

E A P S P I

Pensions for the Public Sector

ANNUAL REPORT 2011



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FOREWORD

European developments (again) dominated the pension landscape in 2011 as this edition of EAPSPI's Annual report will illustrate. In March, the Commission published an overview of all answers received to the public consultation on the Green Paper in order to illustrate the full range of views and diversity of responses. Together with the initiative report of the European Parliament of February, the Commission may therefore evaluate the public opinion for future legislative projects at EU level based on a broad scope of information.

The core element of the Commission's reform agenda is undoubtedly the review of the IORP (or Pension Fund) Directive. Already, three out of thirteen questions of the Green Paper of July 2010 dealt with this issue i.e. with a review of the supervisory structure of supplementary pension schemes. In 2011, and therefore even before the later publication of the White Paper, the Commission continued the preparatory work for an updated draft directive by sending a so-called Call for Advice (CfA) to EIOPA, which seeks to obtain advice on how to review the IORP Directive. Since EIOPA also wanted to include the opinion of the pension industry and of stakeholder organisations, it launched two public consultations in 2011 before submitting its final opinion to the Commission.

Transparency and sound information to affiliated persons and beneficiaries was as well an important element in the Green Paper and hence of the discussion afterwards. Every pension institution is therefore obliged to check and to improve its own information policy. However, there is also

need for an overall information tool especially for highly mobile workforce. The 'Find your pension' initiative, which is designed for European researchers, is a first step to meet the increasing demand for comprehensive pension information by incorporating several pension institutions into an internet-based information platform.

European developments are, nonetheless, not reduced to the Commission's initiatives. Also the jurisdiction of the European Court of Justice (ECJ) contributes to the further development of pensions. Beyond the "classical" discrimination cases especially on grounds of gender and of age, the ECJ additionally had to deal with the question of free movement of workers, hence building a bridge to the topic of pension portability that was a further central aspect of the Green Paper.

Apart from EU developments, the reform process in the single Member States always attracts special attention since according to the introduction to the Green Paper, *"Member States are responsible for pension provision"*. The examples of the United Kingdom, Ireland and Italy, which are exposed in this Annual report, demonstrate that in spite of national particularities, the overall tendency goes – among others – towards rising retirement age, increasing employees' contributions and readjusting taxation rules in order to reduce the overall expenditure for pension schemes.



Hagen Hügelschäffer
Secretary General

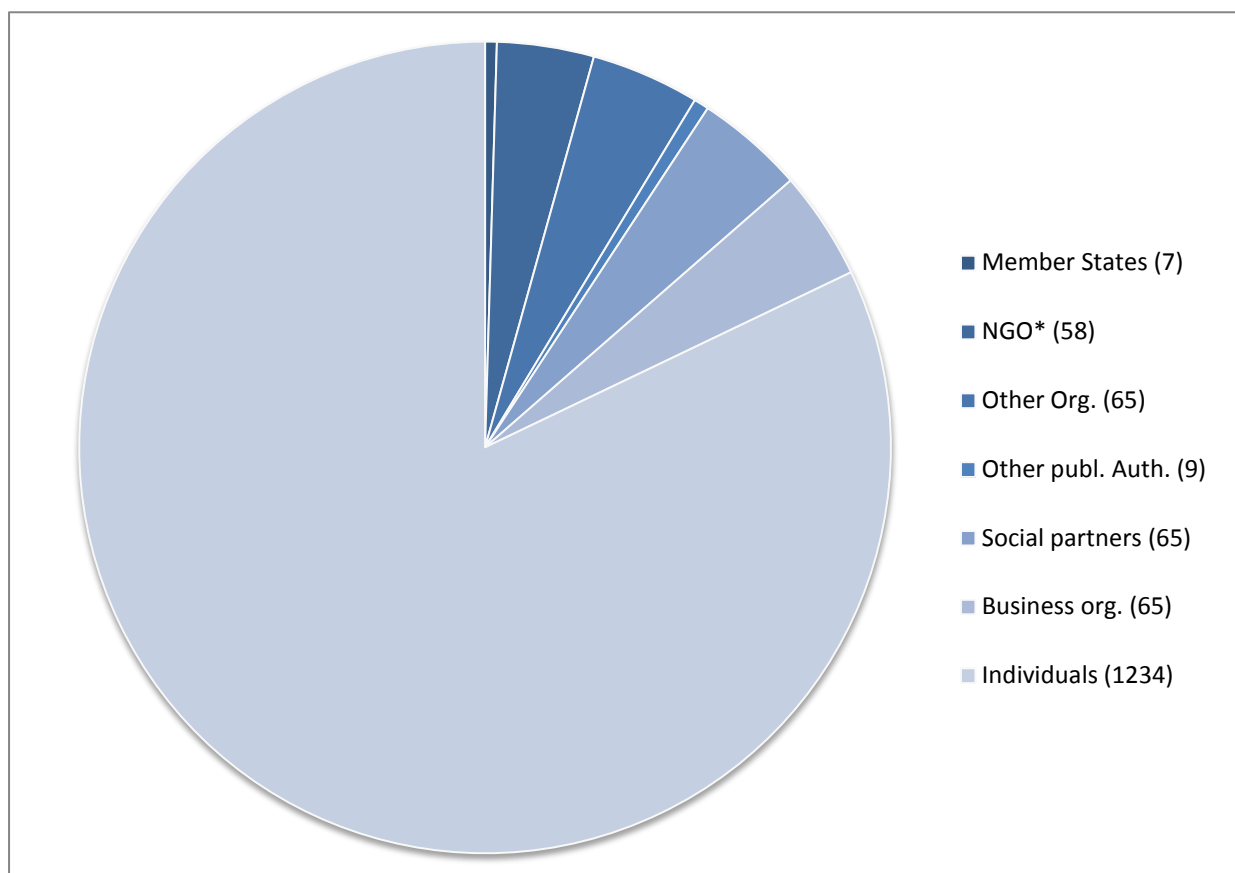
ANSWERS TO THE GREEN PAPER AND FOLLOW-UP ACTIVITIES OF THE COMMISSION



On 7 July 2010, the European Commission published its Green Paper on Pensions and opened a consultation phase until 15 November 2010. In contrast to other consultations in the pension sector, this Green Paper caused a wide echo not only from the pension industry, but also from individuals. Altogether, the Commission received 1,673 responses out of which 1,230 came from individuals; mostly from British pensioners living in Canada who mainly were of the opinion that the overall pension level would be insufficient to ensure an adequate living standard abroad. Most of the respondents delivered their answers

by using the Commission's online template whereas a minority of 170 statements were submitted in a written form.

The following graph illustrates the distribution of the answers according to the different groups of respondents. Apart from the individuals, most answers came from non-governmental and business organisations, social partners as well as from other organisations. Relatively few statements came from Member States and other public authorities.



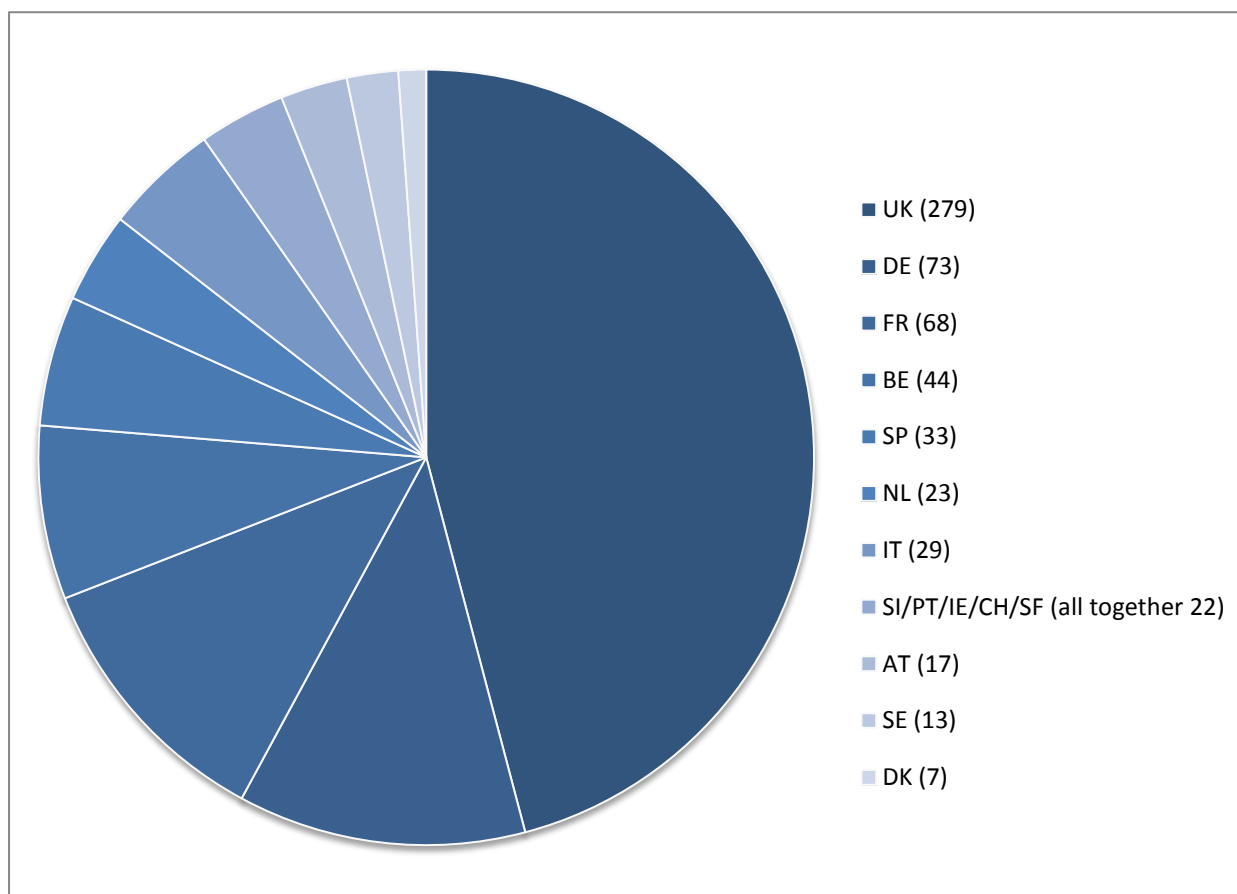
Source: COM presentation: Green Paper on Pensions – Statistics

* also classification of EAPSPI

Regarding the distribution among the different countries, most answers came from countries outside the European Union because of the large number of British pensioners living in Canada taking part in this consultation. With a view to EU Member States, the statements mainly came from the United Kingdom (279), followed by Germany (73) and France (68). The rather

high number of 44 answers from Belgium can be explained by the fact that most of the European pension stakeholder institutions as well as other lobby organisations are located in Brussels.

The following graph shows the distribution of the answers according to the countries that are members of EAPSPI.



Source: COM presentation: Green Paper on Pensions – Statistics

The Commission has integrated all answers in its Summary of Consultation Responses of 7 March 2011. This document of 44 pages covers the full range of views and diversity of responses including those of the European Parliament, the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR). Hence, this report provides a complete overview about the mainstream opinion to the different issues that were discussed in the Green Paper. This summary will therefore help the Commission to evaluate the public opinion for future legislative projects.

Among all the statements, the Initiative Report of the European Parliament of 16 February 2011 deserves particular attention. Since it has been adopted by the vast majority of 535 votes against only 85 dissenting votes, it reflects indeed the overall opinion among the European deputies. Even if the Parliament delivered its opinion around four months after the official end of the consultation phase, it is nevertheless of crucial importance of the future EU policy making in this area. The rules of the Lisbon Treaty, which has entered into force as from 1 December 2009, foresee the ordinary legislative procedure as the standard for future European legislation (Art. 289 and Art. 294 of the Treaty of the Functioning of the European Union – TFEU). In contrast to decision-making in the past which were mainly based on unanimous Council decisions, the ordinary legislative procedure requires “only” a qualified majority both in the Council and in the Parliament. Estimations have unveiled that around 95% of future EU-legislation will be adopted by means of this new procedure. There-

fore, the point of view of the Parliament to the different issues in the Green Paper will set cornerstones for the Commission for the feasibility of future policy initiatives.

A comparison between the majority of the respondents to the Green Paper, summarised in the Commission’s report of 7 March 2011, and the Initiative report of the European Parliament of 16 February 2011 show that the positions do not diverge significantly as the following three aspects are going to illustrate:

- **General comments and future role of the European Union in the field of pensions**

Both the majority of the answers to the Green Paper and the European Parliament are of the opinion that Member States should remain competent for the concrete design of their pension systems, which implies – among others – the respect of the principles of subsidiarity and proportionality. Therefore, the role of the European Union should be restricted to the coordination at EU level especially by means of “soft law”, i.e. the Open Method of Coordination (OMC). The majority of the respondents conclude that the role of the EU should hence be restricted to the definition of basic principles and of common targets. With a view to the politically delicate question whether to rise the pensionable age or not, they are of the opinion that in the future, a balance between active and retirement period will have to be found in order to ensure the sustainability of pension systems. According to the Parliament, sustainability can be best achieved through the introduction of a multi-pillar structure even though the European deputies underline

the importance of the compulsory pay-as-you-go systems of the first pillar as the main source of old age revenues in most European countries.

- **Modification of the Pension Fund Directive**

One of the most important topics at EU level is the currently debated revision of the IORP Directive 2003/41/EC (or Pension Fund Directive). The Commission is planning to publish a proposal for a revised directive and therefore sent a Call for Advice (CfA) to EIOPA in April 2011 in order to obtain advice on how to modify this directive.

The majority of the answers to the Green Paper as well as the European Parliament are of the opinion that an impact assessment prior to any legislative modification is indispensable to evaluate the financial consequences of a new supervisory regime for supplementary pension schemes. They are both also of the opinion that at least some principles of the second and third pillar of the Solvency II regime, particularly qualitative and disclosure requirements, can be adopted for a new supervisory structure of second pillar pension schemes.

However, notably employers' and pension funds' representatives have firmly expressed their concerns against any application of the quantitative requirements of the first pillar of the Solvency II regime. They underline the fundamental difference between insurance products and the pension plans of supplementary pension institutions. Therefore, most of those stakeholders are against any harmonisation of solvency rules at

EU level. The European Parliament has therefore come to the conclusion that any modification of the IORP Directive should respect the particular features of the concerned pension institutions.

- **Portability of supplementary pension rights**

Besides the revision of the IORP Directive, the Commission furthermore intends to table again the portability of supplementary pension rights by issuing a new proposal for a directive probably in the second semester of 2012. The notion of "portability" in this context is not restricted to the pure transferability in case of a job change. It also covers a harmonisation of the rules for the acquisition and the preservation of dormant pension rights. The majority of the answers to the Green Paper as well as the European Parliament prefer such harmonised rules to unified transferability rules since they are aware of the technical and fiscal problems cross border cases usually entail. However, any harmonised regulations for the acquisition and the preservation of dormant pension rights should contain adequate transition rules enabling the adoption of the pension plans.



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CALL FOR ADVICE AND EIOPA CONSULTATION



The review of the IORP Directive (or Pension Fund Directive) is the core element of the Commission's reform agenda for the coming months and years. Already three (out of thirteen) questions of the Green Paper of July 2010 dealt with this issue respectively with a review of the supervisory structure of supplementary pension schemes. Even before the end of the consultation phase of the Green Paper in November 2010 – and naturally before the later publication of the White Paper – the Commission announced in its work programme for 2011 the *“revision of the IORP Directive ... to maintain a level playing field with Solvency II and to promote more cross-border activity in this field and thereby help address the challenges of demographic ageing and public debt.”* Officials of the Directorate General Internal Market regularly announced in 2011 the upcoming review of the IORP Directive by underlining that the particular features of IORPs would be taken into consideration.

The Commission, however, is not undertaking the review of the IORP Directive alone. In fact it closely works together with EIOPA, the European Insurance and Occupational Pensions Authority, in order to benefit from its expertise. Therefore, on 7 April 2011, the Commission sent an official version of the Call for Advice (CfA) to EIOPA. This CfA seeks to obtain advice on how to review the IORP Directive with a view in particular to:

- improve cross-border services,
- introduce a risk-based supervision due to the recent economic and financial crisis,

- modernise prudential regulations for DC-schemes.

The CfA, which contains only 12 pages, is subdivided into seven different sections:

1. Introduction
2. Scope of the IORP Directive
3. Facilitating cross-border activities
4. Introduction of risk-based supervision for IORPs (large part of this document)
5. Specific features for DC-schemes
6. Quantitative impact study and data related issues
7. Further guidance on the reporting modalities and deadlines)

The detailed annex of this CfA of 50 pages contains more specifications and references especially to the Solvency II Directive (2009/138/EC).

In contrast to a prior draft version, the CfA took the IORP Directive, and not the Solvency II Directive, as the starting point to develop a *sui generis* supervisory system for IORPs. Therefore, EIOPA's advice should consider the particular features of occupational pension schemes in the EU.

EIOPA also wanted to include the opinion of the pension industry and of stakeholder organisations in its later advice to the Commission. Therefore, EIOPA launched a first official public consultation between 8 July and 15 August, in

which EAPSPI also took part and which contains the following questions especially to the scope and to qualitative criteria.

- CfA 1 – Scope of the IORP Directive
- CfA 2 – Definition of cross-border activity
- CfA 4 – Prudential regulation and social and labour law
- CfA 12 – Supervision of outsourced functions and activities
- CfA 13 – General governance requirements
- CfA 14 – Fit and proper
- CfA 17 – Internal control system
- CfA 18 – Internal audit
- CfA 20 – Outsourcing

This 83-pages consultation document is structured as follows:

- Executive summary
- Introduction
- Draft responses of EIOPA to the aforementioned areas as the main part of the document. This section is sub-divided as follows:
 - Extract from (the annex to) the CfA
 - Background
 - EIOPA's advice

- Questions for Stakeholders
- Collated questions for stakeholders.

EAPSPI's statement, which can be downloaded from the association's website www.eapspi.eu / "News", contains the following general comments apart from the answers to the concrete questions:

- Workplace pensions must generally be promoted.
- Excessive regulatory rules might be counter-productive for a further promotion of supplementary funded workplace pensions.
- Workplace pensions are an issue at national and sectorial level.
- The diversity of pension design due to cultural and historical reasons must be respected.
- The important role of social partners and their ultimate responsibility has to be taken into consideration.

EAPSPI finally underlined that although some principles of the second pillar of the Solvency II regime deserve to be supported, the Solvency II Directive should not be the starting point of any modification of the IORP Directive due to the following fundamental differences between IORPs and insurance institutions

- IORPs are social institutions that provide additional old-age income.

- IORPs cover parts of the population that otherwise would not benefit from any supplementary pensions.
- IORPs are characterized by great efficiency and by low internal costs.
- Solidarity is a further core element of occupational pension schemes.
- Oftentimes, the employers have the ultimate responsibility for the fulfilment of the pension promise.

However, this document merely contains the smaller part of the whole consultation. The re-

maining questions of the CfA – especially about the controversially debated quantitative criteria – are submitted to a further official consultation in the last quarter of 2011.



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FIND YOUR PENSION PORTAL – FIRST EUROPE-WIDE TRACKING AND
INFORMATION SERVICE OF PENSIONS



“Sorry, I am not sure if VBL is a private pension system or part of the German national pension...”. With these words ended the inquiry of a young scientist who, having repeatedly changed her workplace, wanted to know how her future pension would shape out. At first she had worked in Switzerland, at a supra-national research institute which provides its own pension plan. Next she was employed in a German university at which point she was insured with VBL and with the German Statutory Pension Insurance Scheme. Then she moved to Sweden where she took part in a research project with a Swedish university. Here she once again had a fixed-term contract. This example of a career path is not an isolated case. According to the European Commission’s (EC) estimates, about 1.5 million scientists are classified as ‘wandering/migratory’, i.e. they are highly mobile and constantly changing their workplace.

Mobility as an integral part of the career

Being a scientist differs significantly from other professions because here mobility is an integral part of one’s career. Short (or fixed) term contracts with different research institutes and universities throughout Europe are common in the first 10 – 15 years of researchers’ employment biography. But mobility can also be required later in their work life to pursue a particular research subject. This leads us to our topic: the question of mobility and pensions. The typical career in research results in having been a member of a variety of state pension schemes and different supplementary pension schemes but not having much knowledge about them.

Mobility and Pensions

In 2008 the ERA (European Research Area) expert group of the Commission published a report about *“Realising a single labour market for researchers”*, which described problems regarding the state and supplementary pensions of researchers by giving concrete examples. The EC estimates that the group concerned today is still relatively small but growing fast. That is why the EC has identified pensions as possible obstacles to attracting more young researchers to work in the European Union.

Indeed the issue of pensions and international professional mobility still only concerns a small sector of the workforce. Nevertheless, mobility is an important aspect of employment policy. For this reason, the EC has never lost sight of the subject. Even though it has not yet come to the adoption of a European Portability directive, the latest developments show that it is still considered an essential topic. There are different ways in which the goal of mobility can be realised. The possible solutions mooted since 2001 range from the establishment of a Pan-European pension fund (particularly suitable to large corporations), encouraging transferability of existing pension entitlements or their cash equivalent values and shortening waiting and vesting periods, to the establishment of a tracking service system.

Professional mobility as a subject of the ongoing European legislative process

In the Green Paper *“Towards adequate, sustainable and safe European pension systems”*¹, the Commission specifically asked what kind of possible solutions should be pursued. The majority of the responses did not favour transfers as a good option. Many answers strictly opposed them considering the transferability of cash equivalent values to be too difficult and expensive to carry out². Instead most of the responses supported the approach of setting minimum standards concerning the acquisition and preservation of pension rights. Although the European Parliament, in its statement on the Green Paper, stressed that transferability of capital values ought to be permitted into other pension funds, it also stated that the focus of the Commission’s activities should be on the development of minimum standards for the acquisition and preservation of pension rights³. Therefore it was not surprisingly that in the recently submitted White Paper the Commission does not propose portability as a definite goal but favours other approaches. However, portability is included here because it is intended to overcome existing tax obstacles⁴.

In its resolution the European Parliament had welcomed the establishment of tracking service

systems as they have just been introduced in different European states and called upon the Commission to work on proposals for a European tracking service system⁵. Following this advice from the Parliament the Commission in its new White Paper highlights the importance of those systems in the Member States and announces the intension to promote their development. The EC *“will consider, in the context of the revision of the IORP directive and the proposal for a portability directive, how the provision of the required information for pensions tracking can be ensured, and it will support a pilot project on cross-border tracking”*⁶.

According to the announced work program of the Commission the consultation process on a European directive about occupational pensions (former called portability directive) will be reopened with the proposal to set minimum standards for the acquisition and preservation of supplementary pension rights. Another field of action is the IORP directive to which amendments shall be proposed inter alia in order to simplify the framework of cross border pension funds with regard to supervision and the applicable labour and social law. How the legislative process will work out is very unpredictable. Unlike in the past, decisions can be made by virtue of the majority principle.

¹ <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=839&furtherNews=yes> retrieved on 11 January 2012 at 08:54

² Summary of Consultation Responses to the Green Paper ‘Towards adequate, sustainable and safe European Pension systems’, 7 March 2011

³ European Parliament resolution of the 16 February 2011 on the Green Paper on Pensions (2010/2239/INI), n° 38

⁴ White Paper on Pensions

⁵ European Parliament resolution of the 16 February 2011 on the Green Paper on Pensions (2010/2239/INI), n° 39

⁶ White Paper on Pensions

Coming back to mobile researchers it has to be considered that basically, there will be no single solution to improve their situation as regards their pensions. As the EC expert group, Social security and supplementary pensions' stated in their report, improvements will only come through various different measures⁷.

In the White Paper the Commission commits to continue engaging for the foundation of a Pan-European Pension Fund for Researchers. In our opinion this Fund is not suitable to overcome the obstacles of mobility, even if there were a number of employers willing to sponsor it: Changes in jobs will frequently cause membership in differing pension schemes because many publicly funded research employers already are members of supplementary pension schemes. And if researchers end up their careers in academia they often work for global enterprises which also provide their own company pension schemes. In light of this fact it is fundamentally important to provide easily accessible and understandable information.

How to provide a good information service for researchers

With the higher demand for mobility the number of requests to our offices has also increased. These consist of questions from scientists who are overwhelmed by the various pension systems they have been involved in and have neither the time nor the patience to deal with each one. The most common topics are related to all 3 pillars, especially the differences between the pillars. Typical questions concern the question of

portability, when and where a pension can be applied for and how high it can be expected to be. Unlike the everyday requests of clients here other countries and foreign pension providers are involved. We could only give answers in relation to our own schemes, but would this really be good customer service?

This was also the case with regards to the inquiries of the scientist I mentioned above. Looking at her career path and having in mind that the number of these requests is increasing, we came up with an idea: If there was a map with all the research employers and related pension institutes, the researchers could find the information themselves. This portal should not only function as a map but also give researchers all the information about the related pension schemes and providers they need.

The 'Find your Pension' portal

In the context of the EC's 'European Partnership for Researchers'⁷ VBL has started a project which is funded by the German Ministry of Research and Education. This project includes not only the creation of a portal, but also a compilation of information on all pension schemes for

⁷http://ec.europa.eu/research/press/2008/pdf/com_2008_31_1_en.pdf

researchers in Europe and an exploration of possible solutions to remove obstacles to mobility. The original plan was just to create a portal for supplementary pension schemes. However, after the first few months it became clear that it is not important what pillar a system belongs to. Internationally mobile researchers need information on their entire pension, not just the supple-

mentary second pillar. We therefore started to also include the relevant state pension systems.

In order to give a short and simple explanation of the 'Find Your Pension' portal the website has a homepage which explains how to use the portal in three easy steps:

- Step 1: Fill in the relevant employer
- Step 2: Search for the pension providers concerned
- Step 3: Learn about the pension scheme

The researcher starts by filling in the name of an employer who he or she works for, has worked for or is thinking of applying to for a job. When the employer has been entered the map shows his geographic location. The researcher gets the address of the employer and possibly the name of a contact person in the international office. Then he/she can find the relevant pension

scheme by clicking 'Pension Institution'. Here the pension institutions / providers appear, together with their address, and if so desired a company brochure, company logo and their contact details. The map uses Google Maps technology so the format is readily identifiable and very simple to use for the typical mobile researcher.

The core of the information is the 'Factsheet' which is provided for every scheme. Set out in an FAQ style, the factsheet gives clear, direct answers to the questions most important to the average mobile scientist: What different categories of benefits are there and when am I entitled to claim? Who pays the contributions for my insurance and what happens if my contract is complete and I begin working elsewhere?

In order to include the first pillar pension, the portal will also show the name and address of the institution in charge for state pensions in the country concerned and there will be a second factsheet about said scheme(s). In our experience researchers are often only interested in the key information on their pension. That is why the information should be understandable and to-the-point. This 'Less is More-principle' and the multi pillar approach make the 'Find your Pension' portal unique and very attractive to researchers. While reading the factsheets most of the users' questions will be answered quickly and clearly and they will get a good basic knowledge of the pension schemes. This way the portal will effectively be a sort of 'pension school'. There will also be a section to learn about the coordination principles applicable to the 1st pillar schemes (EU regulation 883/2004).

Ensure quality and build up a knowledge system

When we considered the concept of the portal we first thought we would collect and maintain all information and data by ourselves but then the question arose: how do we keep the information up to date and ensure its quality and accuracy?

Taking into consideration knowledge systems like Wikipedia we created the concept to work by registration and sharing information in the form of a network. Employers of researchers and/or pension providers can register with the portal and update their information on the portal themselves. In order to achieve the best possible quality the information about the schemes should be given in the form of a factsheet and by

using links to brochures etc. In this way we can guarantee high quality, goal oriented information that can be changed and updated whenever necessary.

Most pension providers already offer their customers excellent information; on the internet or through their printed media and customer service. But so far there is no central source of information for the pensions of scientists in Europe. This is exactly what the new 'Find your Pension' portal seeks to offer. The providers can post useful information about their schemes and, incidentally, their service staff have a knowledge system that can help them to save time and therefore money. The same applies for the research employers as they can also direct their mobile employees to this source.

Diversity is not an obstacle but an opportunity

This was the topic of EAPSPI's 2011 annual conference in Bilbao. The 'Find your Pension' portal is an opportunity to demonstrate that this statement holds equally true with regards to mobility. Thorough and transparent information is necessary for that. The portal will be a great improvement for researchers who are mobile and want to get information about their future pensions without having to write long letters. It will help researchers to track their pension path and has the potential to be the first Europe-wide information and tracking service portal about pensions. The EAPSPI Board of Directors decided that EAPSPI will be a partner of the portal. Thus all members who are affected are invited to cooperate and to help the network grow. The

working group 'mobility and pensions' will follow the development process and will support it.



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JURISPRUDENCE OF THE EUROPEAN COURT OF JUSTICE



Even though the fundamental freedoms of the European primary law as well as other European legislative acts ensure the respect of the fundamental freedoms already for many decades, the European Court of Justice (ECJ) again published several rulings in 2010/2011 in this area with relevance for pension schemes. Most of these judgements dealt with discrimination cases on grounds of gender, sexual orientation and age. But also the question of free movement of workers kept the ECJ busy. And finally, the judgement C-271/08 of 15 July 2010 still had to be transferred by the sued Federal Republic of Germany as well as by the social partners of the public sector. In this judgement, the ECJ decided that employers of the local sector with a number of employees above a certain threshold had to respect European public procurement law before awarding service contracts to pension institutions.

1. Discrimination cases

1.1 Discrimination on grounds of gender

1.1.1 C-236/09 (*Association Belge des Consommateurs Test-Achats and others*)

One of the most well-known cases in 2011 was the decision C-236/09 of 1 March 2011. The ECJ decided that the use of gender as a factor in the calculation of insurance premiums would violate EU law after 21 December 2012. The legal basis of this ruling is Directive 2004/113/EC that prohibits discrimination based on gender in the access to and supply of goods

and services already as from its entry into force on 21 December 2007. However, this directive foresees an exception in Art. 5 (2) according to which a differentiation on grounds of gender is allowed if it can be justified by actuarial and statistical data. Since this exception has more or less become the rule in the practice especially of the insurance sector, the Court only allowed this rule until the 21 December 2012, the first date of revision of this exception clause. Afterwards, insurance undertakings are only allowed to offer unisex-tariffs.

Since the legal basis of this ruling is Directive 2004/113/EC, only insurance products are directly concerned. First pillar pension schemes are excluded since they are submitted to the (special) Directive 79/7, which allows a differentiation based on gender. For a long time it was unclear whether to apply this judgment also to occupational pension plans. A strong argument in favour of the extension is the similar structure of the applicable Directive 2006/54/EC, which also contains such an exception clause. However, the Commission finally decided in its guidelines of 22 December 2011 on the application of the Directive 2004/113/EC in the light of the ECJ-judgment C-236/09 (*Test-Achats*) that occupational pension plans are basically different from insurance contracts and that therefore this ECJ-decision would only apply on insurance contracts. In these guidelines, the Commission furthermore expressed its opinion that this ruling did not have any retroactive effect. Hence, unisex tariffs are only compulsory for new contracts after the 21 December 2012.

1.1.2 C-356/09 of 18/11/2010 (*Kleist*)

This ECJ-ruling also dealt with discrimination on grounds of gender. An Austrian collective agreement stipulated the automatic termination of a labour contract once the employee reaches the legal retirement age in the first pillar that still foresees different ages for women and men. Even though the concerned collective agreement referred to the state-run first pillar scheme and therefore to a legal rule, the ECJ, however, considered this practice as a direct discrimination since such a differentiation – though being allowed for the first pillar – is not allowed in the context of labour conditions.

1.2 Discrimination on grounds of sexual orientation

Sexual orientation and occupational pension plans? At a first glance, such a constellation seems to be of a rather academic nature. However, the ECJ-ruling C-147/08 of 10 May 2011 (*Römer*) has demonstrated that such a question can also occur in practice when the calculation rules for the later benefits refer – among others – to the tax category of the beneficiary and in this context to his matrimonial status. Some national tax legislations foresee a more favourable tax treatment for married couples but only of different gender. Same-sex couples, however, are excluded from this advantage even if they live in a registered partnership. In this case, Mr. *Römer*, who lived in a registered partnership, pretended a 50% lower pension level due to the application of a less favourable tax-category for the calculation of his benefits. The ECJ consid-

ered this practice as a direct discrimination on grounds of the sexual orientation if the beneficiary could not marry since he lives in a legal partnership. Yet, an equal treatment can only be claimed as from 3 December 2003, the date of the entry into force of the applicable Directive 2000/78.

1.3 Discrimination on grounds of age

Especially since the ECJ-judgment *Palacios de la Villa* (C-411/05), the question of non-discrimination on grounds of age is becoming increasingly important also for the pension sector even if the jurisprudence still allows a larger leeway to justify unequal treatment compared with the discrimination cases on grounds of gender or of sexual orientation (see above).

In the joined cases C-297/10 and C-298/10 (*Hennings and Mai*) the Court had to decide whether the German collective agreement on remuneration of public sector employees contained a discrimination of younger workers. Until 1 October 2005, the wage categories in the collective agreements were determined according to age. Afterwards the social partners abandoned the age criterion by replacing it by the criteria of professional skills and experience. In order to avoid any losses in remuneration, the social partners furthermore agreed on transfer rules that maintain the latest remuneration level. The ECJ decided that this collective agreement did not constitute a discrimination on grounds of age. Even though the former remuneration rules discriminated younger workers, the new rules, however, have eliminated this discrimination. Also the transition rules are justified although the

former discrimination will thus be preserved for the future. But in contrast to the transition rules in the *Test-Achats* decision, the discriminatory effect will disappear due to new remuneration rules at a mid- or long-term horizon.

2. Free movement of workers

The free movement of workers and the preservation of their acquired social rights is one of the main concerns of the Commission and of stakeholder institutions as the result of the consultation on the Green Paper have demonstrated (see above). But also the ECJ had to deal with this issue in the case C-379/09 of 10 March 2011 (*Casteels*). *Mr. Casteels*, who had worked in different subsidiaries of British Airways in Europe, claimed for the recognition of all working periods spent in the company. British Airways, however, did not recognise the period in Germany since *Mr. Casteels* did not fulfil the legal vesting period of five years according to German law. The ECJ was of the opinion that British Airways also had to recognise the working period in Germany and that therefore, any denial of this time would violate the fundamental freedom of free movement of workers. This statement of the ECJ will probably also feed the discussion about harmonised conditions for the acquisition of supplementary pension rights that were also part of the debates in the Green Paper.

3. Transfer of the ECJ-judgement C-271/08

On 15 July 2010 the ECJ decided that Germany had violated public procurement law as far as “large” public employers had awarded occupa-

tional pensions contracts based on deferred compensation directly to the managing institutions without a prior call for tender at EU level. With respects to the thresholds in the relevant EU directives on public procurement, “large” employers were those with more than 4,505 employees in 2004, with more than 3,133 employees in 2005 and with more than 2,402 employees in 2006 and 2007. Further details of this ruling are to be found in EAPSPI’s Annual report 2010, page 29/30.

The consequences of this ruling are the following:

- Only “large” employers exceeding the relevant EU thresholds (see above) are directly affected.
- Existing contracts of the individual employees on deferred compensation are, however, valid and remain untouched.
- The social partners have to transform the judgment into national law since the ECJ has recognised the freedom of collective bargaining as equivalent right to the fundamental freedoms of the Lisbon Treaty that also cover the public procurement rules.
- This judgement is potentially relevant for other public sector pension schemes, which are based on collective agreements, such as in Denmark and in Sweden that have supported Germany in this procedure.

The Federal Republic of Germany therefore had to transfer this judgment in order to avoid a second infringement procedure that could have

ended in a further ruling against Germany. Since the ECJ decided on a collective agreement, the social partners of the public sector imperatively had to intervene in order to transfer this decision. Therefore, the employers' representation, the German association of local employers (VKA) firstly recommended their affiliated members to terminate all frame contracts between "large" employers and the pension institutions. Furthermore, the employers' representation started negotiating with the trade unions about a new collective agreement that respects this new jurisprudence. Since the social partners could

not reach an agreement, the employers' representation finally issued a binding guideline for their members according to which "large" employers now have to call for tender prior the award of new service contracts for deferred compensation. This binding guideline was transferred to the Commission which later, in March 2012, officially closed this infringement procedure.

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COUNTRY REPORTS



Public Service Pensions in the UK Pension Reform 2015

Following the recommendations made in Lord Hutton's final report (http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions.htm) the UK Government embarked on a period of discussion and negotiation with stakeholders for the public sector schemes in England and Wales covering the NHS, Teachers, Local Government and Civil Service. Initially each scheme was issued with an outline scheme design known as the reference scheme which was based on the recommendations made by Lord Hutton and the key elements were that schemes should be based on a career average revalued earnings (CARE) scheme rather than final salary and that normal retirement ages should be aligned to the state pensions age. In addition cost ceilings were also issued to allow detailed specific scheme negotiations to take place.

Cost ceilings provided the parameters for scheme discussions with unions on the shape of reformed pension schemes. Each cost ceiling reflects the cost of delivering Lord Hutton's recommendations for the respective pension scheme, whilst ensuring that most low and middle earners working a full career will receive pension benefits at least as good, if not better, than they get now. Each cost ceiling is expressed as a percentage of total pensionable pay bill for each scheme. It is the level of total contributions (both employee and employer) that are required to meet the cost of the Government's preferred design (i.e. the reference scheme).

On the 2 November 2011 the UK Government issued what was their final offer and in doing so increased the cost ceilings to reflect a change in the recommended accrual rates from 1/65th to 1/60th although schemes were able to agree different accrual rates as long as the outcome remained within the set cost ceiling. In addition the UK Government offer also provided for full protection for any individual within 10 years of their normal pension age on 1 April 2012. Full details of that offer can be accessed from the HM Treasury website via the following link: http://cdn.hm-treasury.gov.uk/pensions_public-service_021111.pdf.

Further discussions took place as a result of this offer in line with the UK Government's timetable to achieve a negotiated outline agreement by the end of 2011. On 20 December 2011 the Chief Secretary to the Treasury announced that Heads of Agreement had been reached with the NHS Pension Scheme, the Principal Civil Service Pension Scheme, the Teachers' Pension Scheme and the Local Government Pensions Scheme based on the enhanced offer made by the Government on 2 November 2011. These agreements were subject to ratification with the respective union executives and membership.

In all cases the enhanced cost ceilings set on 2 November 2011 remain unchanged and no additional money was offered by the Government. These agreements, if ratified, will deliver the UK Government's key objectives on linking Normal Pension Age to the State Pension Age and moving to career average schemes. While most workers will still have to work longer and pay more, most low and middle earners working a

full career will receive pension benefits at least as good, if not better, than they get now.

In all schemes the accrual rate has been improved in each of the outline agreements. This has been offset by lower revaluation of accruals prior to retirement with a link to prices rather than earnings. This has meant no extra cost to the taxpayer.

However since this announcement was made a number of unions have either formally rejected or sought further discussions before a decision can be made on agreement and at the time of writing it is not clear how this will affect the reform programme going forward. Discussions on reforms to the Police and Firefighter schemes are still to be finalised.

The Scottish Government has devolved responsibilities for the NHS, Teachers, Local Government, Police and Firefighter schemes in Scotland. Although discussions have taken place on the respective schemes in England and Wales, as referred to in this report, the Scottish Government is considering the approach to long term reforms and no decisions have been taken yet. The case for reform made by Lord Hutton will be considered by Scottish Ministers together with the final outcome of the reforms undertaken by the UK Government. Any proposed reforms will be taken forward in partnership with trade unions and employers of the schemes concerned.

Contributions

In addition to providing a long-term look at public service pensions the UK Government asked Lord Hutton to provide short-term proposals for ensuring that public sector pensions provision remains fair and affordable. Lord Hutton issued an interim report on 7 October 2010 which concluded that public sector workers should pay more for their current pension benefits. The UK Government subsequently announced its intention to increase employee contributions to public sector pension schemes by an average of 3.2% of pay between April 2012 and April 2014. This will deliver savings of £2.8bn across public schemes by 2014/15. On 19 July a UK Government Written Ministerial Statement confirmed initial employee contribution increases for one year only and that negotiations on increases planned to the LGPS in England and Wales would be treated separately from the rest of the public sector schemes. A copy of that statement can be found via the following link: http://www.hm-treasury.gov.uk/press_83_11.htm.

The increases in contributions were a key factor in the disputes raised by trade unions that resulted in a public sector wide strike on 30 November. In addition to the increase in contributions the trade unions also dispute the need to reform public sector schemes at this time, given scheme reforms had already been undertaken between 2006 and 2009, and the UK Government's decision to change the indexation of pensions from the Retail Price Index (RPI) to the Consumer Price Index (CPI) which was introduced from April 2011. The change from RPI to

CPI is estimated to reduce the future value of public sector pensions by between 15% and 20% depending on the time the pension is measured over as CPI has generally been lower than RPI. For example the CPI increases applied for annual indexation of public sector pensions in April 21011 provided for an increases of 3.1%. If the link to RPI had been maintained this would have provided an increase of 4.6%.

Contribution increases for the schemes in England and Wales for 2012/13 are due to be introduced from April 2012. With the exception of the Local Government Pension Scheme in Scotland similar increases will be applied to the NHS, Teachers, Police and Firefighter schemes in Scotland. Although the Scottish Government is principally opposed to this particular policy the financial constraints that would be applied by the UK Government to the Scottish Budget if the increases are not applied mean that they are reluctantly applying similar employee contribution increases.

Contribution increases for 2013/14 and 2014/15 have still to be determined and will be discussed during 2012.

Tax Relief

The UK Government has also introduced changes to the way pensions are taxed, which are aimed at restricting the tax relief granted to the most highly paid. The main changes are:

1. From the tax year 2011/12, the Annual Allowance will be reduced from its current level

of £255,000 to £50,000. In simple terms this means that [a] in defined benefit arrangements the pension growth will be limited to £50,000 divided by a factor of 16 [or a pension increase of £3125] and in [b] defined contribution arrangements the contribution cannot exceed £50,000. There will be a three years smoothing facility to allow unused allowances to be carried forward. This will benefit those who have a salary "spike" in one year. There are some exemptions from the change and these are:

- a. Death
- b. Terminal and Serious Ill Health
- c. Members with Deferred/Preserved benefits in the Scheme.

2. From April 2012, the Lifetime Allowance will reduce from £1.8m to £ 1.5m. The Lifetime Allowance (LTA) is the total value of all private and occupational pensions, but not any state pension, which can be built up over the working life without paying extra tax. The revised LTA may affect someone if they have earned a pension in excess of £65,217 a year, plus any lump sum they are due or if they have a pension (excluding any lump sum) of £75,000.

The coming year will see significant work being undertaken in how public sector pensions will look in the future. This will not be an easy journey as understandably public service workers see their pensions as a key element of their overall terms and conditions and will strongly

defend the pension rights they currently receive. Significant reform against a backdrop of difficult economic times which includes pay freezes and general uncertainty is not ideal. The Scottish Government however remains committed to public sector pensions which are affordable, sustainable and fair.



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Pensions in Ireland: An overview of key challenge and policy responses

Mr. David Hegarty, Head of Policy at the Irish Pensions Regulator, the Pensions Board, gave a presentation entitled: *Pensions in Ireland - An Overview of key challenges and policy responses* to the LEC meeting in Dublin. He began by explaining the Irish pensions system is organised around 3 “pillars”: the state pension, occupational pensions and personal pensions.

Pillar 1: State pension

This essentially consists of the contributory state pension which amounts to a maximum of some € 230 per week. This currently represents approximately 35% of average earnings and there is a political commitment to maintain the state pension at this level. In addition, there is a means-tested non-contributory pension of € 219 per week. This is aimed at poverty prevention amongst the aged who have reduced means. These pensions come into payment currently at 65 years of age. Under recently enacted legislation, the State pension age is to rise from 65 to 68 by 2028 (this is an agreed measure under the EU/IMF programme). The commitment to maintain this at 35% of average earnings remains and the change in pension age is accompanied by some changes to eligibility and contribution rules.

Pillar 2: Occupational pillar

This pillar consists of employer sponsored DB and DC schemes that generally operate on a funded basis in the private sector and on a pay-as-you-go basis in the public service. Schemes

are voluntary arrangements between employers and employees and are generally constituted as trusts. There are some 550,000 members in 1,100 DB schemes and 260,000 members in 75,000 DC schemes – including 56,000 single member schemes. The funded schemes must meet a statutory funding standard, regulated by the Pensions Board.

Pillar 3: Personal pillar

The personal pension pillar includes vehicles such as Personal Retirement Savings Accounts (PRSAs) and Retirement Annuity Contracts (RACs). These are schemes taken out by individuals and can benefit from tax relief and can receive employer contributions. In Ireland the total pillar 2 and 3 pension fund assets amount to some 45% of GDP but account for just 25% of retirement income, indicating the particular coverage of the second and third pillars.

Pensions Board – Pensions Regulator

The Pensions Board which regulates Pension provision in Ireland was established under the Pensions Act 1990. It is a statutory agency reporting to the Minister for Social Protection, headed by a 17 person Board, appointed by the Minister. The Board includes industry and consumer representatives and Government ministries. It is funded by fees levied on pension schemes and pension products. It has a staff of around 40 people and an annual budget of about € 5.5 million. Its main functions are to regulate occupational pensions and PRSAs, to provide policy advice to the Minister and the Government, to give guidance to trustees and the industry on the Pensions Act and finally, but

importantly, to provide a source of pensions information to the general public.

The Pensions Board's main regulatory activities are:

- To record scheme registration and amendments;
- To collect fees;
- To enforce the funding standard regime for funded defined benefit schemes (public service pay-as-you-go schemes are exempt);
- To ensure compliance with disclosure requirements;
- To collect annual scheme information; and
- To carry out audits of scheme administrators and providers.

Government Policy

The last Government published the "National Pensions Framework" (White Paper) in March 2010 setting out plans for reform of system, including the increase in the pension age for the state pension mentioned above and a soft-mandatory (i.e. with opt-out) auto-enrolment system is to be introduced in the next two or three years subject to budgetary constraints. There are also proposed adjustments to the tax relief regime for pension contributions, in that tax relief is to be delivered through single 33% rate instead of at marginal rates of 20% or 41% now. This change has been overtaken to some extent by terms of EU/IMF programme of financial support.

A new defined benefit model is at a consultation stage, based on the idea of a lower, but more secure, "core" benefit. There will also be stronger regulation and a review of Pensions Board powers as well as a rationalisation of personal pension vehicles and changes to public service pensions – a single public service scheme is to be legislated for as an EU/IMF commitment.

Demographic and other pressures

At the moment, Ireland has a relatively young demographic and there are about 6 people at work per pensioner. Ageing projections, however, show this will fall to 2 by mid-century. The defined benefit (DB) pension model is coming under serious pressure at present. The Pensions Board estimates that about 75% of private sector funded schemes are in deficit. This is due to increases in life expectancy, investment losses and, more recently, falls in interest rates. Defined contribution (DC) provision is becoming more important but it must be admitted it is unlikely to meet retirement income expectations. Projections show public pensions expenditure is set to rise to 5% of GDP by 2060.

Summary

Overall a stressed economic situation and serious fiscal problems mean difficult times for pensions in Ireland, although reforms are underway which should assist coverage and provide a

'floor', market conditions and life expectancy changes, allied to the likely movement in Ireland's demographic balance make for a challenging period ahead.



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A historic survey of the supplementary pension system within the Italian three-pillar pension system

The supplementary pension system was introduced in Italy by Legislative Decree n° 124 of 21 April 1993. In the banking sector, supplementary pension schemes were already present, but there was no general law concerning the compulsory public pension system. The general compulsory pension system ensured excellent coverage in comparison to other countries, and there was no need, therefore, of a system of supplementary pension schemes.

A pension reform made by the legislative decree n° 503 of 30 December 1992 changed the rules for calculating pensions. This resulted in a sharp cut in public pension expenditure which made supplementary pensions necessary. This reform of the public pension system was integrated with the decree n° 124/1993 that created a general framework of supplementary pensions.

The law of 8 August 1995, n° 335 reforming the pension system, which introduced the contributions system for younger workers, confirmed the decrease in replacement rates of public pension. Since 1992, public security in Italy has been subject to ongoing reform processes of the method of calculating the pension, of the requirements for the access to a pension, with a progressive harmonisation of the rules in the existing pension schemes.

The reforms of 1992 and 1995 changed essentially the rules of calculating pensions. With the-

se reforms, the working world in Italy was divided into two, according to contributions seniority enjoyed at the end of 1995. The calculation method of the pension for workers with at least 18 years of contributions did not change or changed only slightly at the end of 1995, while workers hired after the end of 1995 were forced to adopt the calculation based on contributions causing a sharp drop in replacement rates.

The pension reform also provided a mixed system which covers all workers enrolled in a pension management who were under 18 years of contributions before 1996. In this case the pension is calculated by the system of contributions for periods before 1996 and through the pay-as-you-go prior periods.

The supplementary pension schemes have been equated with the decree n° 252/2005 to ensure the free movement of workers and membership in the system of supplementary pensions. According to the Decree n° 124/1993 supplementary pension schemes in Italy can be established by:

- contracts and collective bargaining agreements, including business agreements;
- autonomous agreements between workers and professionals;
- regulations of entities or businesses;
- agreements between working members of cooperative and associations of the national cooperative movement;
- agreements between parties who provide unpaid care in the family, attributed to the appropriate pension fund INPS;

- asset management companies, real estate brokerage firms, banks, insurance companies;
- insurance companies under contracts of life insurance that can collect only individual membership.

The equation is based on common rules applied to all forms of supplementary pensions in respect of costs, transparency and portability of the positions gained. For the proper implementation of these rules, the role of COVIP (Commissione di Vigilanza sui Fondi Pensione) has been confirmed as the only authority in the field.

The pensions paid by the supplementary pension funds are of two types:

- old-age pension which is awarded to the attainment of the age requirement for the existing pension system registry compulsory membership for similar treatment of old age and the requirement of five years of participation to the supplementary fund;
- the pension benefit that is awarded by seniority, only with the cessation of work, and at least fifteen years of age participating in the supplementary fund and the ages of no more than ten years less than that provided for the retirement of old age.

The supplementary pension schemes are subject to tax on income replacement of 11% applied to net income in each tax year.

A survey of the Italian three pillars system

The Italian pension system is composed of three pillars:

- Pillar I: Public, mandatory, PAYG.
- Pillar II: Private, voluntary subscription on a collective basis. These include pension funds contracts (FPC), pre-existing pension funds (PPF), open pension funds (Fpa) limited to cases of membership-based on collective bargaining.
- Pillar III: Private voluntary subscription.
 - Private, on an individual basis. It includes individual pension plans (individual membership in open funds and individual pension plans using life insurance policies).
 - Mandatory pension: Automaticity of performance.
 - Direct obligations of the estimates and insurance registration required mandatory retirement.
 - Supplementary pension system is based on the policy and principle of capitalization and on the freedom of activation of "instituting sources" plans by sources: freedom of adherence to the plan.

A series of laws, among others, govern the system of supplementary pensions:

- Law n° 421/1992 (connected to the financial law for 1993, contains the delegation for supplementary Green Paper and follow-up of the pension).

- Decree n° 124/1993 (governing the supplementary pensions).
- Law n° 335/1995 (reform of the pension system compulsory and supplementary).
- Decree n° 47/2000: (delegating implementation and introduction of tax on individual pension plans).
- T.U.I.R. Presidential Decree n° 917/1986: (also contains the supplementary pension scheme tax – amended and supplemented by Legislative Decrees n° 47/2000 and No. 168/2001).
- Law n° 243/2004 (Law for the reform of compulsory insurance and supplementary)
- Decree n° 252/2005.

Some supplementary pension funds are already active for public administration:

- FOPADIVA (Aosta Valley).
- LABORFOND: Trentino Alto Adige Italian region bordering Austria: active for local government, too.
- ESPERO: school employees and teachers already established, but pending authorization by COVIP (Italian surveillance supplementary board on funds) are two funds:
 1. SIRIO Fund whose target is part of public administration.
 2. PERSEO Fund whose target is Health service and local Government.

Complementary pension schemes – Target groups

- Private and public sector employees.
- Members workers in cooperative production firms.

- Self-employed and freelancers.
- Recipients of the legislative decree of 16 September 1996, No 565: entities engaged in unpaid care in the family.
- Holders of income capital company etc. other from work (capital, company, etc..) and dependents.

In brief, the system is complementary to the first pillar, alternative to public; it is a pension that helps to ensure an adequate standard of living after retirement.

The individual capitalisation, i.e. contributions paid out, are invested and returned (with associated returns) to the worker in the form of performance. It is on a voluntary basis and on open membership. Every worker can decide whether and where to join, with full awareness and autonomy.

The fundamental choice is the

- Long-term commitment (in terms of social security contributions and constraints of stay).
- Awareness in the choice.

Market Structure

The market for supplementary pension is made up of different types of pension schemes that you can join, in particular:

1. Negotiating pension funds
2. Pre-existing pension funds
3. Open pension funds

4. Individual pension plans using life insurance policies - PIP "new" (in accordance with Legislative Decree n° 252/05).

Open fund and Pip Fund which are opened up in the form of autonomous assets separated (according to art. 2117 Civil Code) from the same financial intermediaries that can manage the closed pension funds: investment firms, banks, insurance, asset management companies.

Pip individual pension plan implemented by the signing of contracts of life insurance agreements with insurance companies authorized to do so. They are established unilaterally by the insurance companies. The corporate bodies of the Fund negotiated are:

- Assembly of Delegates, a body that expresses the will of the members.
- Board of Directors, the executive body (drawing conventions, addressing the financial investment strategies, preparing budgets and information, etc.).
- Board of Auditors, in order to monitor the activities of the Fund.
- President – legal representative, elected by the Board of Administration.

Defined benefit

Only the funds of self-employed may be defined benefit. The performance is predetermined, the contribution varies depending on the amount of the benefit.

The specificity of the civil service is that the severance pay – TFR (severance pay) – of public employees enrolled in the negotiating fund is paid only at the time of end of service for supplementary pensions are accounted for by INPDAP that invests on the basis of the average returns of a basket of pension funds.

It may be worth noting that the funds have a certain margin of discretion in setting the minimum requirements for the participation in the retirement pension, with the possibility of introducing peculiar requirements in the first stage of the life of the fund (see Fund Espero statutory provision).

We should point out that Legislative Decree n° 252/05 does not apply to civil servants (Article 23, paragraph 6). The delegation has not been exercised for civil servants (letter p) of paragraph 2 of art. 1 Law 243/2004).



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E A P S P I

Pensions for the Public Sector

European Association of Public
Sector Pension Institutions

Association Européenne
des institutions de retraite
du secteur public

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