, LT, LV | DE, FRA, ITA, SPA | SWE, FIN |

Source: Natali, 2008.

EU coordination of Pension rights, most recent **reform trends (after the crisis)**

- Short-term measures to increase adequacy
 - **indexation, one-off benefits**
- mid/long-term austerity
 - **increased retirement age, further cutbacks**
- opposite trends on public/private mix
 - **further impulse for supplementary schemes**
 - **re-nationalisation of pension funds (CEE countries)**

EU coordination of Pension rights, mapping the application of the EU toolkit

| | | <i>Risk pooling</i> | <i>Financing</i> | <i>Management</i> | <i>EU legislation</i> |
|----------------------|----------------------|----------------------------|----------------------------|-------------------|--|
| <i>Third pillar</i> | | Personal | Funded | Private | Life, UCITS, banking and investment services (MiFID) Directives*** |
| <i>Second pillar</i> | | Occupational | Funded | Private | Directive 98/49 IORP Directive**, Life Directive, UCITS Directive |
| <i>First pillar</i> | 3 rd tier | Personal | Funded | Public/Private | Regulations 883/2004 and 987/2009 No prudential rules* |
| | 2 nd tier | Universal/ Occupational | PAYG | Public | |
| | 1 st tier | Universal/ Targeting | Means-tested/ flat-rate | Public | |

* Estonia represents an exception

**Some countries (France, Sweden and Lithuania) apply IORP to life assurance undertakings.

*** IORP directive is applicable to individual schemes in Italy, Romania and Latvia

Source: CEC 2010c

EU Coordination of Pension Rights: Main Gaps in the Legal Framework

1. Exclusion of non statutory schemes from the material scope of regulation 883/2004
2. Lack of transferability of supplementary pension rights in Directive 98/49/EC
3. Lack of harmonisation on waiting and vesting periods
4. Lack of fiscal coordination and the consequent limits to transferring pension rights
 - Different taxation regimes
 - Tax neutrality with respect to premia
 - Dividends and interest paid to foreign pension funds
 - VAT on outsourced services
 - Transferability of capital
5. Other problems
 - Indexation
 - Limitations to choice
 - Information asymmetries

EU Coordination of Pension Rights: Main Gaps in the Legal Framework

| <i>Country</i> | <i>Pension taxation system</i> | <i>Discrimination</i> |
|----------------|---------------------------------------|-----------------------|
| Belgium | EET | Abolished in 2007 |
| Bulgaria | EET | No info |
| Czech Republic | No second pillar | No |
| Denmark | ETT | Condemned by ECJ |
| Germany | EET/TEE | No |
| Estonia | EET | Abolished in 2007 |
| Greece | No second pillar | No |
| Spain | EET | No |
| France | EET | No |
| Italy | ETT | No |
| Cyprus | EET | No info |
| Latvia | EET | No |
| Lithuania | EET | No |
| Ireland | EET | No |
| Luxembourg | TEE | No |
| Hungary | TEE (claims to have no second pillar) | No |
| Malta | No second pillar | No |
| Netherlands | EET | No |
| Austria | EET | No |
| Poland | TEE (claims to have no second pillar) | No info |
| Portugal | EET | No |
| Romania | EET | No info |
| Slovenia | EET | No |
| Slovakia | EET | No info |

EU Coordination of Pension Rights: Infringement procedures about corporate taxation

| Member State | Letter of formal notice | Reasoned opinion | ECJ referral | Closed |
|----------------|-------------------------|------------------|-----------------|-------------|
| Austria | | | | X |
| Czech Republic | X – 7 May 2007 | X – 26 Jun 2008 | | X |
| Denmark | X – 7 May 2007 | X – 25 Jun 2009 | | |
| Estonia | X – 31 Jan 2008 | | | X |
| France | X (unknown) | X (pending) | | |
| Finland | X – 23 Jul 2007 | X – 25 Jun 2009 | | |
| Germany | X – 31 Jan 2008 | | | |
| Hungary | | | | X |
| Italy | X – 23 Jul 2007 | X – 26 Jun 2008 | X (pending) | |
| Latvia | | | | X |
| Lithuania | X – 7 May 2007 | | | |
| Netherlands | X – 7 May 2007 | | | X |
| Poland | X – 7 May 2007 | X – 14 May 2009 | | |
| Portugal | X – 7 May 2007 | X – 6 May 2008 | X – 27 Nov 2008 | |
| Slovenia | X – 7 May 2007 | | | |
| Spain | X – 7 May 2007 | X – 6 May 2008 | X – 27 Nov 2008 | X (pending) |
| Sweden | X – 7 May 2007 | | | |
| United Kingdom | | | | X |

Source: adapted from EFRP (2009a: 32, 2009b: 1-3).

EU coordination of Pension Rights, Main Technical Problems, need for mapping

| State-run | Collective | Employer-led | Personal |
|--|---|--|---|
| <i>Mandatory public: all Member States</i> | <i>Mandatory quasi-public: France (PAYG) and Finland (mixed PAYG and funded)</i> | <i>Pension fund, various arrangements (funded): Belgium, Germany (also book reserves), Hungary, Poland, the Netherlands, Switzerland</i> | <i>Mandatory: Bulgaria, Denmark (Special Savings Pension), Estonia, Hungary (MPFs), Latvia, Lithuania, Poland (OFEs), Romania, Sweden (Premium Pension)</i> |
| | Reg. 883/2004 applies above | | Reg. 883/2004 applies above |
| <i>Mandatory public for certain categories (PAYG): various schemes for e.g. public employees in Denmark, Germany (VLB), Switzerland and the UK; for unhealthy or heavy occupations in Poland</i> | <i>Sector-wide (funded): Belgium, Denmark, Germany, Italy (also book reserve, TFR), the Netherlands, Slovenia (for public employees), Sweden, Switzerland</i> | <i>Opt-out: UK pension fund trusts</i> | <i>Voluntary: Czech Republic, Germany (Riester), Italy (PIP), Hungary, Poland, Slovenia</i> |
| <i>Mandatory public for certain categories (funded): various schemes for unhealthy or heavy occupations, e.g. in Slovenia, etc.</i> | | | <i>Opt-out: UK (Personal Pension, Stakeholder Pension).</i> |
| Reg. 883/2004 applies above | | | |

Source: Ebbinghaus (2011), own modification.

EU coordination of Pension Rights, Main Technical Problems

- State-run schemes
 - the case of UK (opting out)
- Collective schemes
 - subsidiarity (need to respect national social and labour law)
 - limited use of voluntary declarations (AGIRC/ARCCO)
 - huge fragmentation and heterogeneity
- Employer-led schemes
 - huge fragmentation and heterogeneity
- Personal schemes
 - mandatory/voluntary

EU coordination of Pension rights, future scenarios (synoptic table)

1 Recalibration of Regulation 883/2004

2. New Portability Directive

3. Change in the scope of IORP Directive

4. EU-27 Matrix of Pensions

5. Principle-based approach

EU coordination of Pension rights, future scenarios (synoptic table)

1 Recalibration of Regulation 883/2004

1.1 More clear demarcation between pieces of EU legislation

1.2 Annex on statutory funded schemes

1.3 Relaunching voluntary declarations (reversing the burden of proof)

1.4 Extension of the material scope

EU coordination of Pension rights, future scenarios (synoptic table)

2. New Portability Directive

- 2.1 Re-emergence of Draft Directive (trade unions input)
- 2.2 ECJ Rulings (Casteels vs. British Airways), ARTT. 45-48 TFEU
- 2.3 Lisbon Treaty (from to)

3. Change in the scope of IORP Directive

- 3.1 Extension of Directive (more radical strategy)

EU coordination of Pension rights, future scenarios (synoptic table)

4. EU-27 Matrix of Pensions

4.1 To Map out different pension schemes, preliminary technical tool

5. Principle-based approach

5.1 Minimum regulation and/or non-binding guidelines on portability
(OMC?)