

National updates

Editorial

GERMANY

The new supplementary pension for public employees

The EPB issue of August 2001 (page 4 et seq) set out the social partners' position on the reform of the supplementary scheme. Several problems were raised and the social partners' proposals were set out. Social partners had planned to finish negotiations by the end of 2001 in order to develop up new regulations sustainable over the long term.

On 13 November 2001, the partners issued the 2001 Plan for old age insurance and they agreed on a new orientation for supplementary pensions. The top up system would go, to be replaced by a points based system. The Plan for old age insurance provides the basis of the future supplementary pension regulations. Subsequently, the details concerning benefits and financing have been regulated by two collective agreements : one of them for the Federal Republic and the Länder , the other for municipalities. Both agreements signed on 01.03.2002 replace the previous agreements signed in 1967 which have applied until now. For municipalities and church staff, the Association for pensions of municipalities and churches (AKA) has transposed the collective agreement for municipalities for its 25 member institutions that have subscribed to its model. The core part of this is compulsory and represents a basis for the regulations of the various pension institutions.

The old age insurance agency for the Federal Republic and the Länder (VBL) has transposed the pension collective agreement directly to its own regulations.

The major points of these two agreements are as follows:

- 1) the present top up system will wind up with retrospective effect from 31 December 2000. It will be replaced by a points based system which represents in a way a transition towards a funded scheme. For technical management reasons, for the first stage in year 2001 pension rights will still be accrued under the old calculation system.
- 2) rights accrued up to 31.12.2001 will be transferred over to the new system. Pensions in payment have been readjusted at the date of 31.12.2001 and will be paid at the same rate ;
- 3) The new points based system acts as a transition towards a funded system. The future benefits will amount to the level that would have been reached with a 4 % contribution to a fully funded scheme.
- 4) The employees will have the opportunity to increase their pension rights through individual contributions. To help achieve this they will be entitled to State subsidies under the form of direct allocations or tax relief, provided

(see page 2)

Over the last four months, the €uro has become part of daily life in the countries which have adopted it, with no major problems. Besides making life easier for those travelling within Euroland, the single currency now allows Eurocitizens to make reliable price comparisons. Its success is proof of the dynamic determination of the Member States of the European Union to build a true community and carve out a place for all its many components in the world of tomorrow.

Our world, we must realize, has now been totally explored and is known to all. The strategy of expansion and competition which, until the very recent past, underpinned the development of the most advanced economies, must now be gradually replaced by a strategy of cooperation and sharing in the move towards greater solidarity. The history of the Member States and the story of the building of Europe underline the paramount importance of a joint approach to problem solving while respecting diversity. That is why the construction of a democratic European Union must be pursued and strengthened. More than ever, it is the only reasonable future for our societies, whatever beliefs the Europhobes and Eurosceptics may hold.

Solidarity must also be brought to bear in the way we organize a sustainable future for our retirement systems, ensuring that they will be financially tolerable for our children, the contributors of tomorrow. Reforms continue to be introduced all over the continent. This issue largely given over to the latest phase of the reform of the German pensions system. With the overhaul of the basic scheme now completed, our partners have turned their attention to the public sector complementary scheme and the civil service scheme.

Thierry CHRISTOPHOUL
Original language : French

NATIONAL UPDATES

GERMANY - Hagen HÜGELSCHÄFFER The new supplementary pension scheme	p 1
GERMANY - Helmut RÖHRL New legislation for civil servants' pensions	p 5
GERMANY - Hagen HÜGELSCHÄFFER Pension taxation	p 6
ITALY - Carlo MARINO Aggregation	p 7

NATIONAL UPDATES

SPAIN – Jon ALDECOA Application of the 2001 agreement	p 8
--	-----

EUROPEAN CASE LAW

Marina LEVY The Griesmar and Mouflin Cases	p 9
---	-----

provided they are covered by the general scheme. These measures were provided for by the law on pension capitalisation dated 26.06.2001 (see EPB of August 2001). The supplementary pension institution will offer a system of additional voluntary contributions; employees may also subscribe to a pension plan if their pensions institutions offer such a service.

Employees' savings systems are (presently) excluded, but social partners have agreed to start negotiations about this type of insurance.

The present article will develop each of these points and will set out what stage has been reached in transposition of the collective agreement.

1. The new points based system

Until now the benefits of the supplementary scheme for public employees were related to the period of membership and the salary over the last three years preceding retirement.

As a top up system, the supplementary scheme had to complete the basic pension of the general scheme, sometimes up to 91.75 % of the last net salary, in order to provide a benefit similar to the civil servants' pension. This double link of the supplementary benefit with, on the one hand the basic pension and on the other hand the civil servants' pension, meant there was a constant requirement to amend the supplementary pension regulations, (without even going into the necessary co-ordination between the different schemes and the fiscal regulations).

In the future, the occupational pension will rely on a points based system as a replacement for the top up scheme. The amount of the benefit will be the same as could be obtained with a 4 % contribution to a funded scheme. The indexation rate amounts to 3.25 % during the accrual period and 5.25 % after the pension has been assessed. As the system will be funded, the income issued from capital investments will determine the basis for the indexation rate and for the allocation of possible surplus. Another possibility will be to make reference to the current return of the 10 largest pension institutions listed in the annual report of the Federal Agency for Financial Service Control.

At the time of retirement, the benefit will be calculated according to the amount of contributions paid during the career. The benefits of the points based system will refer to the whole career and no longer, as before, to the last three years. This benefit will be paid in addition to the basic pension of the general scheme and will increase by 1 % every year on 1 July. The new supplementary pension scheme will be autonomous, independent of the general scheme and the civil servants' scheme. This will see the end of the need to constantly amend the regulations.

This points system is based on the concept of all contributions paid to the pension institutions being converted into pension points. This conversion takes into account the amount of contributions and the member's age by applying an age factor defined in the table presented on the left side. The younger an employee, the higher the conversion rate since the contributions will be invested over a longer period.

$1/12^{\text{th}}$ of the employee's annual remuneration is divided by a reference salary of € 1000.

The number of pension points is calculated as follows:

$$\frac{\text{Remuneration}}{\text{Reference salary}} \times \text{age factor}$$

The occupational pension will be calculated by multiplying the number of pension points by the point value which is about € 4. This amount has been actuarially determined on the basis of 0.4 % of the reference salary. The amount of the reference salary and the value of the point (€ 4) have no importance, as long as the ratio remains 0.4 %

Therefore the calculation formula for the occupational pension in the points based system is as follows:

Number of points x value of the point

Example 1

The annual remuneration for a 25 year old member is € 24,000. $1/12^{\text{th}}$ of this remuneration is € 2,000; the ratio to the reference salary is € 2000 divided by € 1000 = 2. The number of points obtained is this ratio, 2, multiplied by the age factor, in this case 2.4, giving 4.8 pension points for the year.

Age factor

Age	factor	Age	factor
17	3,1	41	1,5
18	3,0	42	1,4
19	2,9	43	1,4
20	2,8	44	1,3
21	2,7	45	1,3
22	2,6	46	1,3
23	2,5	47	1,2
24	2,4	48	1,2
25	2,4	49	1,2
26	2,3	50	1,1
27	2,2	51	1,1
28	2,2	52	1,1
29	2,1	53	1,0
30	2,0	54	1,0
31	2,0	55	1,0
32	1,9	56	1,0
33	1,9	57	0,9
34	1,8	58	0,9
35	1,7	59	0,9
36	1,7	60	0,9
37	1,6	61	0,9
38	1,6	62	0,8
39	1,6	63	0,8
40	1,5	64	0,8

Since the value of the point is € 4, the pension amounts to $4.8 \times 4 = € 19.20$ monthly.

Example 2

The annual remuneration of a 50 year old member is € 48,000. $1/12^{\text{th}}$ of this remuneration is € 4,000; the ratio to the reference salary is 4,000 divided by 1,000 = 4. The number of points obtained is 4 multiplied by the age factor, 1.1 in this case giving 4.4 pension points for the year.

Since the value of the point is € 4, the pension amounts to $4.4 \times 4 = € 17.60$ monthly.

This points based system tracks the general scheme and provides for retirement pensions, survivor pensions and disability pensions. In the case of partial disability the benefit provides half the amount that would be paid in the case of total disability.

For early retirement, there is a 0.3 % deduction from the pension amount for each month before the statutory pensionable age, up to a maximum reduction of 10.8 %.

The points system also includes social elements financed by actual or notional surpluses. This provides free points granted in several cases: disability, dependent children, or where the employee with at least a 20 year career has a pension lower than a certain threshold.

In the case of phased retirement, the system takes into account at least 90 % of the previous salary earned before the beginning of the gradual reduction in hours worked. The new legislation also provides that the remaining surpluses available after the allocation of the social elements will be redistributed to the members under the form of bonus points so that they will share the benefits of their supplementary pension institutions capital investment.

This new points system has the advantage that the members can calculate their pension rights at any time. Because of the pre-determined fixing of capital return and the age factor, this system is also attractive for young employees. Every year, all members, whatever their age, will be individually informed about their pension rights. They have, therefore, the opportunity to consider whether their

pension rights are sufficient or not, so that they can start a supplementary savings plan if necessary.

For employers, the collective agreement provides that if an employer is in an unfavourable economic situation, the payment of the 2 % contribution can be stopped for 3 years in a determined geographical area. Such a situation will be determined by a mixed commission of social partners.

2. Processing of pensions and accrued rights

All pensioners (§ 2.1) and all active members (§ 2.2) will be transferred into the points system. Making a clean break with the old top up scheme is a way to avoid referring for years or decades to the old legislation and to transition measures that would certainly have raised administration problems.

2.1 Transfer of pensions

The pensions currently paid were calculated as at 31.12.2001 and will constitute a stock. They will be paid with the same amount increased by 1 % each year in July as from 2002. The amount will not change in accordance with the variation of the general scheme pension, or the increases in the civil servants' pension. Thus the benefits of the general scheme or (other sector related schemes) and the benefits of the supplementary scheme for public service employees will be indexed separately.

2.2 Transfers of active members

As for the calculation method to transfer accrued rights towards the points system, the 2001 Plan for old age insurance makes a distinction at a certain date between members close to retirement age (older members) and those who are far from retirement (younger ones).

Deferred members who are no longer members after 31.12.2001 will have their pension rights calculated on the basis of the usual method applying to fixed pensions; the pension rights will then be transferred in the new system.

"Older active members"

Employees aged 55 and over on 1 January 2002 will have their accrued rights calculated according to the old legislation. The resulting amount will then be converted into pension points.

"Younger active member"

All the other active members will have their pension rights determined according to the law on occupation pension and subsequently converted into pension points. First, a retirement pension is calculated on the basis of the 91.75 % maximum rate. The total pension is determined according to the usual rules in force to date. The basic pension is then set as a fixed sum calculated through an approximation method. The difference between the total pension and the notional basic pension gives an amount that represents the supplementary pension (at full rate). This full rate benefit is the basis on which the sum to be transferred to the new scheme is calculated. It amounts to 2.25 % of this basis for each 12 month period of membership completed by 31.12.2001.

3. Financing

Just as with the old top up scheme, the actual financing method is up to each pension institution. Thus, according to their financial situation, these institutions can either maintain the pay-as-you-go system they have or adopt a funding method, or else a combination of both systems (financing of old pensions through the pay-as-you-go system, financing of the new pension rights through a funded system).

Firstly the pension institutions can continue with the pay-as-you-go system. In this context one of the major points of the 2001 Plan for old age insurance provides that where the financial needs exceed the maximum contribution rate in force on 01.11.2002, allocations can be paid by the employers, free from charges and taxes. This system can be applied only if the contribution rate exceeds 4 %. As a matter of fact all pension institutions have low contribution rates so that they will not be concerned immediately. However this measure affects the pension institutions of the new Länder of the former GDR.

While continuing their pay-as-you-go scheme, pension institutions will be allowed to build up an initial capital relying on additional contributions, which could be a first step in the transition towards a fully funded system.

It is also possible to shift immediately to a funded system. This could give the

in short

Pensions Forum in Brussels Transferability

The transferability working group of the Forum has met in Brussels on 18 March; Mathieu SCHEEPERS participated on behalf of our association.

During the Forum plenary session of 17 April, the working group's report was presented and globally approved.

However it seems necessary to further the reflection on other possibilities of transfers either between the second pillar and the first pillar or between second pillar schemes and third pillar schemes.

Pension Forum in Bordeaux

Invitations have been sent out. Like last year the whole forum will be translated into English.

On the occasion of the 10th anniversary of this event, an international day will be organised on 19 September. All EAPSPI's subscribers are invited. Some of us will give their testimony about the study trips and the exchanges organised between our institutions.

Agenda

The next Board meeting will be held in Brussels on 23 May. Our legal expert commission will meet on 27 and 28 May under Mathieu SCHEEPERS' chairmanship.

Klaus STÜRMEER takes again the leadership of the Portability working group which will meet on 28 and 29 May.

advantage of lightening the financial charges for employers since contributions will not be taxable under the new law. In a pay-as-you-go scheme, contributions are subject to taxes. They must be partially paid by employers on behalf of their employees because of legal regulations and measures flowing from collective agreements.

Although the aim of the new legislation is to prepare a transition towards a funded system, at first pension institutions are expected to maintain the pay-as-you-go method because of their actual financial situation. A sudden change in the financing of the new supplementary pension would entail a considerable financial burden. Presently only a few institutions in a good financial position, (particularly in the church staff area) will be able to shift to full funding or a combined financing system.

VBL and most municipal pension institutions will probably maintain the pay-as-you-go system and will only move gradually to funding.

4. The subsidised savings plan

At first public sector employees were excluded from the fiscal incentives offered by the law on pension capitalisation. The legislator argued that their top up scheme could provide a pension similar to the civil servants' pension, so they were considered as not eligible for this advantage. After the retrospective winding up of the top up scheme dated 31.12.2000, the way towards fiscal incentive is open. Thus public service employees have the same fiscal advantages and subsidies as the private sector employees if they use their own money (which has already been taxed and subject to social charges) to build up a funded supplementary pension.

Since the common declaration that the social partners have put to the supplementary pension institution at the beginning of the year, pension collective agreements provide either for the opportunity to introduce an additional voluntary contribution linked to the compulsory contribution, or to propose an affiliation to a pension fund if the pension institution is able to offer such

pension fund. The pension institutions for municipalities and church staff are now obliged to offer this type of pension product.

By voting on AKA's model agreement on 28.03.2002, member institutions have approved a supplementary pension product by means of additional contributions. All employee of a body affiliated to AKA will be able to buy extra pension points to top up those accrued through compulsory contributions. Employers can also purchase points, for example for specific categories of staff.

Irrespective of the financing method of the compulsory occupational scheme, the voluntary purchase of points is done on a funded basis that complies with the principle of actuarial equivalence between contributions and benefits.

This provision will be administered separately, but covering those institutions dedicated to voluntary purchased points, and it will have its own capital and own surpluses. The additional voluntary contribution is based on a business plan dependant on actuarial principles in order to meet all control requirements applying to pension institutions.

There will be no social element under this system. Employees can choose to cover the same risks as in the compulsory system or to exclude disability and death. In this latter case, the number of points purchased will be subject to an actuarially calculated enhancement.

5 Employees' savings systems

From 01.01.2002 the law on occupational pensions allows all employees to convert a part of their salary, up to 4 % of the social security ceiling (i.e. € 54,000 in West Germany, € 45,000 in Eastern Germany) into pension contributions. On request employers must convert a percentage of the salary into pension savings within the company's occupational pension, or, where this is not possible, with an insurance company. However this right can be limited through collective agreements.

Social partners have used this option in their 2001 Plan for old age insurance.

At present employees savings systems are not allowed for all public employees covered by the collective agreement, but the social partners have agreed to renegotiate this question later.

At present it seems that the employees savings question could be included as part of salary negotiations. Employees will probably subscribe to the insurance

system which is very attractive for certain levels of salary. It is also favourable for employers since it will reduce the additional charges on salaries.

Perspectives

The 2001 Plan for old age insurance is the most important reform affecting supplementary pensions for public

employees since 1967. The points based system eliminates all the disadvantages of the top up scheme which has applied until now.

However many questions remain unanswered, particularly regarding taxation, and the question of employees' savings systems has still to be satisfactorily resolved.

Hagen HÜGELSCHÄFFER
Original language : German

GERMANY

New legislation for civil pensions in the framework of the general pension reform

On 20 December 2001, the law amending the civil pension regulations was published in the Official journal of the German Federal Republic. This law aims to transpose the provision of the private sector pension reform of 2001, for non discrimination reasons in the field of taxation.

This law was partly implemented on 1 January 2002 but most of the provisions will only come into force on 1 January 2003. This article sets out the most significant changes.

Reduction of the pension level

The present pension level will be lowered by 3.25 % during a transition period from 2003 and 2010. Thereafter the replacement rate of a full rate civil pension, which is presently 75 % will be 71.75 %. The reduction will affect pensions in payment as well as future pensions. The minimum rate of 35 % is maintained, as well as the pension calculation following an occupational accident.

Presently the accrual rate of the civil servants' pension is 1.875 % of the final salary per year, with a maximum of 75 %. To reach this maximum, 40 reckonable years are necessary. The new law in force as from 1 January 2003 provides for an accrual rate of 1,79375 % with a maximum replacement rate of 71.75 % for the same 40 year period of service. Reductions with the same effect will also be applied to the civil servants already in service on 1 January 1992 in the framework of the comparative

calculation provided for by § 85 of the Law.

The reduction of the pension level will be carried out over several stages. It will start on 31 December 2002 with the first general salary increase and will finish at the 8th salary increase. At first the pension decrease is not related to the accrual rate but with the application of a reduction factor to the reference salary used for the pension calculation. In the first year the reduction factor will be 0.99458, for the second year 0.98917. When the reduction factor is 0.95667, the pension rate will be 71.75 % (75 % x 0.95667 = 71.75 %). Only at the stage of the 8th salary indexation will the replacement rate be directly affected by the decrease in the accrual rate and no longer by the reference salary. The 8 successive reductions combined with the future pension increases will not result in any loss of pension. However the indexation will be smaller.

Decrease in the survivor pensions

Naturally, the reduction of the pension level will affect survivor pensions (for spouses and children), since these latter are calculated on the basis of the reduced pension. The survivor pension rate will be reduced to 55 % of the civil pension (instead of the current 60 %). However if marriage is prior to 1 January 2002 and if one of the couple was born before 2 January 1962, the 60 % rate is maintained.

There are two other modifications concerning the entitlement to a survivor pension. Until now no qualifying period was applied to the survivor pension

rights for permanent civil servants or contract public employees. But now, where marriage has been contracted after 1 January 2002 a five year qualifying test will be applied and the survivor must have been married for at least one year instead of 3 months.

Other modifications introduced by the law

To maintain social equity, the decrease in the survivor pension is compensated through a system of enhancement to benefits for a child. Several child related advantages of the general scheme have been applied to the civil service pension scheme.

The occupational accident regulation have also been completed by specific provisions.

Measures regulating overlapping have been made more restrictive. Thus a pension resulting from an occupational accident will be partially deducted from the civil servant's pension at the time of actual retirement. A reimbursement of contributions granted in place of another retirement benefit could also entail a decrease in the pension. Finally the civil pension will be stopped where the pensioner takes on another job in the public service.

Suspension of the reserve fund financing

To avoid a double charge for civil servants and pensioners the financing of the reserve fund will be suspended from 2003 to 2010. The reserve fund which was set up in 1999 was financed by a 0.2 % levy on salaries. The

in short

Departure – arrivals

Germany

The Chairman of VBL, Dr Rolf SCHMID, retired on 31 March 2002. Dr SCHMID had begun his career in 1966 first at the Higher Financial Department of Stuttgart and then in 1970 at the Federal Ministry of Finances in Bonn. Since 1 August 1978 Mr Schmid was member of VBL's Board and he became chairman on 1 March 1992.

Mr Wolf R. THIEL has replaced him as chairman of VBL's Board since 1st April 2002. Previously, since 1978, Mr Thiel was the head of department at the Federal Ministry of the interior (Ministerialrat) where he was responsible for collective agreements within the public sector.

Portugal

Dr Armando SOUSA GUEDES has left CGA's administration in Portugal to take on new responsibilities within CGD. He has been replaced by Dr Serafim AMORIM that most of us have already met when our structure was still a club of pension schemes.

EPB and the Board wish to thank the leavers for their involvement within the association and wish them good luck in their new professional or private life
We are also happy to welcome the new comers and we hope we will have the pleasure to meet them in Rome in October.

existing funds (resulting from the 0.2 % levy applied during three years) will remain untouched. By way of compensation, the reserve fund will receive 50 % of the savings resulting from the 2001 Pension Law. From 2011, the reserve fund will be financed again until 2017. The present provisions will be reviewed in 2011 taking account of any evolutionary changes.

Supplementary pension from private systems

Like employees covered by the general scheme, active civil servants can now

subscribe to supplementary (3rd pillar) pension systems supported by the State (Riester Act issued further to a proposal from the Ministry of Labour) This is financed by civil servant's contributions and government subsidies. The personal contribution together with the state allocation can be deducted from taxable incomes up to a legal ceiling. In the near future, public employers and civil servants' unions will launch an information campaign about the opportunities offered by this law.

Helmut RÖHRL

Original language: German

GERMANY

Pension taxation – recent developments

Taxation of general scheme's pensions and civil pensions – case law of the Federal Constitutional Court of 6 March 2002-

Through its judgement dated 6 March 2002, the Constitutional Court of the Federal Republic, which is the German supreme court, stated that the difference in taxation regimes applied to the general scheme and the civil servants' pensions was in breach of the Constitution.

Under the current legislation, only the returns generated by the general scheme are subject to taxation. This represents a part of the pension-related financial flow that can be considered as the notional interest obtained from the notional pension savings, which in fact are the contributions paid to the general scheme.

However, civil servants' pension benefits are fully taxable, so civil servants are fully subject to income tax. This difference can be explained by the fact that during their whole working life the employees covered by the general scheme pay contributions which are not deductible from the taxable income (system of contributions' taxation) and as double taxation is not legally possible they cannot be taxed again when they are released as a pension. On the contrary, civil servants do not pay any pension contribution during their career, therefore their benefits are taxable.

Under the law the fiscal pressure must be equal, whether relating to prior taxation of contributions or to final taxation of benefits.

Further to a case brought by a retired civil servant, a Financial Court has submitted this question to the Constitutional Court. It wondered whether in accordance with the principle of equal treatment enshrined in the Constitution, taxation of contributions and taxation of benefits had a similar fiscal result.

In fact, general scheme pensions rely on three financial sources :

- The employee's contribution amounting to 9.55 % of salary, non deductible from taxable incomes;
- The employer's contribution of the same amount, which is not taxable because of specific regulations ;
- The federal contribution financed by the State budget, (hence by the taxpayers) which therefore is not subject to any tax to be paid by the employee. This federal contribution, which aims to lighten the financial burden of the scheme, has reached 23.5 % of the scheme's incomes by 1999.

Therefore it can be observed that only a small part of the means used to finance pensions flows from an income that has already been taxed (the employee's contribution).

The Constitutional Court has confirmed the doubts of the Financial Court and has declared that the legal provisions governing the taxation of the general

scheme pensions and the civil servants' pensions are unconstitutional.

Because of the complexity of this matter and its considerable financial impact, the Court has given time to the legislator who however is requested to find a solution to this discrimination by 21.12.2004.

Unlike in other decisions regarding taxation, the Court does not impose any strict condition to the legislator. It only requests him to establish a situation compatible with the Constitutional law by the date mentioned above while avoiding double taxation. Therefore the legislator has several options.

Well before the judgement was given, many fiscal experts had suggested a generalisation of benefit taxation, at least to take into account the situation existing in the other European countries. It is therefore probable that the taxation of civil servants' pension will be maintained and that the general scheme's benefits will become taxable. To avoid double taxation resulting from the changes, the transition period will necessarily be rather long. The experts have already proposed to tax 65 % of the general scheme's pensions as from 2005 and make contributions deductible from taxable incomes up to the same percentage.

In compensation pensioners would benefit from a € 3000 franchise like retired civil servants. Over a 35 year period, the percentage of pension subject to taxes would increase by 1 point every year while the percentage of taxable contributions would decrease in the same proportion. At the end of the period the general scheme's pension would be entirely taxable.

Reimbursement of the subsidies received in the framework of the pension savings plan (Riester pensions)

The law regulating pension savings plans (see EPB n° 10 of August 2001) gives employees the chance to offset the pension decrease resulting from the reform of the general scheme by subscribing to a subsidised occupational pension plan or pension savings plan, normally named after the Ministry of Labour Riester. The benefits from such pension plans are subject to taxes.

Just before this law was passed, the legislator had introduced a special provision that will be quite important for pensioners who move abroad. This particularly concerns foreign workers

(who numbered more than 1 million in 2000) but also German workers who wish to spend their retirement in another country (usually southern Europe; 147000 of them in 2000). These pensioners will have to reimburse all subsidies they have been given through their pension plan, as it is provided for by the law. The legislator wants to avoid any opportunity of tax evasion which would introduce a favourable discrimination in comparison with the pensioners living in Germany. The reimbursement of the subsidies is meant to impede unequal treatment.

Before the law was passed, a doubt had been raised regarding the conformity of this provision to the principle of free movement enshrined in the Treaty of Rome. Before the law was promulgated, several groups, including German European MPs had requested the European Commission to check the conformity of this reimbursement clause with the Treaty. The author of the present article has published a critical study on this question (see the journal *Betriebliche Altersversorgung – the occupational pension- n° 2/2002, page 134 et seq.*)

Hagen HÜGELSCHÄFFER
Original language: German

ITALY

Aggregation according to Law n° 388/2000

Aggregation (in Italian *totalizzazione*) provides the possibility for the employee to bring together several contributory periods completed under several schemes

The Italian Law n° 388/2000 (section 71) provides that employees who have not satisfied the qualifying conditions and established pension rights either in any scheme of the general compulsory insurance (A.G.O.), or in any other mandatory or voluntary pension schemes (included the mandatory schemes governed by Council Order n° 509, of 30 June 1994), can benefit from the aggregation of their periods of contributory membership of schemes. Each period of contributory membership has not met the qualification conditions of the separate schemes, and taken separately they

are insufficient to provide a right to a pension under the rules of each scheme.

The schemes have to check the qualifying period in accordance with § 1; section 71 of the Law 388/2000 and they determine the share of the benefit they are responsible for. .

According to its own provisions, each scheme establishes a pro-rata calculation based on the amount of contributions paid and the period of membership.

For the pensions or pension shares calculated under the defined benefit scheme, the amount of the share to be paid by each scheme is obtained by determining a theoretical amount (based on all the aggregated contributory periods) to which a reducing factor is applied.

This factor represents the ratio of the contributory service completed under one scheme to the total contributory service completed in all schemes.

Each scheme pays its share of the pension, that can be subject to revaluation and be enhanced by the "vesting period solidarity allowance", which allows the completion of the qualifying condition up to the 20 years provided for by the regulation of the defined benefit system.

The aggregation system applies to all compulsory pension schemes including occupational private schemes, both for retirement and disability benefits.

The practical implementation of this system is governed by ministerial orders.

Carlo MARINO
Original language: English

SPAIN

LEGAL APPLICATION OF THE APRIL 2001 AGREEMENT

Several Regulations that affect public and supplementary social security issues, were published on 31 December 2001. Those related to supplementary social security were already set out by Jose Carlos Garay in the previous issue of this bulletin. It is now a question of analysing how the measures related to Social Security, which were formulated in the Pact between employers, one of Spain's most important trade unions, and the government, are gradually being put into practice. A summary of this agreement was already published by the secretariat in last year's April issue.

The two areas that have undergone the most important modifications have to do with the new gradual and flexible retirement regulation and the widow's pension.

Situation of gradual and flexible retirement

Up to now, only people paying contributions from before 1 January 1967 were able to retire before the age of 65, but not before 60. Now the conditions in which they can do that have improved and, more importantly, that possibility is now extended, with some conditions, to those who do not satisfy that requirement. Partial retirement and the framework to encourage retirement after 65 are also regulated.

To be more precise, the regulation includes the following possibilities:

Part-time retirement

Once retired, people will be able to make compatible their pension benefits with a part-time job, under the terms set up in the regulation. For as long as such a situation lasts, the pension benefit will be diminished in inverse proportion to the reduction applicable to the pensioner's working day in relation to that applicable to the working day of a comparable full-time worker.

Early Retirement

Workers belonging to a labour mutuality before 1 January 1967 are allowed to

opt for early retirement. The early retirement pension will be subject to reduction on the application of an 8% reduction for each year or fraction of a year by which the worker falls short of the age of 65, except where such workers satisfy the following requirements:

- a minimum period of effective contribution of 30 years, without taking into account for these purposes, the proportional part for extra payments

- The cessation of employment was in no way attributable to the worker's free-will

The early retirement pension will be reduced on the application of the following coefficients for each year or fraction of a year by which the worker falls short of the age of 65:

- with 30 years of contribution, the reducing coefficient is 8 %
- Between 31 and 34 years of contributions: 7,5%
- Between 35 and 37 years of contributions: 7%
- Between 38 and 39 years of contributions: 6,5%
- 40 or more years of contributions: 6%

Early retirement is extended to workers from the age of 61 who did not belong to a labour mutuality on 1 January 1967, if they satisfy the following requirements:

- Have been registered at the employment agencies as job seekers for at least the 6 months immediately prior to the retirement application date.

- a minimal effective contribution period of 30 years, without taking into account for these purposes the proportional part for extra payments

- The cessation of employment was in no way attributable to the worker's free-will.

The early retirement pension will be reduced on the application of the following coefficients for each year or fraction of a year by which the worker falls short of the age of 65:

- 30 years of contributions: 8%
- Between 31 and 34 years of contributions: 7,5%
- Between 35 and 37 years of contributions: 7%
- Between 38 and 39 years of contributions: 6,5%
- 40 or more years of contributions: 6%.

Workers older than 65

When a worker starts to receive a retirement pension at an age greater than 65, the percentage applicable to the relevant regulatory base will be the result of adding to the 100% an additional 2% for each complete year for which, on the date from which the pension fell due, contributions have been paid after the age of 65, provided that the interested party had 35 years of vouched for contributions at that date. Otherwise, the stated additional percentage will be applicable, once the age of 65 has been reached, from the date on which the said period of contributions has been vouched for.

Employers and employees will be exempted from having to contribute to the Social Security for common contingencies, except for temporary disability derived from the same in regard of those employees and the like with indefinite contracts who are both aged 65 or above and can vouch for 35 or more years of contributions, without taking into account for these purposes the proportional part for extra payments. If by the time the person were 65, he/she had not contributed for 35 years, the exemption will be carried out from the date he/she vouches for the 35 years of contribution.

The planned exoneration also extends to unemployment contributions, the Salary Guarantee Fund and professional training.

The possibility is opened up of opting for the permanent invalidity pension in cases of invalidity deriving from professional contingencies, on reaching the age of 65.

The aim of the reform in this regard is to encourage workers to remain in active employment and, consequently, to improve Social Security funding in the face of an ageing population.

The Social Security was created in 1967. Before this date employees were covered by the labour mutuality which represented the basic scheme. The modern Social Security has replaced these structures, but some of them have remained to provide a supplementary coverage

Obligation to fund the special agreement in certain work-force adjustment plans.

In the case of a work-force adjustment plan in companies not involved in a procedure tendering, including workers aged 55 and above who did not belong to a mutual fund on 1 January 1967, the obligation will exist to pay the quotas set aside to fund a special agreement in regard of the aforementioned workers under the terms foreseen in the General Social Security Act.

Social Security quota allowances to workers 60 years old or older.

Workers who are aged 60 or above and have worked in the company for 5 or more years will be entitled to a bonus of 50% of the employer's Social Security contributions for common contingencies, except for temporary disability derived from the same, on the quotas falling due from 1 January 2002. The bonus will be increased 10% each financial year until the maximum of 100% is reached.

Widow's and orphan's pensions

The April agreement established the progressive increase in the widow's pension from the base 45% to 52%. To be more precise, the regulation

establishes for 2002 that the percentage to be applied to the relevant regulatory base in order to determine the amount of the widow's pension will be 46% (instead of the previous 45%). That improvement will be extended to 70% in those cases where there is dependent family and the pension is the sole or main source of household income.

The continued receipt of the widow's pension, even after remarrying, is permitted for those who satisfy the following requirements:

- to be older than 61 or, if younger, have been awarded a permanent invalidity pension, where the degree of invalidity is total or great, or can demonstrate a disability to a degree equal to or greater than 65%.
- The widow's pension or pensions received by the pensioner comprise the main or sole source of income.
- The married couple's annual income, including the widow's pension or pensions, amounts to less than double the amount, calculated for a year, of the minimum wage in force at any given time.

The age at which one can qualify for the partial orphan's pension will be

increased to 22 years and to 24 in the case of absolute orphanhood.

Conclusions

In general terms, the following conclusions may be drawn:

- Little progress has been made, and there has even been a step backward in terms of the system's financial sustainability. Above all, some contributions are reduced, some benefits are increased, and instead of discouraging retirement before the age of 65, it is actually made easier.
- Progress is being made in the direction of the European trend of making the public system more flexible, especially with regard to the retirement age—albeit passing on the costs and the benefits to the employee.
- This increased flexibility opens up a new field for supplementary pensions because, when these are viewed as an integral part of the public system, there is more scope for better personal pension planning.

Jon ALDECOA

original language : English

European case law

Analysis of the Griesmar and Mouflin cases

The Court of Justice of the European Communities has issued two very important judgements affecting the French pension scheme for civil servants and military staff with regard to the principle of equal pay for men and women.

This principle relies on Article 119 of the EC Treaty (replaced by Article 141) which has been developed in two directives :

- Directive n° 79/7 of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security;
- Directive n° 86/378 of 24 July 1986 on the progressive implementation of the principle of equal treatment in social security occupational schemes modified by Directive n° 96/97 of 20 December 1996.

In both cases (Griesmar Case C-366/99 of 29 November 2001 and Mouflin Case C-206/00 of 13 December 2001) the CJEC states that :

- Pensions granted by the civil servants' pension scheme constitute pay within the meaning of Article 119
- The provisions of the French scheme are incompatible with the principle of equal pay enshrined in Article 119. It has to be noted that in May 2000 in the Podesta Case, the CJEC had already condemned the provision of the Social security code (Article L 913-1) which authorised sex discrimination regarding survivor pensions. Such provisions have been repealed by the Order of 22 February 2001. Today it is the pension scheme for civil servants which is affected.

The facts

The Griesmar Case

Mr Griesmar is a French magistrate and father of three children. He was awarded a pension calculated on the basis of the years of service he had actually completed, with no consideration of any service credit for children, as this credit is granted to women only, in respect of each child. He therefore appealed against this decision considering it as incompatible with the European principle of equal pay for men and women. He argued that the pensions paid by the pension scheme for civil servants constituted pay and fell within the scope of Article 119 of the EC Treaty. The CJEC has confirmed his analysis. In this case discrimination cannot be

**European Association of
Public Sector Pensions
Institutions - EAPSPI**

Association under the French Law
1st July 1901, registered at
Préfecture de la Gironde
Bordeaux – France – nr 2/25493

Reg. office & General secretariat :
co Caisse des dépôts
3, rue du Vergne
F 33059 BORDEAUX CEDEX

☎ + 33 (5) 56114397
Fax + 33 (5) 56114863

aeirsp@caissedesdepots.fr

<http://www.eapspi.org>

**Euro Pension Bulletin,
Newsletter for EAPSPI's
members**

Editorial director :
Thierry Christophoul

Chief editor :
Claude Dubois

Reading Committee :
Klaus Stürmer
Brian Town
Nicolas Jeurissen

Printing :
Atelier reprographie
Caisse des Dépôts - Bordeaux -
France

justified since the service credit is linked to periods of education and not periods of maternity leave. It therefore cannot be exclusively granted to women.

The Mouflin case

In this case the claimant has appealed against the refusal of his application for an early pension in order to take care of his wife afflicted by an incurable illness. The administrators based the refusal on Article L 24-1-3° of the civil and military pension code which provides that this benefit can only be granted to female civil servants.

As with the Griesmar Case, the CJEC has again confirmed that such pensions constitute pay and has considered that this sex based discrimination was an infringement of Article 119.

Analysis: development of a new deciding factor

Both cases are interesting since the judgement of the CJEC directly refers to the implementation of Article 119 and not, as it could have, on the directives of 1978 and 1986 mentioned above.

Therefore it tries to clarify the character of pension benefits paid by a public sector scheme.

This character was not obvious since from 1998 the civil service scheme has been covered by Regulation 1408 /71 of 14 June 1971, and thus as been considered as a statutory Social Security scheme.

The CJEC proves that schemes covered by Regulation 1408/71 are not exempted from the principle of equal treatment defined by the Treaty which has precedence within the legal system.

The main criterion governing the implementation of the principle of equal pay for men and women is therefore passing from the consideration of the nature of the scheme towards the consideration of the nature of benefits.

Indeed, until this case, the determining factor seemed to rely on the directives of 1978 and 1986 as they referred to of the nature of the scheme, either statutory or occupational.

The occupational schemes were strictly subject to the principle of equality whereas the statutory schemes had more flexible conditions.

This case law has established that the deciding factor was based on the employment relationship and the consideration that benefits constitute pay.

Therefore one can consider that a statutory scheme pays benefits which are remuneration and not social security benefits, where it meets the criteria defined in the Beune Case (C-7/93 of 28 September 1994) :

- the pension only concerns a specific category of employees,
- the pension is directly linked to the period of reckonable service,
- the pension is based on the last salary.

If these criteria are not satisfied, the legal scheme must abide by the same principles as the occupational schemes as regards equality for men and women. In such a case the State is in the same position as a private employer who pays its staff for the services completed and no longer as a public authority operating on a solidarity basis.

Impact on the French schemes

Further to the Podesta Case the provisions of the social security code have been harmonised with the European law. The schemes whose regulation refer to the social security code are supposed to be in accordance with the European law in this field, at least regarding survivor pensions.

Now the civil and military pension code should also be adapted in order to make the whole French pension legislation compatible with the European law.

Let's hope that these two judgements will give the opportunity for a global review of the pension code, and that the authorities will not wait for a judgement to be issued on each litigious point of this code.

Marina LEVY
Original language : French