AEIRSP EAPSPI EVVÖD

Euro Pension Bulletin

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December 2002

National updates

PORTUGAL

The reform of the general scheme of Social Security

General principles

The Decree-Law n° 35/2002 has introduced in the Portuguese pension scheme of Social Security (for private workers) new measures which tend to tighten the links between benefits and contributions in order to establish financial sustainability on the medium and long term.

The previous pension reform which had affected the civil servants in 1993 already represented a first step towards this objective, since it had modified the calculation of the pensionable salary by replacing the final salary by the average of the 10 best of the 15 last years. This reform resulted in reducing the replacement rate from 100 % for 36 service years down to 80 % for 40 service years.

The new scheme defined by the 2002 Law relies a calculation of the pensionable salary based on the salaries of the whole career. This principle is being implemented gradually as from 2002 and will be fully operative in 2017.

In spite of stricter calculation rules and a definite step towards defined contribution, the new scheme maintains a certain type of solidarity by introducing new redistributive mechanisms. Indeed the global pension rate is higher for low salaries because of a system of different accrual rates to be applied according to the level of salaries. With such a system, the global pension rate can reach up to 92 % of the reference salary instead of the 80 % rate applicable so far.

Scope of the new regulations

The new law concerns all workers of the private sector as well as the civil servants covered by the Social Security legislation, i.e. CGA's members appointed since 1 September 1993.
It fully applies to new entrants employed as from 1 January 2002, and it partially applies to those already employed at this date.
As for civil servants appointed before 1 September 1993, they are still covered by the « Estatuto da Aposentaçao », which means that they benefit from the pension regulations provided for by the Law of 1972 : possibility to obtain 100% of the final salary after 36 service years.

New pension calculation

Pensionable salary
It is determined by the following formula :
TR (n x 14) whereby
TR = the total annual remunerations of the whole career (subject to indexation)
n = the number of contribution years, up to 40.

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Editorial

The hopes for a possible future convergence in European pension systems brings a happy ending to the year 2002. On 15 September, the Member States sent to the Commission their national strategy reports. These documents will make it possible for the Commission to highlight the best practices to be developed and the weaknesses that will have to be corrected.
The study of these reports will allow states which are looking for solutions to consult all the provisions introduced in the other countries and to observe their impact. However, a solution which is convenient for one country may not necessarily be adapted for another and may not be welcome by the population. Yet, we must admit that the observation of what is going on outside our borders is a factor of progress and that the experience of others is a wealth for all.
Such a benchmarking operation could be carried out by the countries which have not yet started their reform. If the success or the failure of a reform is bound to the quality of its long-term projections, it also depends of the way it is introduced. Thus, an educational effort is as important as the progressive implementation of the adopted measures. In fact, a transition period is essential for the citizens about to retire, so that they don't feel dispossessed.
For the 12 countries that will join the Union in the next two stages (2004 and 2007), this process has been and will continue to be very useful. In many cases, they have modified their pension system under external pressure. The convergence process will allow them to adapt gradually according to their capabilities.
In this Christmas period, I wish for each citizen to adopt a socially responsible behaviour and to show solidarity towards the most needy, since social peace calls for social justice.

Thierry CHRISTOPHOUL
Original language : French

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Revaluation of the calculation basis

The amount of the remunerations registered before 1 January 2002 are indexed on the consumer price index (CPI).
The amount of remunerations registered after 1 January 2002 are adjusted according to an adjustment factor composed of 75 % of the CPI index and 25 % of the gross salary index, if this latter is higher than the CPI.
The adjustment factor cannot be higher than the IPC + 0.5 %.
This adjustment method is applicable until 2011 but subject to possible changes.

Accrual rates

The accrual rates can vary from 2.3 % down to 2 % according to the number of contribution years and the amount of the pensionable salaries.
◆ members with less the 21 contribution years have a 2% accrual rate. Their pension cannot be lower than 30 % of the pensionable salary.

◆ For employees who have less than 21 contribution years, the pensionable salary is divided into several brackets calculated according to the minimum guaranteed wage (MGW), each salary bracket having a different accrual rate, as shown below :

Bracket 1	Up to 1,1 × MGW	2,30 %
Bracket 2	from 1,1 to 2 MGW	2,25 %
Bracket 3	from 2 to 4 MGW	2,20 %
Bracket 4	from 4 to 8 MGW	2,10 %
Bracket 5	Over 8 MGW	2 %

For these employees, the pension rate is calculated for each salary bracket by multiplying the corresponding rate by the number of years concerned by the salary bracket.

Pension calculation

◆ For employees with less than 21 contribution years, the pension amounts to :
Pensionable salary × 2% × n
(n being the number of contribution years)

◆ For employees with at least 21 contribution years and a pension salary included in the 1st bracket, the pension will amount to:
Pensionable salary × 2.3 % × n

◆ For an employee whose pensionable salary is included in the 3rd bracket, the pension will be calculated as follows:
- The first salary bracket (i.e. 1.1 of the MGW) is multiplied by 2.3 and by n
- The second bracket (i.e. 0.9 of the MGW) is multiplied par 2.25 and n
- the part of salary falling in the third bracket (i.e. the pensionable salary minus 2 MGW) is multiplied by 2.20 % and n.

◆ For an employee whose pensionable salary is included in the 5th bracket, the 5 accrual rates will be applied to the salary brackets concerned for the number of years concerned.

Transition periods

◆ Employees who, by 31 December 2001, have completed their vesting period (i.e. 15 years for the general scheme of Social Security and 5 years for CGA's members), as well as the employees who retire between 1 January 2002 and 31 December 2016, are subject to more favourable conditions.
The pension to be paid will be the highest among the three following options:
- the amount calculated according to the 1993 regulations (taking into account the 10 best of the 15 last years),
- the amount calculated under the present legislation,
- the amount of a pro-rata pension resulting from the application of both legislations.

the pro-rata pension (P)

$$P = \frac{P1 \times C1 + P2 \times C2}{C}$$

P1 being the pension calculated under the 1993 legislation,
C1 being the number of contribution years completed by 1 January 2002.

P2 being the pension calculated under the 2002 legislation,
C2 being the number of years completed after 1 January 2002.

C, being the total number of contribution years.

◆ The employees who, by 31 December 2001, have not completed the vesting period and whose pension will be processed after 1 January 2017 will be granted the highest amount among the following options:
- the amount of pension calculated under the 2002 legislation
- the pro-rata pension.

Early pensions

The present provision regarding early pensions will be reconsidered every 5 years to take into account the evolution of the social and economic situation.
Any new special early retirement provision will have to include clear time limits.

Information provided by Vasco Costa (CGA)
Original language:French

Information from the Commission

The national strategy reports are available on:
http://europa.eu.int/comm/employment_social/soc-prot/pensions/index_en.htm

the first evaluation of national strategies for adequate and sustainable pensions is available on:

http://www.europa.eu.int/comm/employment_social/news/2002/dec/joint_pensions_report_en.html

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National updates

SPAIN

First step towards a supplementary scheme for civil servants

On 7 November 2002, the Spanish government and the unions have published an agreement on modernisation and better efficacy of the public administration

This agreement aims to improve public services through a better management of human resources. It tackles the questions of mobility, working time, promotion, training, as well as the conditions for a better conciliation of professional life with family obligations.
Finally this agreement presents a first project for a pension system to be designed under the following conditions:

« The General Administration of the State must carry out, in 2003, analyses and technical studies necessary to set up and develop a pension system. This system will be an occupational defined contribution scheme. »

« The General Administration of the State will allocate an amount of € 24.65 million as a deferred salary for the staff covered by the agreement ».

This agreement concerns State civil servants who are presently 250,000 in Spain. However it could stand as a model for the staff of the local and autonomous governments who have no supplementary scheme.
In such a case about 2 millions employees could be concerned.
It is supposed that the system will be organised in 2003 and that the State's allocation will be granted in 2004. This allocation is also supposed to be renewed during the following years. The allocation would represent 0.48 % of the civil servants' pay roll but so far nobody knows whether the employees will pay a contribution ;

Information provided by Jon Aldecoa
Original language : French

European Case-law

THE DANNER CASE – ECJ C-190/00

Membership in another Member State

1. The facts

On 10.03.2002, The European Court of Justice (ECJ) issued a judgement, in the Danner Case, concerning cross-border fiscal rights. Concretely, it concerned tax deductibility for contributions paid to a pension scheme in another Member State of the European Union.
The case was born out of the question of whether national fiscal regulation on direct taxation (in the present case, in Finnish law), which restricts the deductibility of voluntary contributions paid out to pension institutions established outside Finland, is compatible with art. 49 of the EC Treaty on the free movement of persons and goods. The said case is concerned with contributions paid out to German institutions, the « Federal employee pension fund » (BfA) and the Doctor's old-age insurance fund in Berlin.

The applicant is a German national, M. Danner, who moved his place of residence from Germany to Finland and continued to pay out voluntary contributions to the BfA and the Doctor's pension fund.
The Finnish state refused him the a tax deductibility by arguing that the current Finnish legislation does not admit such a deductibility when the contributions are not paid out to a Finnish scheme. To justify the questioned legislation, the Finnish government, backed by the Danish government, exposed among other things the impossibility of taxing old-age benefits paid out by foreign institutions, or of controlling them.
The government is of the opinion that in practice, such benefits escape pension taxation in Finland most of the time, either because the retiree moves out of Finland at the time of retirement, or the exchange of information between the states on the pensions paid out is insufficient.

2. Judicial decision of the ECJ

In its judgement, the ECJ concludes that a national fiscal regulation which restricts or excludes fiscal deductibility of contributions paid out to a pension institutions established in another Member State, is contrary to article 49 of the EC Treaty in the sense that this deductibility exists for contributions paid to national institutions.
On this point, the ECJ first notices article 49 is equally applicable when the payments are made to a pension institution or an old-age insurance fund established in another Member State of the European Union. The Court is of the opinion that the contributions paid by the applicant constitute consideration for pensions. (§ 27 of the judgement).

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In its ruling, the Court refers back to its judicial precedents on this point, namely that the direct taxation falls within the Member States' competence which nonetheless must be exercised consistently with Community law, (§ 28). On this, the ECJ answers the arguments defended by the Finnish and Danish governments by arguing that Finnish regulation on the said direct taxation must insure the fiscal cohesion of the national system (point a) and the efficiency of fiscal controls (point b).

a) The fiscal cohesion argument

According to the principle of fiscal cohesion, there exists an interaction between the deductibility of contributions from the taxable income, and the pension benefits to be paid later which are taxable, since the loss of fiscal revenues in the Member State which applies deductibility of contributions will be compensated by the taxation of pension to be paid later. By virtue of this principle, the regulation of Finnish fiscal law, subject of the present litigation, is justified. The Court challenges this opinion by referring to its case law, namely the Wielockx Case (C-80/94). This judgement stipulates that fiscal cohesion is not established at the level of an individual person by a perfect interaction between the deductibility of contributions and the taxation of pensions, but at the level of agreements against double taxation passed among states (§ 41). Furthermore, there exists such an agreement between Finland and Germany to avoid double taxation.

b) The efficient fiscal control argument

Concerning the objection put forward by Finland and Denmark, arguing that it is impossible to exercise an efficient fiscal control in such a case, the ECJ, by referring to its case law, points to the Council's Directive on administrative help EEC 77/799 of 19.12.1977. It focused on administrative help between the administrations of the Member States specialised in matters of income taxation. Finally, the ECJ is of the opinion that this directive offers the Member States enough possibilities to insure the necessary controls in order to avoid losses in tax revenues (§49 and following)

3. The consequences of the judgement

This judgement is of no consequence for the civil pension rights of permanent civil servants and the supplementary pension schemes of the public sector, since these types of institutions are active only on their own national territory. The judgement should give a clear-cut way of telling when, and under what conditions, the contributions of a salaried workers to a voluntary old-age insurance scheme can be submitted to a different taxation depending if it is with a national institution or a foreign one. This judgement will only affect cross-border pension insurance, and thus pension institutions with cross border activities. (cf. the specialised journal *Versicherungswirtschaft*, N° 21/2002, p. 1680).

From the German point of view, the Court's reasoning is of major importance in the context of the Law on individual pension savings, voted in 2001. This law aims (among other things) to develop voluntary supplementary pensions with the help of the State in order to compensate for the decrease in the basic pension. The law stipulates that the help from the State, taxable at the end of the pension process, will have to be paid back when one moves abroad. Indeed, there is a fear that retirees can this way evade German taxation (see *Euro Pension Bulletin* n° 12 of April 2002, p. 8). Even if the conditions of the Danner Case does not refer exactly to the same situation, we notice that the ECJ, by putting forward fiscal cohesion and the directive on administrative help, used precisely the arguments that certain persons had formulated against this obligation of reimbursement, defined by the Law on the accrual of individual pension savings (cf. the specialised journal *Betriebliche Altersversorgung* N° 2/2002, p. 134 ss.).

Hagen Hügelschäffer
Original language : German

Conference on pensions for civil servants

Our partner CSE Development organises on 24 April 2003, a conference on "Civil servants' pensions in Europe" under the patronage of Commissioner Anna Diamantopoulou.

This event is organised to help the promotion of CSED's publication on the same subject. It will be held at the Borschette conference hall in Brussels and the translation will be ensured in English, French and German. It could be organised thanks to the help offered by the European Commission's.

The programme and the registration forms will be available on Internet very soon on the CSED's Web site www.cse-aibs.org

For further information contact cse@mfp.fr

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Focus

THE COUNCIL OF EUROPE AND SOCIAL PROTECTION

The council of Europe is an international organisation with a regional scope whose prime objective is the defence of a pluralistic democratic model favouring stability in Europe. To date, it has 44 members.

The council of Europe does not place social questions very centrally.
Nevertheless, a few conventions were organised around this subject, in the goal of realising a closer union between its members, in order to promote their social progress.
In the specific field of social protection, the Council's essential activity is focused on the elaboration of minimal norms.

MINIMAL NORMS

The elaboration of these norms by the Council of Europe was the subject of two founding texts, namely the European social charter and the European code of Social Security, which were both followed up by a revised text.

The European social charter and the revised social charter
The original version of the European social charter was signed in Turin on 18 October 1961 on the model of the universal declaration of human rights, and on the conventions organised through the International Labour Organisation (ILO). In October 1991, the ministers' committee of the council of Europe formed a working group in charge of making proposals to improve the efficiency of the charter.
This reflection led to the adoption of the revised European social charter on 3 April 1996 which, like all international treaty, only came into force after the necessary ratification from the member states, specifically on 1 July 1999.
These two texts share an identical declarative first part, based on a general statement of rights and principles, and a normative second part explaining the precise commitments resulting from these general principles.
In this second part, the States commit to considering themselves as bound by the articles related to social protection.

<u>Common rights and principles</u>

The right of female workers to maternity protection (minimum rest period of 14 weeks).
The right to Social Security. The signatories are bound to establish a Social Security scheme and to maintain it at a satisfactory level, at least equal to the one necessary for the ratification of the European Code on Social Security.
The right to social and medical assistance to those lacking resources.
The right to social, judicial and economic assistance through a family benefits scheme.
The right of children and adolescents to social, judicial and economic protection.

<u>Rights stemming from the new charter</u>
Two of the new rights recognised in the revised social charter are about social protection specifically:
The right of aged persons to social protection.
The right to protection against poverty and social exclusion.

European Code of Social Security and Revised Code
The European Code of Social Security is the product of a reflection between experts of the Council of Europe and the International Labour Organisation. Through this document, the objective of the Council of Europe was not to harmonise, but to carry Social Security to an equally high level, the states being free to decide of the means of achieving such results.
The Code came into force four years after the first signature on 17 March 1968, and after the necessary ratification.
The Revised Code aimed to promote Social Security protection and individual social rights. Its objective is also to eliminate discriminations, particularly those based on gender.

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The Revised Code was open to signatures at Rome on 6 November 1990 but no Member State having ratified it, it has not yet come into force.
In its revised version, the Code is a complex instrument composed of close to 90 articles and 15 separate sections.
These two instruments have for objective to define for all the social risks covered by a Social Security system, the minimal conditions of protection that States must guarantee.

Covered risks

The totality of traditional risks of Social Security are covered, including the rights to old-age, disability and survivor benefits:
Globally, the Revised Code broadens the range of covered or protected persons, and thus spreads the field of application of the different benefits.

RELATIVE EFFICIENCY

Compared to a true community-wide social legislation, whose effect would be felt through its directives, regulations and case-law, certain groups express doubts on the effectiveness of the instruments of the Council of Europe because of their somewhat minimal content and the flexibility of application conditions.
Generally, as much for the social Charter than for European Code of Social Security, the signatories can proceed to a partial ratification.
This form of 'a la carte' ratification, which doesn't force the state to submit to all the normative provisions, is certainly the main weak point of this instrument.
Thus, for the European Code of Social Security, it is not necessary to abide by all the articles of the Code referring to the nine traditional branches of social security (Chapter II to IX included). It is sufficient for the states, in order to ratify it, to approve six of its chapters, knowing that Chapter II (medical care) is worth two units and that Chapter V (old-age benefits) counts for three units.
This instrument therefore presents much flexibility and any state that develops its Social Security system has the possibility of subsequently accepting new chapters of the Code.
Furthermore, the regulation procedure is also one of the weaknesses of this instrument.
It is thus planned that the signatories must periodically turn in a report on its application conditions (art 74). This report is handed over to the committee of the ministers of the Council of Europe, which verifies that the signatories have conformed to the obligations they have committed to.
By virtue of article 75 of the Code, the committee of ministers decides, through a two-thirds majority, if each contracted partner has filled its obligations. If it reaches a negative conclusion to this question, it invites the concerned states to take the necessary measures to fulfil its obligations.
In practice, the committee of Ministers regularly adopts resolutions on the application of the Code and passes them on to concerned states.
Even though states are little inclined to being thus pointed out and that many of them have already modified their legislations following the Committee's requests, it is undeniable that this procedure is not very constraining, especially when compared to the sanctions that the European Community can inflict on its members when they fail in their obligations.
Finally, another weakness can be pointed out: these texts only consist of international commitments for the states, which are only subject to the controls agreed to by the signatories. They do not offer the citizens of the signatory states the possibility of individual recourse to an international court of law.
In conclusion, the flexible ratification conditions, the absence of an actual system of sanctions and the impossibility for individuals to rely on these texts to defend their rights through a court process, reduce considerably the efficiency of these texts.

Nevertheless, their utility is absolutely recognised by the member states of the Council of Europe that are not in the European Union, and particularly the eastern-European states.
Indeed, the ratification by those states of the texts of the Council of Europe on social issues can be considered a first step which should lead to a future membership in the European Union.

Patrick Maupin
Original language : French

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Open Forum

Interesting times for pensions A point fo view from LGPS perspective in England and Wales

Suddenly this summer pension became an interesting subject. Or rather it became a subject that everyone was interested in for a variety of self interests.

In a country where much pension provision is linked to second tier provision from an employer's scheme which has traditionally been funded and would historically provide a benefit based on final salary the vagaries of the market began to make their presence felt.

The problem essentially was one of forgetting that pensions are about the long to very long term. Many decisions were being made and many fears being expressed as a result of short term changes. Data can be produced that shows that for most of the 20th century investment in equities outperformed any other form of investment. Such was the outperformance from the mid 1980s (and this included two drops in 1987 and 1991/92) that for many organisations there was little or no need for the employer to make any contribution to the pension scheme. Indeed the tax regime in the UK worked against this from 1987, because pension fund surpluses above 105% of liabilities were subject to a punitive tax regime. Unless surpluses were used to improve benefits – which had a further long term detrimental affect.

As the income streams lessened organisations were faced with putting money into their pension fund. Scare stories abound. Employers are paying four or five times for pension in 2001/2002 compared to 1996/1997. This is a bit like Stalinist statistics on productivity growth in tractor factories. If you only produced ten in year one it was not terrible difficult to provide 400% growth in subsequent years. If little was being put into the funds, a small increase appears significant. People seem to have forgotten or have never been properly aware of just how much it costs to provide a pension guarantee of 60-70% replacement rate. In effect 20% of salary for 40 years. But this 20% can be made up from employee, employer contributions and investment income. And pension liabilities were greater in part because of the higher than inflation increases granted in the past.

Investment positions also became weaker because of the use of a particular form of hedging, called stock lending. Certain bodies, in order to meet financial criteria at end of a quarter or end of a year can borrow stock from, for example, a pension fund. They pay a premium to the actual owners for the privilege. But during certain market conditions certain hedge funds borrow the shares, then sell them at a lower price than that marked. The share value of that company falls and the hedge fund then buys back the shares it has borrowed making a profit on the difference between the two prices. On a small scale, or in a stable or growth market, this process can be dealt with by ongoing smoothing. But this year there are certain concerns that this practice lead to more rapid drops in the overall value of individual company shares and then the overall index, eg FTSE or DAX. In the meantime certain hedge funds were still making tidy profits from their own making and, dare I say it, fixing of a market.

As investment income dropped more and more schemes followed the American route of the early 80s – the defined contribution pension scheme for all new entrants which can provide an employer with fixed costs for the foreseeable future. Unfortunately the risk is transferred to the employees. And as inflation shrivels and investment income reduces individuals see their potential income in retirement diminishing. For two reasons. The pot of money saved up over forty years suddenly shrinks as stock markets “adjust” (a polite word for collapse); and annuity rates drop because investment

in short

France After the Griesmar Case

After the Judgement of the European Court of Justice, the Conseil d'Etat (Supreme Court) stated on 29 July that the non application to male civil servants of the bonus years granted to female civil servants was a discrimination in breach with the principle of gender equality enshrined in the Treaty.

This judgement of the Conseil d'Etat gave rise to about one hundred direct claims addressed to CNRACL and about ten disputed claims sent to Courts. One of them sent to the Administrative Court of Toulouse resulted in a suspension of the CNRACL's decision refusing to grant these bonus years to a male civil servant.

The CNRACL called for the State to sort out this situation but this latter declared that this question could only be settled in the framework of a general pension reform.

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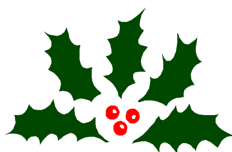

Association Européenne des Institutions de Retraites du Secteur Public AEIRSP

Association régie par la loi française du 1er juillet 1901, déclarée à la préfecture de la Gironde Bordeaux – France – n°2/25493

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returns and inflation are so low (and add in for good measure, increased life expectancy). You can get a much higher pension if you smoke 50 cigarettes a day and drink lots of alcohol daily.

In the meantime the stocktake exercise for the LGPS decided to retain the defined benefit package. More work is required on the possible future design of the benefit package for the work patterns of the future. More concern is being felt for the cost impacts on local tax payers of continuing to meet pension liabilities of local government staff. In particular as local tax-payers see the value of their own pension plummet or disappear, and start to accuse public servants of being feather bedded.

Interesting times indeed. With multiple challenges, which require us to keep our nerve and ensure there is no short term over reaction. After all as the draft EU Directive on sustainability made clear, without long term sustainable economic growth and more employment for longer, all of us involved in the pensions industry might as well pack up and go home. We may merely be tinkering at the edges or simply fiddling while Rome burns, by designing and redesigning pension plans. We have to meet individual aspirations, we have to meet ongoing costs, we even have to consider migration as part of the total package. But beware Greeks bearing gifts, in the shape of pension salesmen offering a Euro version of a 401k plan. The average size of such an American pension dream plan is $20,000 dollars, enough to provide an income in retirement of $100 PER YEAR. No wonder some US employers started reopening DB schemes to recruit and retain staff. Let's be sure we don't follow the worst excesses of our American cousins.

Brian Town

Original language : English

ASSOCATION NEWS

AGENDA

2003 annual conference

The next conference of our association will be held in London on 9 and 10 October.
The subject will be disclosed in the next newsletter
The General Assembly will gather on 8 October.

Board

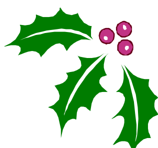
The next meeting will be held on 21 January 2003 in Brussels.

Commissions and working groups

The next briefing documents for the working groups will be analysed at the next Board meeting.
The legal expert commission met in Lisbon on 19 and 20 December.
The Portability Report of EAPSPI is placed on the Commission's Circa site together with the other documents provided by the members of Commission's Transferability working group.

Reports of the 2002 conference in Rome

Most of the reports are placed on the association's website. The missing texts (mainly in German) will be introduced as soon as they are translated.



Season's Greetings from the Secretariat General