

National updates

FRANCE

The pension reform

The reform of the French pension system is bound to a double objective: to preserve the pay-as-you-go method, which is a societal choice based on solidarity between generations, and to face the demographic challenge of the next decades.

The retirement of the after war generations will dramatically increase the number of pensioners as soon as 2006. The increase in life expectancy, particularly after age 60 reinforces this trend. Life expectancy is expected to progress by about 6 years between 2000 and 2040. In 2040, one third of the French population will be aged over 60, against one fifth nowadays.

These evolutions directly affect the pension system balance. Under unchanged legislation, the pension schemes would have to face a deficit of about € 43 billion in 2020. The reform aims to compensate this gap while preserving the sustainability of the national economy. Four guidelines underpin the pension reform:

- To ensure a high pension level, through prolongation of working life and insurance period
- To preserve equity and social justice
- To give everyone the opportunity to build up their own pension through flexibility and free choices
- Finally, to guarantee the financing of pensions until 2020

These guidelines will be the subtitles of the present article

Ensuring a high pension level through prolongation of active life and insurance period

The standard recognised by the government as a high pension level is about two third of the activity income. To achieve this objective without jeopardising the financial equilibrium, the reform provides for a prolongation of the insurance period required to obtain a full rate pension.

At a first stage, this period will be gradually increased in the public sector schemes in order to match the period required in the private sector general scheme (40 years). It will thus rise from 37,5 years up to 40 years in 2008. At a second stage, after 2008, the insurance period required to qualify for a full rate pension will be adjusted again to take into account the increase in life expectancy, the objective being to maintain from 2003 onwards the same ratio of active life to retirement life.

Considering the current demographic prospects, the preservation of this ratio would imply a insurance period of 41 years in 2012 and 41 $\frac{3}{4}$ years in 2020. The adjustment will be done in 2008, 2012 and 2016 after being approved by an independent committee which will consider the current demographic, economic and social factors.

The increase in the necessary insurance period to qualify for full rate pension makes sense only if the working life is also extended., otherwise, the government objective to reach a high pension level would not be achieved.

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Editorial

After other European countries, France has just decided in which conditions its pension system will face the demographic situation that affects most states of the so called developed world.

It has opted for the preservation of the pay-as-you-go financing system and the strengthening of the inter-generation solidarity. However one question still remains: the concern for equity between generations. Even if they are considered as notional, pension liabilities will have to be paid and the burden left to future generations will be considerable.

Like for other countries which have introduced their reform earlier, France will probably have to consider the necessity to reform the reform. Italy still goes on with more reforms after the very first one introduced in 1992 under the Amato government. Germany is just finishing the last adjustments of its reform of January 2001 and it is already working on a new project.

For citizens who usually favour their day to day life over long term consideration, there is a big risk of getting tired of so many reforms or even to rise up against them. At this time of concern for globalisation, this risk must not be overlooked. The difficult birth of the French reform project reminds it.

It is necessary to carry out a educational work towards citizens, and pension institutions have to take part in it. A responsible process of communication must answer the sirens' song which tries to convince us that "everything is going fine, everything is safe"... Otherwise there is a risk of upsetting the citizens' confidence in the state, which might affect social cohesion.

As I can see through some recent publications, the idea seems to go its way, but... shall we be pioneers only in words?

Thierry CHRISTOPHOUL
Original language: French

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The reform law provides a package of measures aiming to maintain workers longer at work either in the private or in the public sector. As a rule, it invites labour organisations and unions to meet at least every three years to negotiate the working conditions and the provisional management of employment and competence for ageing workers.

In the private sector, certain measures aim to stem the incentives for early retirement before age 55. Occupational early retirement pension will be subject to a specific contribution. The process of gradual early retirement (available before age 60) will be abrogated on 1 January 2005. Finally the law limits the social charges exemptions applicable to certain cases of early cessation of activity (CATS) for workers having completed harsh jobs.

Other measures aim to develop working opportunities in the private sector, after age 60 which remains the minimum age for the basic pension.

The rules on overlapping of salary and pension are made more flexible. Resuming work with the last employer will be allowed but at the earliest one year after the pension starting date. The mechanism of gradual retirement will also be made more flexible since the employee who is not entitled to a full rate pension, will be allowed to accrue more pension rights by carrying on a part time working activity. Compulsory retirement can no more be imposed by employers before the age of 65, whereas it was largely used as from the age of 60. Finally in order to encourage workers to release their pension rights as late as possible, in 2004 an increasing factor of 3 % will be applied to any insurance year completed after age 60 provided the period required for a full rate pension has been completed.

This latter measure will also be introduced in the civil servants' pension schemes with the same aim of extending working life. To be coherent with this objective, the civil servants who at pensionable age (60 or 65) have not completed the required period for a full rate pension will be allowed to accrue more pension rights by working extra years, subject to service necessity. The reform also provides for specific rules for civil servants, governing the overlapping of salaries and pensions. Finally after deciding to gradually suppress the early retirement system in the civil service (the end of activity leave, CFA), the government

reorganises the gradual cessation of activity (CPA), the system would apply as from age 57 and could last even after age 60. In addition, the conditions for part time schedules during the gradual cessation of activity will be made more flexible.

Preservation of equity and social justice

The reform presents various provisions that fall into three categories :

- measures relating to particular career
- measures relating to specific professional categories
- more general measures relating to pension indexation, survivor pensions and family advantages.

The first set of measures concerns low salary workers, poly-pensioners, workers having started a very early career and workers having harsh working conditions.

As from 2008, the persons who have had the minimum wage during their whole career will be entitled to a pension amounting to 85 % of the minimum legal wage. To achieve this objective, the contributory minimum will be increased by 3 % on 1st January 2004, 2006 and 2008.

For pensioners affiliated to several basic schemes, the best years will be taken into account in proportion to the insurance period in each scheme.

The private sector workers who have started their working life very early between age 14 and 16 will be allowed to retire before age 60 under certain conditions of age and contribution period.

Finally the professional organisations and unions will be invited to start negotiating on the definition of job harshness and the way to take it into consideration.

Measures relating to certain professional categories aim to correct situations considered as unfair in comparison with other categories, by granting more favourable pension conditions.

The reform establishes a supplementary scheme for civil servants in order to allow them to build up pension rights based on the extra pays (bonus and additional remuneration) which nowadays are not taken into account in the pensionable salary. This scheme will be compulsory, partially funded and employers and employees' representatives will be involved in the scheme's governance.

The more general measures relating to pension indexation, survivor pensions and family-linked advantages aim to harmonise certain rules either between private and public sectors, or within the public sector, between men and women in order to adapt the scheme to the recent European case law.

The reform law guarantees the purchasing power for both private sector workers and civil servants. For private sector workers, the strict price indexation in force for the last 15 years, was no longer pre-defined since 1998, which was a concern for pensioners. The rule is again included in the law and at least once every three years, the government and the social partners will negotiate about pension evolution. For civil servants, the strict price indexation is less favourable than the current indexation based on salary increases and statutory reforms applied to active employees.

The reform law simplifies the survivor pension system for private sector employees. The survivor pension will not be subject to any age condition or any condition relating to remarriage or duration of marriage. It will be paid under the form of a differential benefit by reference to a ceiling applied to personal incomes. This will avoid all complicated rules regarding the overlapping of a survivor benefit with other old age of disability benefits. In the public service schemes the qualifying conditions for survivor pensions are harmonised for men and women, the age condition which applied only to men is abolished.

The family-linked pension advantages are maintained for the private sector and those applying to civil servants are modified in order to harmonise the situation of men and women. Thus, in the civil servants' scheme, for all children born or adopted as from 2004, the one year bonus per child is replaced by the validation of the parental leave period within the limit of three years (for men and women). For children born before 1st January 2004, the one year bonus (which applied only to women) is maintained and extended to men who have interrupted their activity.

Developing opportunities to build up one's own pension through flexibility and free choices

As mentioned above, the systems for gradual retirement are encouraged. For private sector employees, the gradual

early retirement before 60 is abolished whereas gradual retirement systems after age 60 as well as the overlapping rules are made more flexible. For civil servants, the reform provides for specific rules governing overlapping of employment and retirement and reorganises the gradual cessation of activity system.

Adjustment factors for the civil servants' schemes and the private sector general scheme are modified so that they get closer to actuarial neutrality and allow the insured more freedom in the choice of retirement age. The reform law establishes an enhancement factor of 3 % per year completed after age 60, once the insurance period for a full rate pension is completed. It also provides for a reducing factor to be applied to the insured who wish to claim for a pension before they have completed this insurance period. In the civil servants' schemes, the reducing factor will be introduced in 2006 and will be gradually increased in order to reach 5 % per missing year by 2015. In the private sector general scheme, this reducing factor is already in force it amounts to 10 % per missing year. Further to the reform this rate will gradually decrease to reach 5 % like in the civil servants' scheme.

Thus the pension levels will be more tightly linked to the insurance period. The insured will have to choose between continuing their activity to obtain a better pension, or retiring earlier with a smaller pension. In the civil servants' scheme and the private sector general scheme, the reform offers the opportunity to purchase periods of studies, up to three years, in order to increase pension rights.

To be able to make the right choice and the best decision, the insured must be better informed, both on the general evolutions of pension schemes and on their personal pension situation. On the first aspect, the reform confirms the existence of the Pension Orientation Committee and gives it the charge to keep a watch on the evolution of the whole pension system. On the second aspect, it recognises to the insured the right to know their pension rights accrued in all the compulsory schemes and proposes to extend the principle of pre-calculation (presently limited to the basic schemes) to the supplementary scheme. A Public Interest Group composed of all schemes will prepare the practical implementation of the information right principle.

Finally the reform intends to reorganise the savings effort by giving to everybody the access to a new pension savings plan. This new plan which will provide a life annuity at retirement. could be subscribed individually or collectively through companies or occupational sectors. Contributions will be deductible from taxable income within the limit of a general ceiling applying to all contributions paid to all savings and pension plans. The employees' savings system is also modified and can also offer an additional income at retirement.

The employees' voluntary savings plans (PPESV) is thus converted into a PPESVR which is the same system adapted for pensions: after a 10 year fixed term, a new term can be fixed at retirement age and the beneficiary can choose either a lump sum or an annuity.

Guaranteeing pension financing until 2020

The financial needs of the main basic schemes have been assessed by the Pension Orientation Committee at € 43 billion in 2020 among which 15 billion for the private sector general scheme and € 28 billion for civil servants' schemes.

The reform through the extension of insurance periods and a strict price linked indexation would allow to cover € 20 billion. The government has also announced the decision to increase by 0.2 points the contributions of the private sector general scheme, which would represent € 0.9 billion in 2020. However certain provisions such as the increase of the lowest pensions will generate additional charges amounting to € 2.7 billion in 2020.

Globally the reform would reduce by 40 % the financial need in 2020 (€ 18.2 billion including 5.2 billion for private sector general scheme and 13 billion for the civil servants' schemes. It would leave a gap of € 24.8 billion : 9.8 billion for the private sector general scheme and 15 billion for the civil servants' schemes.

The financial balance of the private sector general scheme would be compensated by new contribution increases from 2008 until 2020 globally amounting to 3 points. These increases could be compensated by a reduction of the unemployment contribution in order not to increase the net compulsory charges. It is worth reminding that before the reform, the deficit of the scheme was assessed on

the basis of a 4.5 % unemployment rate as from 2010.

The civil servants' schemes could also be balanced in 2020 through an additional effort from the employers (State, local government and hospitals) which would represent € 15 billion in 2020.

Conclusion

The reform would ensure the total coverage of the pension schemes' financial needs, as they have been assessed for 2020. Like the other European reforms, the government aims at the financial consolidation of the pension schemes and the introduction of the necessary tools for monitoring the evolution of pension systems.

This evolution will be subject to a long term follow-up since by 1st January 2008, 2012 and 2016, the government will draw up a report setting out the evolution of the employment rate for seniors (over 50), the evolution of the financial situation of pension schemes, the situation of employment and an analysis of all the parameters involved in the financing of pension schemes.

The risk would be that the incentives to extend working life would be insufficient and that the labour market be too depressed. In such a case, many insured would undergo a decrease in pension levels, since they would not have the opportunity to contribute over a sufficient period and the financial balance of the pension system would have to be reviewed, since the pension contribution increases would not be compensated by the decrease of unemployment contributions.

The success of the reform will require a strong communication policy in favour of the ageing workers and above all an economic policy able to boost growth and employment.

Yves Guégano

Original language : French

The reform was adopted by the Parliament on 24 July 2003 and published on 22 August after control of the Conseil Constitutionnel. Most provisions will come into force on 1 January 2004. Other provisions require a negotiation with the social partners which will begin on 9 September. The implementation decrees will be issued in the months to come

Focus

The open method of co-ordination applied to pensions

Reminders

The open method of co-ordination aims to the convergence of national policies. Convergence is different from unification, co-ordination and harmonisation of national legislations. In European Law, unification consists in introducing new rules, compulsory and directly applicable, this means that they modify the national legislation and do not require any national transposition provision.

This is the case for Regulation 1408/71 which co-ordinates national social protection legislation for active or inactive migrant workers, without affecting the Social Security Law. It relies on several principles : equality of treatment, aggregation of insurance periods, exportation of benefits, uniqueness of legislation applicable, and co-operation of institutions. However co-ordination may also imply, unification of certain concepts and rules of private international law.

Harmonisation, which is different from unification aims to introduce compulsory minimum standards requiring national transposition. The legal tool for harmonisation is the directive (for example Directive EC 98/49 of 29 June 1998 relating to safeguarding supplementary pension rights).

However the European Community has a limited competence in the field of social protection.

Article 42 of the EC Treaty requires unanimity for all the measures ensuring, aggregation of insurance periods and exportation of benefits for migrant workers. On this legal basis the Community has adopted Regulations 1408/71 and 574/72 as well as the following adaptations resulting from European case law.

According to Article 137 of the EC Treaty, the Community supports and complements the activities of the Member States in the field of social security and social protection of workers and in the field of modernisation of social protection systems.

The Council encourages co-operation between Member States and adopts by unanimous vote directives which "shall avoid imposing administrative financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings".

In other words, the field of social protection is left under control of the ECJ and is up to the Member States' will to develop convergence policy through the open method of co-ordination.

Definition of the Open Method of Co-ordination

It is an inter-governmental mechanism, which lay between legal integration and simple co-operation. The general principle of convergence relies on the periodical determination of political objectives and the assessment of the results by the other Member States.

It was first introduced in economic policy in 1992 through the Treaty of Maastricht, with the creation of the Economic and Monetary Union (EMU). However its impact increased in 1998 with the implementation of the Stability Pact adopted in 1997.

Whereas the European Central Bank defines and implements the Broad Guidelines for Economic Policies (BGEP), the co-ordination of economic policies remains under the responsibility of the Member States.

The Directorate General ECFIN of the Council proposes recommendations in the field of economic and budgetary policies and encloses a report on the BGEP of the previous year. After the European Council has given its approval, the ECOFIN Council adopts the BGEP by qualified majority.

In addition to the definition of BGEP, a follow-up and a multilateral monitoring are organised under the aegis of the Commission and under control of the Council. General or individual recommendations can be taken by the Council.

The Treaty of Amsterdam has set out the objective of a high level of employment

and to carry out this policy, it provides for mechanisms of co-ordination of the employment policies resulting from the European Strategy for Employment.

Every year, the Commission proposes Employment Guidelines (EG) with concrete objectives. After consultation of the Parliament, these guidelines are adopted by the Council.

The Member States build up national plans for employment which adapt the European Employment Guidelines to the national context. These national plans are subsequently assessed by the Commission and the Council which may issue recommendations.

The Council and the Commission draw up a joint report, passed on to the European Council in December for the establishment of new guide lines for the year to come.

The Open Method of Co-ordination was recognised at the European Council of Lisbon held in March 2000 and more recently in the Treaty of Nice in 2001. In the fields where the Union has a limited competence, the open method of co-ordination aims to co-ordinate national policies and if possible achieve convergence. It is a flexible method which can adapt itself to each policy.

The method is as follows:

- definition of broad guidelines for the Union, with deadlines to achieve the objectives,
- establishment of quantitative and qualitative indicators and assessment tools to make possible the comparison of best practices,
- conversion of European guidelines into national policies and
- periodical follow-up and assessment by the other Member States

The Open Method of co-ordination applied to pensions

The officials in charge of the European economic policy, the Directorate General for economic and financial affairs (DG ECFIN) and the ECOFIN Council have introduced the open method of co-ordination in the field of pensions with a financial aim. Indeed the Stability and Growth pact and the BGEP imply public finance monitoring

and a particular control over social security budgets.

In 2000, the ECOFIN Council obtained that part of the BGEP be dedicated to the financial consequences of ageing.

At its meeting of July 2001, it decided that Member States will have to integrate demographic long term prospects in the report presented every year in the framework of the Stability and Growth pact. These reports are subjects to assessment and recommendations.

In addition, since the end of 1999, the Ministers of Social affairs have expressed their wish to develop a specific action in the field of social protection which covers pensions. They admitted the need for co-operation in order to modernise social protection.

For this reason, they set up the Social Protection Committee and a follow-up procedure at European level, widely inspired by the European Strategy for Employment, i.e. by the open method of co-ordination. However the Ministers of social affairs have not achieved a fair balance between the financial and the social aspects involved in the social protection problem.

Indeed public pensions stand as a major political and financial challenge. The European Council insists on the necessity to submit structural policies, including social policy, to the BGEP.

Thus the financial aspects come under the competence of the Ministries of Economy whereas the adequacy and adaptability of social protection is under the competence of the Ministries of Social Affairs. Other more political reasons explain the lesser influence of the social

affairs politicians (lack of political consensus in the social field, exclusion of the Parliament and the social partners from the OMC).

Recent developments

On the basis of the national strategy reports presented in September 2002, the Commission has submitted to the Council a draft joint report on adequate and sustainable pensions. This report issued on 17 December and adopted by the European Council in March 2003 will be subject to an assessment by the Commission and the Council by the end of 2004.

This report sets out three main objectives:

- financial sustainability of pension systems
- adequacy of pensions
- modernisation of pension systems to make them more adaptable.

The report presents objectives which may seem opposed but are interrelated : reduction of expenses and preservation of a reasonable pension level taking into account social evolutions (adaptation to more flexible employment and career patterns, gender equality, transparency). However the financial aspect stands as the most important objective :

- reduction of the public debt
- reduction of expenses by increasing the employment rate, introduction of work incentives for workers aged between 55 and 65 and postponement of the actual retirement age by 5 years.
- reduction of the level of pension relying on pay-as-you-go systems by strengthening the link between benefits and contributions; introduction of actuarial

neutrality by linking the pension level to the contributory period and to the retirement age.

- development of funded systems.

The Communication of the Commission of May 2003* analyses the question of streamlining open co-ordination in the field of social protection. Social policy involves social inclusion, pensions and health care (including long term care). Social policy could have its agenda integrated with the BGEP's programme as well as the Employment Guidelines in order to streamline and co-ordinate the various European social protection policies. The new streamlining process will rely on the annual joint report on social protection. The period between 2003 and 2006 will be a transition period;

In the summer 2005, the new Member States will present their national strategy reports on pensions, whereas the existing Member States will present an updating report stating the implementation of measures since 2002. As from 2006 the Member States will present every year a national strategy report aiming to achieve the objectives set up in 2006 (in the three areas and with a prospective view). In 2006 the second joint report on social protection will focus on pensions. In 2007 and 2008, the national reports will analyse the progress achieved. These reports will be based on new indicators whose number will be as reduced as possible.

Dominique Etcheverry-Halsouet
Original language : French

http://europa.eu.int/eur-lex/pri/en/dpi/cnc/doc/2003/com2003_0261en01.doc

Chronology of the OMC

- 1992 Treaty of Maastricht : co-ordination of economic policies with the introduction of EMU
- 1997 Treaty of Amsterdam : co-ordination of employment policies
- 1998 2000 Lisbon European Council : definition of the OMC, pension financial questions integrated in the BGEP creation of the Social Protection Committee
- 2001 Treaty of Nice : application of the OMC to social protection
- 2002 National strategy reports
- 2003 European Council : adoption of the joint Report on Adequate and Sustainable Pensions
- 2004 National strategy reports
First joint report on social protection
- 2006-2009 : streamlining and global integration : (BGEP, Employment Guidelines and social protection)

Method : annual timetable

- January : Commission – Report on the implementation of the BGEP, joint report on Employment, and annual report on social protection based on the corresponding national reports
- Spring : Broad political guidelines of the European Council
- April : Commission : adoption of recommendations for the BGEP, proposal for EG and common objectives for social protection
- June : Council : adoption of the BGEP, the EG and the common objectives for social protection

European case law

The Skandia Case - Subscribing occupational pensions in another Member State

In short

FORUM

The next meeting of the Pensions Forum will be held in Brussels on 22 October.

GENDER EQUALITY

The European Commission proposes to simplify and improve the legislation in the area of equal treatment between men and women. It points out that there are a considerable number of separate legislative acts, including amendments, presently in force. To carry out this process, it proposes three approaches (consolidation, codification and recast of the legislation) and requests the members of the Pensions Forum to give their opinion on each option. The document of the Commission sets out the advantages and disadvantages of each approach and lists up all directives relating to gender equality. It is available at the following address

http://europa.eu.int/comm/employment_social/news/2003/jul/consultation_en.html

The Commission wishes to exclude from the process the issue of equal treatment in statutory social security schemes, since Directive 79/7/EEC stands separately and requires a specific approach.

By its judgement dated 26 June 2003 (C-422/01) the Court of Justice of the European Communities has decided that the free provision of services provided by Article 49 of the EC Treaty is illicitly restricted where a national provision provides an unfavourable fiscal treatment for an old age insurance subscribed in another Member State of the EU, in comparison with insurance contracted with an insurance company established in the home Member State .

The first reactions from the experts welcome this judgement et consider it as an important step towards the opportunity for pension institutions to provide freely their services throughout the European Union.

THE JUDGEMENT

The Swedish insurance company Skandia and one of his employees, Mr Ramsted, a Swedish national residing in Sweden brought the case to court. Skandia wanted to subscribe a supplementary pension insurance financed by the employer for Mr Ramsted, in Denmark, Germany or the United Kingdom and deduct the contribution as charges.

The Swedish fiscal legislation allows deductions only for old age insurance contracted with an insurance company established on the national territory. As this condition was not fulfilled, the contract was treated as an endowment insurance policy for which the tax deduction would apply only at the time the benefit had to be paid. The tax deduction would therefore be postponed to the date when the employee would receive his occupational pension, which as a rule, is less favourable for the undertaking.

In a previous statement, the Swedish Tax Board mentioned that the present case did not meet the conditions of an old age insurance qualifying for contribution deductibility. The parties have appealed to the Supreme Administrative Court of Sweden which confirmed the decision of the Tax Board. However, pursuant article 234 CE, it addressed to the ECJ a request for a prejudicial decision.

The ECJ has considered the fiscal

provision as in breach of the principle of free provision of services provided by Art 49 CE, since the supplementary pension policy contracted in another Member State is fiscally disadvantaged in comparison with the same type of policy contracted on the national territory.

At the outset, the ECJ stated that the provisions of Art. 49 EC apply to this situation since the contributions paid constitute consideration for the future pensions which represent a remuneration. Again at the outset, the Court recalls that although direct taxation falls within their competence, Member States must non the less exercise that competence consistently with Community law and the EC Treaty.

The provisions at issue are unfavourable to the employer since they postpone the right to tax deductibility until the pension is paid. This is liable to dissuade Swedish employers from taking out occupational pension insurance for their employees with institutions established outside Sweden. This represents an infringement to the free provision of service enshrined in Art. 49 except if the points mentioned below justify the situation.

Fiscal cohesion

The Swedish and Danish governments, invited to take part in the proceedings have justified the national legislation at issue by the principle of fiscal cohesion. According to such principle, there would be a direct link between the contribution deductibility and the taxation of the old age pension. The advantages of deductibility would be offset by the taxation of future pensions (see also the Bachmann Case C-204/90 of 28.1.1992). The ECJ rejected this line of argument and stated that such correlation does not exist, since the employer who contracts an insurance policy with a company established outside Sweden must wait the time when the pension is paid to its employee, to be entitled to a tax deduction. No compensatory measure

offsets the prejudice he suffers in comparison with an insurance policy contracted in Sweden.

Effectiveness of fiscal controls

According to the Swedish and Danish governments, there is no guaranteed effective fiscal control and the Council Directive 77/799/EEC of 19.12.1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, is not sufficient. The Court rejects the argument by stating that the Directive may be relied on by a Member State in order to obtain from the competent authorities of another Member State all the information enabling it to ascertain the correct amount of income tax; Any Member State can require from the taxpayer any proof necessary for the tax calculation. The effectiveness of the taxation supervision can be ensured through this type of measures without drastically restricting freedom to provide service.

The need to preserve the tax base

Another argument of the Swedish and Danish governments concerned the preservation of the taxable property, so that, from their point of view, it actually exists a public interest requirement. If the paying institution is located in another Member State, the home Member State would not be in position to tax the pension even if it has provided tax exemption on contributions. The tax-payers from high taxation Member States such as the kingdom of Sweden and the kingdom of Denmark would make profit from the differences between tax systems by subscribing pension plans in Member States where taxation is lower so that all Member States would be forced to bring down their level of taxation in line with others. The ECJ has rejected this argument by referring to the Danner Case and stating that the need to fill the fiscal vacuum could not justify a measure restricting freedom to provide services within the EU.

COMMENTS AND PROSPECTS

This new judgement of the ECJ does not affect public sector pension institutions since they do not provide services in the other Member States. However this decision is of utmost importance for cross-border old age insurance and therefore for

the pension institutions with cross-border activities.

This judgement belongs to the part of the ECJ case law which considers fiscal discrimination in the field of cross-border occupational pension, more and more as an infringement of the European law. It uses the same argumentation relying on fiscal cohesion and effectiveness of fiscal controls. Last year, the ECJ found in the Danner Case (Judgement C-136/00 of 3.10.2002 analysed in EPB n° 14 of December 2002) an infringement of Art 49 EC, due to a similar provision of the Finnish fiscal legislation which limits tax deductibility to voluntary old age insurance contracted with institutions established outside Finland.

Lately, other developments have proved in favour of cross-border old age insurance. The Commission has issued an infringement procedure against Denmark since the Danish Government has not amended its legislation after the formal request sent by the Commission in February 2003. This procedure aims to abrogate provisions like to one at issue in the Skandia Case, which stipulates that contributions paid to pension institutions established in Denmark are deductible whereas those paid to institutions outside Denmark are not. In February the Commission has also sent letters of formal notice to Italy, Belgium, Spain, France and Portugal, to ask them their position concerning the discriminatory fiscal provisions in force in their legislations, before going further in the infringement proceedings. The Commission will also address the United Kingdom and Ireland which are requested to give an answer within two months.

The way chosen by the Court suggests that in the future discriminatory fiscal provisions applied in the field of cross-border pensions will be more and more disapproved by the Commission and the Court.

This will probably also apply to the German fiscal legislation. This latter stipulates that if after building up a pension with the help of State subsidies ("Riester Pension"), the beneficiary resides outside Germany, thus avoiding German fiscal obligations, he will have to reimburse the amount of all the State subsidies received (see EPB n° 14 of December 2002).

Hagen Hügelschäffer
Original language: German

In short

Working groups

The Portability working group met on 9 and 10 July in Munich. The Legal expert commission will meet in Amsterdam on 4 and 5 September. The corresponding reports will be submitted to the Board on 8 October.

Italy

The President Rocco Familiari has taken up new functions. He is presently replaced by Marco Straderini, provisory administrator of INPDAP appointed by the Government. EAPSPI welcomes Mr Straderini and wishes good luck to Mr Familiari for his new job.

**European Association of
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1st July 1901, registered at
Préfecture de la Gironde
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**Euro Pension Bulletin,
Newsletter for EAPSI's
members**

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Printing :
Atelier reprographie
Caisse des Dépôts
Bordeaux - France

ECJ – PENDING CASES

The Debra Allondy Case C-256/01

Mrs Debra Allondy is a part time teacher employed by the Accrington and Rossendale College. Her employment contract like those of the other part time employees (mainly women) has not been renewed. To allow her to maintain her job, she was requested to subscribe to ELS, an employment agency for self employed, which works in partnership with the college.

She was selected by the college among the teachers proposed by ELS and took her previous position although she was legally covered by ELS as a self employed, on the basis of a service contract.

This change of status resulted in a decrease in salary, a loss of advantages and she was no longer

allowed to subscribe to the TSS, the pension scheme for salaried teachers. In December 1996 she brought a legal action against the College, the ELS agency and the Ministry of Education and Employment. By an order dated 23 March 2001, the Court of Appeal which was referred to, addressed to the Court of Justice of the European Communities two prejudicial questions based on Article 141 of the EC Treaty.

Is a female worker, self employed, subcontracted by an agency, entitled to the same remuneration as a salaried male worker, in the circumstances at issue ?

Can this female worker be affiliated to a pension scheme for salaried teachers ?

Dominique Etcheverry Halsouet
Original language : French

European legislation

Extension of Regulation 1408/71 To nationals of third countries

Up to date, nationals of third countries were not covered by the co-ordination of social security schemes provided by Regulation (EEC) n°1408/71 and 574/72. This situation was damageable for three reasons : it gave rise to legal and administrative complexities for nationals of third countries, it introduced a distortion between these persons and European nationals and finally it was not coherent with the efforts aiming to extend freedom of movement within the Community. For these reasons, on 14 May 2003, the Council has adopted a new regulation, Regulation (EC) N° 859/2003, which as from 1 June 2003, extends the scope of the rules co-ordinating the national social security schemes to all nationals of third countries. However these latter can only benefit from this provision where they have a legal residence in the Member

State (the application of Regulations (EEC) N° 1408/71 and 574/72 to these persons does not give them any entitlement to enter, to stay or to reside in a Member State, or to have access to its labour market). The new regulation EC N° 859/2003 does not affect any social security advantage resulting from international agreements with third countries. Finally it has to be noted that Denmark has not taken part in the adoption of the new regulation and is not therefore bound by or subject to it.

*Official journal of the European communities
n° L124 of 14 May 2003*

Jean Luc Duloué
Original language : French