



FUTURE IN BALANCE.

E A P S P I

Pensions for the Public Sector

THE NEWSLETTER OF EAPSPI

# EURO PENSION BULLETIN

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2/2011

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## EDITORIAL

The Green Paper consultation marked the commencement of an intense discussion across Europe regarding the future form of the pension system, which would also cover the pension institutions for the public sector. In regards to the questions of the Green Paper, the answers that were issued to these questions, and the subsequent publications of the European Commission, it can be concluded that a series of legislative initiatives will be applied in the coming years with the result of an increasing influence of EU legislation. At first, this will affect the supplementary systems of the second pillar, however it will also affect the institutions of the first pillar in the long-term.

Both the European Commission as well as the European Court of Justice have recently been constantly concerned with general aspects of pensions and, in particular, the pension systems of the public sector. One of the most important recent decisions was certainly the C-271/08 judgment, the subject of which was the supplementary system for municipal authorities in Germany and which, even nine months after the judgment was pronounced, continued to pose questions regarding the proper implementation of the judgment in particular for the collective agreement contractual parties of the public authorities.

However, even without the European Commission and the European Court of Justice, pension reforms are at the top of the political agenda in many European countries. The catalyst for this has often been the most recent economic crisis, which helped to reveal the flaws of the respective pension systems. Using Spain as an example, it became clear that on the one hand, it is absolutely necessary to completely revise the current system structures, and on the other hand, the necessary decisions for such a revision are however often not made or insufficiently made.

Best regards,



Hagen Hügelschäffer

## The Green Paper on Pensions – Starting point for further Commission initiatives

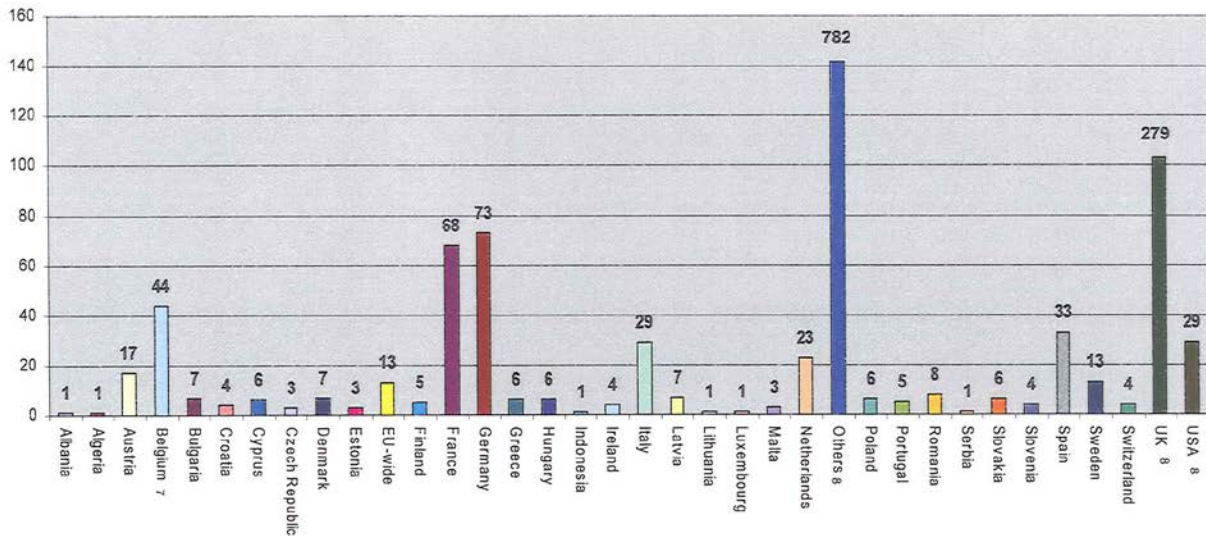
With their Green Paper published on 7 July, 2010, the Commission initiated a Europe-wide discussion on the question of whether and how the framework for pensions should be adjusted at European level, so that the Member States can ensure an adequate and sustainable pension scheme for their citizens, and how the European Union can best support the national efforts. The triggers for these deliberations were the demographic developments, and the challenges to the pension system brought on by the economic and financial crises. With these consultations, which were concluded on 15 November, 2010, the Commission wanted to collect approaches and ideas from Member States, associations and other organisations but also from interested individuals, in order to get a picture of current opinion within the EU as a basis for further steps.

The purpose of this article is firstly to summarise the most important results of this consultation, insofar as they concern public sector pension schemes (Section I). This is followed by a look at those of the Commission's planned future steps which could indicate changes in the field of pensions (Section II). And finally, also of interest in this context, is the attitude of the European Parliament (Section III), as, under Article 289, taken together with Article 294 of the Treaty on the Functioning of the European Union (TFEU), as a rule, proper legislative procedure and the provisions the Lisbon Treaty provide that the directives proposed by the Commission (or regulations or resolutions) must be adopted by the Council (of the EU), which represents the governments of the Member States and the European Parliament.

### I. The Reactions to the Green Paper

Compared to other consultation regarding pensions, this Green Paper has produced very broad reactions. The Commission received a total of 1,673 responses, of which 1,503 were by way of the online questionnaire. By comparison, the 2008 consultation on the question of the application of Solvency II to some pension schemes produced only 60 comments. It is also worthy of note that the majority of responses came from individuals; i.e. a total of 1,234, of which 1,008 were from British pensioners, most of whom live in Canada, and who were involved in a concerted action concerned solely with raising the, from their point of view, inadequate benefits of the governmental pension system. The remaining responses were divided between Member States, non-governmental organisations (NGOs), social partners, and other lobbyists.

Broken down by EU-country, the most responses came from Great Britain (279), followed by Germany (73), France (68) and Belgium (44); whereby the latter's comparatively high number can be explained by the number of lobbyists located in Brussels.



Notes

Belgium

7) Note it is likely some of these relate to EU wide or international organisations based in Belgium

Other/UK/USA

8) Note these bars are not to scale. Many of these responses relate to the campaign on UK State Pensions a large number of whom were based in Canada (which was not a country option you could select) without these UK reads 37 and USA reads 6.

Source: Commission Study: "Green Paper on Pensions – Statistics"

On 7 March, 2011, the Commission, under the title "Summary of Consultation Responses to the Green Paper towards adequate, sustainable and safe European pension systems", published a summarised presentation of the answers received to the 14 questions, including the participants' general comments. This report also included the comments by the European Parliament (see individual details in section III), the European Economic and Social Committee and the Committee of Regions; both committees undertake consultancy activities for the Commission and for the Parliament. The purpose of this summary is to illustrate the entire range of answers, from individuals, all the way to the European Parliament, and thus provide an overview of the differing opinions, which was an orientation guide, particularly for the Commission, with an eye on further legislative initiatives.

That having been said, the majority of the views reflected in the questions regarding the public sector pension schemes are summa-

risied in sections 1 to 3. They deal with the future role of the EU in the field of pensions, changes in the IORP Directive (or Pension Fund Directive) and transferability, including the setting of minimum standards for occupational pension schemes.

**1. The EU's Future Role**

Almost all participants in this consultation agreed that Member States should continue to regulate pensions themselves, whereby co-ordination at EU level, and/or an exchange of experiences by the individual countries via the Open Method of Coordination is seen as necessary. The comments of a number of Member States, as well as the European Parliament, pick up on this, which, notwithstanding the common challenges to the old-age pension schemes, argue for the maintenance of the principle of subsidiary. The demand that the EU should limit its role to the defining of basic

principles and mutual goals, it being too difficult to regulate pensions centrally at Community level, points in the same direction. Added to which, also discussed in the Green Paper is the question of whether an adequate pension for all EU citizens should be defined, which was almost unanimously rejected. On the controversial question of a higher pensionable age being discussed in many Member States, most participants take the view that, in light of increasing life expectancy, to maintain the balance between working life and retirement in the future, the actual retirement age should be raised. This means that, above all, the employment situation of older workers must be improved. On the other hand, changes in the legally defined retirement age should only be undertaken at a national level, taking the views of social partners into account.

## 2. Amending the IORP Directive

On the question of whether, and if yes, how, the IORP Directive should be revised, many participants take the view that this directive should be changed in order to remove remaining legal uncertainties, but any changes should be preceded by a detailed cost-benefit analysis, in order to be able to quantify the costs and the increase in administration expenses. On the question of changes in solvency regulations, employers and the occupational pension schemes take the view, above all, that a revision is currently inadvisable, and that a uniform approach thereto is not possible. In particular, there is doubt as to whether Solvency II is the right starting point for occupational pension schemes. Most comments emphasise that the occupational pension schemes and insurance companies offer different products, and thus require different regulations, whereby a number of comments pointed out that amended regulations for funded schemes should not be permitted to lead to an increase in costs. The strongest objections to revised solvency regulations were raised against the quantitative requirements of the first pillar of Solvency II. On the other hand, there was wide agreement that the second and third pillar of Solvency II included some useful principles – such as, for

example, risk management, or the information requirements.

## 3. Transferability and Setting of Minimum Standards for Supplementary Pension Schemes

Most of the comments oppose regulating transferability but favour the setting of minimum standards. A transferability regulation was rejected, above all, due to technical and legal problems, which at that time already moved the Commission to remove the possibility of occupational pension scheme transfers from the first draft of the October 2005 Portability Directive. As regards the setting of minimum standards, however, opinions as to the scope and deadlines are mixed. In this connection, the emphasis is that, above all, sufficient time must be allowed for adapting the pension plans, so as only to allow the introduction of such standards to proceed slowly.

## II. Further Steps by the Commission

That the Green Paper is only the starting point for further initiatives by the Commission in the area of pensions in the near future can be deduced from the Commission's statements following the conclusion of the Green Paper consultation, which are discussed below.

### 1. Work programme of the Commission for 2011

The first indication can be seen in the Commission's work programme for 2011. Under the heading: "Integrated Growth" the Commission first stated, in a general way: *"To support Member States with concrete measures in their efforts to guarantee reasonable and sustainable pensions for their citizens, which should be determined following the consultation initiated in 2010"*. The Commission was then more precise in the appendices to its work programme. The "Strategic Initiatives whose acceptance is scheduled for 2011" chapter holds out the prospect of the publication of a White

Paper in the third quarter of 2011. This White Paper will then include suggestions for joint actions, which will tie in with the results of the Green Paper consultation. In its work programme the Commission already describes its aims, in that it announces that in order to guarantee reasonable and sustainable pensions: *"The entirely imperfect and fragmented European framework for the coordination and regulation of the strategy as a whole [must] be revised"*.

In the appendices to its work programme, in the chapter entitled "Provisional List of the possible initiatives to be reviewed", the Commission announces the revision of the IORP Directive. It also specifies its goals here, namely: *"to maintain the same basic conditions as for Solvency II, and to promote cross-border activity in this area, thereby grappling with the challenges of demographic change and governmental indebtedness"*.

## 2. Call for Advice

In preparation for the advised changes in the IORP Directive, at the beginning of April 2011, the Commission asked the European Insurance and Occupational Pensions Authority (EIOPA), established with effect from 1 January, 2011 as successor to the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), to draw up a so-called "Call for Advice". By 16 December, 2011, EIOPA would supply the Commission with concrete guidance and advice as to how the IORP Directive could be reviewed in order to attain the Commission's desired goals; namely the improvement of the cross-border activities, the development of a risk-based supervisory framework and the modernisation of the supervisory regulations for defined contribution (DC) schemes. The starting point for the deliberations was to be the IORP Directive, in order to develop a sui generis, risk-based supervisory framework, which takes into account the particularities of occupational supplementary pension schemes in the European Union. The revision of the IORP Directive is also to be preceded by a so-called "impact assessment", with which the effects of the

planned changes can be evaluated. This should take into account, inter alia, that occupational pension schemes are generally established voluntarily by employers, and that revised supervisory regulations should not undermine the cost-efficiency of such schemes. Nevertheless, still out there is the fact that the Commission will seek a close alignment with Solvency II, which will certainly unleash an intensive discussion, above all regarding the quantitative requirements. However, at this point, the Call for Advice admits that occupational pension schemes also dispose over additional safety mechanisms, which, by a logical pursuit of this idea, would militate against an unchanged takeover of the quantitative Solvency II approach.

## 3. The Single Market Act

The revision of the IORP Directive was, after all – if only in passing – the subject of a consultation on the Single Market Act, initiated by the Commission on 27 October, 2010, wherein Commission submitted a total of 50 suggestions to give the Single Market a new impetus on its 20<sup>th</sup> anniversary in 2012. Suggestion No. 31 dealt with the Commission's intention to revise the IORP Directive in 2011, in order, on the one hand, to guarantee reasonable pensions over the long term, and to remove barriers for mobile workers on the other.

## III. Position of the European Parliament

Also relevant is the opinion of the European Parliament to the questions thrown up by the Green Paper, as, fundamentally, under Article 289, taken together with Article 294 TFEU, the Parliament, as well as the Council (of the EU), must approve the Commission's legislative proposals. To that extent, Parliament's initiative report, also according to statements by the Commissioner responsible for the Green Paper, László Andor, is an indispensable orientation for future legislative initiatives.

On 16 February, 2011, the European Parliament, by a clear majority of 535 votes to 85,

agreed on an initiative report regarding the Green Paper. This clear majority alone sends a clear message, not only to the Commission, but also to the Member States and other lobbyists.

### 1. General

The Parliament also takes the view that the individual Member States are solely responsible for the design of their pension schemes as part of their economic and social policies. In light of the economic interdependence of the EU countries, the report challenges the EU and the individual countries to better coordinate their pension policies, and thereby to resort to the Open Method of Coordination (OMC) method, in order to ensure the primary goals of adequacy, security and sustainability of their pension schemes, as defined in the Green Paper. Admittedly, due to the existing differences between the individual countries, it may still be impossible to establish a uniformly reasonable level of pensions at EU level. That apart, however, the report recommends the allocation of the old-age income to various pillars, and names the governmental schemes and occupational schemes as the first and second pillars respectively.

With an eye on the pay-as-you-go financed first pillar pension scheme, the Parliament underlined its unchanged importance for people's old-age income in most countries. In this context, the report also concludes that the pay-as-you-go schemes had proved their stability and reliability during the crisis.

### 2. Changing the IORP Directive

With an eye on the IORP Directive, the Parliament arrives at the conclusion that, before any changes, an "impact assessment" should be prepared to examine the financial effects and the possible increase in administrative costs. The Parliament also takes the view that the qualitative elements of Solvency II represent a good starting point for the revision of the IORP Directive, also referring specifically to risk

management as the second pillar of Solvency II. In addition, it takes the view that any change in the IORP Directive concerning the solvency regulations should take the particularities of occupational pension schemes into account, because the risks which the occupational pension schemes assume differ from those of the insurance industry. This applies to the conditionality of pension rights, the duration of the obligations and the fact that occupational pension schemes are special institutions with a homogeneous range of products.

### 3. Transferability and Setting of Minimum Standards for Supplementary Pensions

On transferability, the Parliament took the approach that this could only be dealt with via a cash-value transfer to a pension provider (of the second or third pillar) following a change of employment, albeit that the report did not go into further detail. At the same time, the Parliament calls for the concentration of future activities at EU level to be on the setting of minimum standards for the acquisition and preservation of occupational pension entitlements. In plain language, these include the call by the Parliament, to the Commission, to reconsider the revised 2007 draft directive dealing with minimum provisions for increasing the mobility of employees by improvements to the establishment and protection of supplementary benefits, which failed at the time, due firstly to the resistance of the Netherlands on the guarantee of dormant pension rights, and later to that of Germany and Luxembourg on the proposed shortening of the waiting and vesting periods. That being said, the question then arises as to whether, bearing in mind the amended legislative procedures under the Lisbon Treaty, a renewed attempt by the Commission could possibly be more promising.

### IV. Closing Comments

The consultation regarding the Green Paper has initiated an intensive Europe-wide discussion about the future configuration of pension schemes, which will also accompany the public

sector pension institutions in future years. In light of the questionnaire in the Green Paper, the answers thereto, the work programme for 2011 and the Call for Advice addressed to EIOPA at the beginning of April 2011, after receiving EIOPA's comments, the Commission is expected to initiate steps in 2012 to amend the IORP Directive, so as to create a uniform framework, inter alia, for the solvency regulations. It may also be expected, in the short- to medium term, that the Commission will again place the subject of uniform minimum standards for the acquisition and preservation of dormant pension rights on the agenda, in which it will certainly be supported by the predominant opinion in the comments on the Green Paper, and above all by the vote of the European Parliament.

It is still not clear whether, in the foreseeable future, transferability will be dealt with under Community law. That it was already removed from the first draft of the Portability Directive speaks against this, and there are still no concrete indications that the Commission will soon

initiate new legislative initiatives on this subject. The reaction of the consultation's participants also suggests that transferability will not receive priority treatment in the foreseeable future.

This overarching view thus leads to the conclusion that the influence of European law will grow steadily. The times when the national frameworks consisting of laws and collective agreements are taken into consideration seem to be coming to an end. In this context, it will be interesting to which extent the Commission will hold to its introductory statements in the Green Paper whereby the ultimate responsibility for pensions lies with the Member States, and that the Green Paper does not question the prerogatives of the Member States or the role of social partners in this area, as the Commission does not assume that an "ideal" universal pension model exists.

Hagen Hügelschäffer, AKA

### **Implementation of the European Court of Justice Judgment against the Federal Republic of Germany in Regards to the Conversion of Earnings into Pension Savings for Local Authority Employees**

With its decision on July 15, 2010 the European Court of Justice reached to a long-expected deliberation regarding the relationship between collective bargaining and public procurement law (C-271/08). The Court of Justice answered the question regarding whether or not the collective agreement parties in a local authority sector in Germany may determine the pension institutions without a public call for tenders by means of a collective agreement. The collective agreement on the conversion of earnings into pension savings for local authority employees (Tarifvertrag zur Entgeltumwandlung für Arbeitnehmer/-innen im kommunalen öffentlichen Dienst; the TV-EUmw/VKA) indeed specifies that the con-

version of earnings into pension savings must be conducted either with public supplementary pension funds, savings banks, or municipal insurance companies.

#### **Content of the Judgment**

The judgment begins with a requirement for a public call for tenders. The Court of Justice claims that the Federal Republic of Germany violated the European public procurement regulations, in so far as framework contracts regarding the conversion of earnings into pension savings were awarded to the institutions named in the collective agreements without a public call for tenders on the EU

level; this was conducted by local authorities and municipal companies, which had more than 4,505 employees in 2004, more than 3,133 employees in 2005, and more than 2,402 employees in 2006 and 2007.

The European Directive 92/50/EWG regarding public procurement (and, since 2006, Directive 2004/18/EG) have been declared applicable by the Court of Justice. Collective bargaining is not subject to any fundamental exception from public procurement law. This was the argument of the Federal Republic of Germany, supported by the two intervenors the Kingdom of Denmark and the Kingdom of Sweden, in its invocation to the Court of Justice regarding the collision of collective bargaining and anti-trust law. However, even in this concrete case, the Court of Justice saw no reason for exception. Collective bargaining laws must be aligned with fundamental freedoms of establishment and of services, which are expressed by the public procurement directives. The Court of Justice acknowledges that the collective agreement on the conversion of earnings into pension savings for local authority employees (TV-EUmw/VKA) has the general social-political goal of improving the pension level of local authority employees. However, the determining of pension institutions in collective agreements for conducting the conversion of earnings into pension savings does not affect "in its core" the right to collective bargaining. Then again, the current regulations in the contractual labor agreement would indeed eliminate the fundamental freedoms, on which public procurement law is based.

Furthermore, the framework agreements also fulfill the prerequisites of the Directives, i.e. they can be categorized as nongratuitous, public service contracts. For local authorities with many employees, the insurance premiums exceed the European law threshold values for service agreements in the amount of 193,000 euros, which results in the obligation for a call for tenders across the EU. Even during the implementation of social-political goals of a collective agreement, the local authorities would function as the public contracting party. Thus they would – as regulated in public procurement law – contract services, for which

they would have at least an indirect influence on the decisive collective agreement provisions by means of their interest groups, on the basis of which the contractual partner would be chosen. Due to the local authorities' obligation to provide occupational pensions for public employees, there would also exist a required direct economic interest in the benefits. The nongratuitous character of such a contract is in particular not challenged, because the ultimate beneficiary of an occupational pension plan are the employees and not the respective employer.

However, in its deliberation regarding the fundamental freedoms and the rights of the collective agreement parties, the Court of Justice strengthened the latter, in that the Court of Justice explicitly acknowledged the rights of the collective agreement parties and demanded the consideration of these rights during the awarding of contracts. Amongst other things, the respective national legal provisions and legal customs in their full extent are to accommodate for during the protection of the basic right for collective bargaining. The Court of Justice noted further that it is possible to align the application of the awarding procedure with the application of the mechanisms, which have developed from German social law (amongst others) and which ensure that the company labor representative, within the respective local authority or company, is participating in the decision regarding the selection of the service provider, which will be entrusted with conducting the conversion of earnings into pension savings.

### Implementation of the Judgment

It became and is now currently the obligation of the Federal Republic of Germany to implement the judgment. The important question here is: how exactly should this judgment be implemented? In regards to the implementation requirements, a current opinion dominates that consists of two components: firstly, a revised version of the collective agreement for the conversion of earnings into pension savings that conforms with public procurement law and secondly, a repeal of the concerned framework

contracts by local authorities and municipal companies and a renewed open call for tenders throughout the EU. In a late-2010 conversation concerning the implementation of the judgment, it became clear that there was a consensus in regards to this matter between the EU Commission, the Federal Government, and the local authority employers. Furthermore, there exists an understanding that the individual insurance contracts, which were made on the basis of framework contracts that are in violation to public procurement law, are valid and can be continued.

### Collective Agreement Revision

In Germany, compensation claims of public local authority employees are normally based on collective agreements. Insofar as compensation claims are based on a collective agreement, a conversion of earnings into pension savings for these claims may only be conducted if this is stipulated or permitted by the collective agreement pursuant to § 17 Par. 5 of the German Occupational Pension Act (Betriebsrentengesetz, 'BetrAVG'). For this reason, the criteria for the call for tenders are to be determined by means of the collective agreement. The collective agreement on the conversion of earnings into pension savings for local authority employees (TV-EUmw/VKA) will determine the criteria for the future, which the local authorities have to consider during a call for tenders for the conversion of earnings into pension savings. After this clear opinion was dominant, which also foresaw changes to the collective agreement, the municipal social partners held negotiations regarding changes to the collective agreement.

### Repeal of the Affected Framework Contracts

Furthermore, local authorities and municipal companies with the aforementioned employment figures must end the framework contracts for the conversion of earnings into pension savings that were made between 2004 and 2007, either by means of termination or by

means of a cancellation agreement. Framework contracts that were made in other years are not directly affected by the Court of Justice judgment and thus do not have to be ended due to the judgment. Due to the fact that the collective agreement for the conversion of earnings into pension savings was made in 2003, many of the framework contracts were also signed in that year. At first, it was expected that those local authorities and municipal employers, which made framework contracts between 2004 and 2007, would end the framework contracts until the collective agreement revisions were made. In accordance with German occupational pension law, they are indeed obligated to offer their employees a conversion of earnings into pension savings. Otherwise they may possibly run the risk of being held liable for damages by their employees.

### Initiation of Administrative Fine Proceedings by the Commission

There now exists an increased pressure to repeal the contracts and reach a consensus regarding the collective agreement. On March 14, 2011 the European Commission requested that the Federal Republic of Germany provide information regarding the implementation of the judgment. According to the European Commission, the German authorities have not taken the required measures, as the collective agreement and corresponding framework agreements continue to be in force. If the Federal Republic of Germany does not provide information within two months regarding the measures undertaken to implement the judgment, the Commission has threatened to again invoke the European Court of Justice for the purpose of initiating administrative fine proceedings due to failure to implement the judgment pursuant to Article 260 Par 2 Treaty on the Functioning of the European Union. This announcement came as a surprise to the Federal Government of Germany, because there existed a consensus with the Commission regarding the aforementioned measures that needed to be taken and because at that time the Commission had not yet cited specific deadlines for the implementation. The parties

of the collective agreement, as described above, are currently in negotiation regarding the revisions. The German state agencies that are charged with the oversight of local authorities have requested the local authorities to disclose whether or not they are affected by the judgment and, if they are affected by the judgment, to additionally repeal the framework contracts. In its answer to the Commission, the Federal Republic of Germany will provide the Commission with the results of the inquiry in order to thereby prevent the imposition of an administrative fine by the Court of Justice.

After the revisions to the collective agreement, the affected local authorities and municipal companies, in consideration of the public procurement criteria determined by the collective agreement, will quickly call for tenders for the framework contracts so as to be able to offer their employees a conversion of earnings into pension savings and thereby ultimately comply with their legal obligations.

Eva Kiwit, BVK

### Spain – 2010/2011 Pension Reform Plans

In 2010, at the beginning of its last quarter, the Spanish government announced by surprise the immediate reform of the Spanish pension system in order to guarantee its future. It was a 180° turn from the positions it had persistently maintained since it was elected. The decision was taken amidst a rather sizeable row caused by Spanish economic situation, with the unemployment rate exceeding the 20% figure and the public deficit being 11.2% of the GDP in 2009, 9.2% in 2010. A helping hand from the rest of the EU Member States was seen at the time of taking such decision, aiming to maintain the financial and economical soundness of the Monetary Union as a whole, and with the possibility of an EU rescue in mind.

The reform followed the “usual” steps:

- There was an agreement with the stakeholders on 19 December 2010 after long discussions: Basically, the Spanish two main trade unions, not considering the rest although some of them have a bigger representation at local level, sometimes in majority – as is the case in the Basque Country.
- Toledo’s Pact: End of 2010. It is a Spanish Parliament’s commission with members from all the political parties represented in it. Some experts are summoned to give their advice and opinion, and the Pact’s conclusions are presented to the Parliament and should be considered at the time of taking a decision regarding the Spanish pension system, although they are not legally binding.
- Agreement between the government, the two main trade unions and the employers’ representatives’ association in January 2011.
- Bill: although drawn up by 28 January, definitely passed by the Cabinet on 25 March, disclosing it on 28 March. It is assumed to be passed by the Parliament within a short time, as the parties approving it exceed the necessary majority.

But, apart from these facts, there are some others that should be borne in mind at the time of analysing any pension reform in Spain:

- Pensions have seldom been under serious debate in Spain. Apart from small revisions regarding the calculation periods, from the

starting 2 years (January 1968) to the present 15, only minor adaptations have been made, and citizens' general perception has always been that the state will pay their retirement pension up to a similar level to that of their last salary.

- Spanish replacement rate is close to 90%. This is why Spaniards believe strongly in their welfare state, as long as pensions are considered and usually do not care about saving for retirement. This is one of the reasons for the high percentage of real estate ownership, as it is the general basic saving tool.
- Nowadays things are changing, and the pension reform issue is quite frequently discussed due to the changes to be undertaken soon, with the valuable help of the European Union's demands.
- Second pillar pension schemes are not common in Spain: Apart from the autonomous regions with a rather extended model, as in the Basque Country and partly in Catalonia, only the biggest corporations traded in the stock exchange (incumbent telecom, petrol companies and some utilities; banks tend to use book reserves) offer them to their employees, and most of them as DC-products.
- Third pillar pension saving is almost a pure tax product due to its fiscal incentives, and very few persons use it with a retirement aim in mind. Annuity payments are a feature not-easy-to-be-seen in pension funds. In most cases the benefit is paid as a lump sum, although its privileged fiscal treatment has been recently reformed, levelling it with that of the annuities.
- Regarding the previous sections, politicians have usually talked about a second pillar pension scheme that should promote savings and financing in the markets, even more when the demographical evolution is considered - Spain is one of the most ageing countries in Europe - however, valid action has not been taken. Moreover, pension institutions were expectant about the possi-

bility of seeing a serious pension reform at last, one considering the aspects that they have been warning about for years - e.g. taking into consideration and implementing a real second pillar pension scheme. But such occupational pension scheme is not mentioned in the text of the reform, although it was included as recommendation No. 16 in the text of Toledo's Pact and it was extensively debated during the bill process as well. A great opportunity has been lost.

### Measures included in the bill – expected to be passed by the Parliament

The measures considered are so due to a basic fact: the pension expenditure, as a percentage of the GDP, will be catapulted from 9% in 2006 (12% for EU 27), to 11% in 2030 (11.5% for EU 27), and 15% in 2050 (12% for EU 27).

The measures itself are:

1. Delay of the legal retirement age: It will move from the present 65 years to 67, with a transition period from 2013 until 2027. An exception will be made for persons with a 38.5 years contribution career, as they will be able to retire at the age of 65 with 100% of the pension. It should be said that the real retirement age is around 64 years at the moment, one of the highest in EU27. A warning is made in the bill about the possibility of delaying the retirement age until 69 by the year 2050, with a transition period from 2032 onwards.
2. Increase in the number of contributive years necessary to earn the full pension: 50% of the pension is guaranteed after a 15 years contribution period, and the full pension after 37 years contributing, two more years than the 35 necessary at the moment.
3. Extension of the calculation period: the last 15 years are considered since 1996, up

from the original 2 years from the start in 1967. But by 2022, the last 25 years will be considered. A warning is given about the full working life being taken into account from 2050 onwards.

4. Delay of the early retirement age: from the present situation of being able to retire at the age of 61 with an 8% reduction per year or fraction, the suggested situation is a possible early retirement at the age of 63 with a reduction of 1.875% per quarter or fraction (7.5% per year).
5. Major innovation: Introduction of a "Sustainability Factor", to start by 2027, to be periodically revised every three to five years. The only criterion considered in this objective revision factor – up to this day – is life expectancy.

## Conclusions

Spain needed a serious pension reform, still does it and will do so in the future, because of its present levels of replacement rates close to 90% of the last salary. It seems unsustainable under the current economic and demographic circumstances. However, further possible solutions seem to be too harsh to enforce for the present possible governments:

1. Tax rise: Difficult after V.A.T. and income tax – in real terms – increase. A tax rise would be difficult to explain and/or implement in an economy with an unemployment rate above 20% (and still going up) and with frozen – or even decreasing – salaries.
2. Employers' contributions increase: With the economy losing competitiveness, labour costs would rise, and corporations could deeply suffer.
3. Employees' contributions rise: Difficult to accomplish at times of diminishing salaries and high inflation, with real estate prices falling – the general basic saving tool – and interest rates going up.

4. Benefit reductions: The Spanish society is not yet prepared for such a change. It would imply shifts in social behaviours that need a long time to settle unless serious consequences are accepted. Alternatives to the current public first pillar replacement ratio are non-existent at the moment, nor are anticipated in any of the measures announced.

The pension reform to be undertaken seems to have been made in order to accomplish EU requirements, and not with the objective of fulfilling the Spanish pension system needs. EU needs are not the same as that of the Spanish society, because of different economic, demographic and social trends evolving in dissimilar paths between Spain and its European counterparts, as well as between the Spanish present situation and that of its recent history. A serious pension reform should tackle, apart from the short-term economic and financial needs of any country – budget constraints, debt limits, inflation requirements... – the social welfare of its citizens, as much as possible given whichever scarce resources allocated, and promoting social cohesion. The social welfare could be reached by very different means, usually depending upon different society conceptions – the state as a mere referee ruling interactions or as a big brother governing the lives of the citizens, for instance. Changing a society conception is a task to be accomplished gradually and with a long time horizon in mind, usually smoothed if the society itself demands the action. Unfortunately, it seems that this is not the case in Spain. The current reform debates in Spain will also be one of the issues of EAPSPI's seminar on 14 October 2011 in Bilbao after the Annual General Meeting, which will deal with the pension reforms recently implemented in Europe in general and in Spain in particular.

Aitor Emaldi, Elkarkidetza