

# L'EUROPE

## en bref

ENGLISH SUMMARY  
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### Focus on ... The three pillar Pension terminology

A **Commission note on Pension terminology** circulated at Pension Forum on 3 November 2004. This information note is providing a description of currently accepted EU terminology of the three pillar system in the EU :

- first pillar : basic schemes (statutory),
- second pillar : occupational schemes,
- third pillar : individual pension plans.

The Commission points out that the « pillar terminology » **does not have any direct legal implications** : texts covering pensions do not refer formally to pillars. Then **Regulation N°1408/71** applies in theory to statutory social security systems (first pillar) but this principle suffers some exceptions because of the fact that pensions schemes based on collective agreement can enter the scope of the regulation : therefore systems such as **AGIRC and ARRCO** are covered by the regulation despite they could, according to Brussels, be regarded as being outside the first pillar.

That also applies to **case law of the Court of Justice** : statutory pension schemes have been regarded as undertakings within the meaning of the Treaty. Similarly, the classification established by **EUROSTAT** for the accountancy of public expenditures does not refer to the pillar terminology.

However, the pillar terminology might be used with a political aim. **The World Bank** has therefore developed its own approach with a different interpretation from that of the EU :

- the first pillar refers to public systems with assistance schemes financed by taxation or by contributions and intended to provide a subsistence income to elderly people,
- the second pillar financed by funding intends to provide benefits ensuring the replacement of an earned income through obligatory saving (either collective or individual),
- the third pillar is made up of the optional individual pension savings.

By contrast, the **ILO** refers to :

- the first pillar targeting the universal minimum pensions,
- the second pillar referring to pay as you go plans,
- the third pillar including all the supplementary pensions managed by private bodies and pension funds.

**The EU pension terminology could take another shape in EU-25.** Most of the new entrants reformed their pension system along the World Bank model in setting up mixed systems with a funded part within what is regarded as the first pillar. The **European Federation for Retirement Provision EFRP** notes that the main shift has come from the first pillar that is composed of two tiers in 12 Member States out of 25 : one publicly managed, the other one privately managed.

**AEIP** draws attention to the fact that the EU pension typology has to specify the place of **compulsory pensions schemes based on collective agreement**: they could be regarded as a second tier of the first pillar, by implementing the regulation 1408 (e.g. AGIRC and ARRCO in France) or by having a mission of economic general interest according to the Court (e.g. Dutch industry-wide sector schemes).

#### SUMMARY

- **FOCUS ON...** The three pillars pension terminology
- **Internal Market** : the draft directive on « services » toward revision p.2
- **Services of general interest** : questionnaire on social services p.3
- **Portability** : pension portability directive seen during spring 2005 p.3
- **Solvency II** : AEIP common position p.4
- **Social** : XVth anniversary of IPSE p.4
- **Open method of co-ordination** : second round for the National Strategy Reports p.4
- **Equality between men and women**: recasting directives p.5
- **Other countries** : United Kingdom p.6  
Italy

## INTERNAL MARKET

### *The draft directive on services towards revision*

The so-called Bolkenstein directive is currently under discussion at the European Parliament.

A **working group** has been set up to accompany the work of the Parliament's Committee in drafting its first report for first reading (expected next June). Meetings will be public and the Commission and the Council are invited to attend. Four meetings are already scheduled: 28 February, 17 March, 7 April, 20 April.

The trickiest points of the draft directive are the **scope** and the **principle of country of origin** (see *Bref 2/2004 and 3/2004*).

The application of the country-of-origin principle to sectors as health and social services, as far as they are considered as economic activities, is questioned: this issue is closely linked to the current debate on social services of general interest (see above).

### **What about Regulation N°1408/71 ?**

The principle of the country of origin is a cornerstone of the proposed directive. In the case of cross-border provision of services, it would allow a service provider to operate in other Member States according to the legislation of the country where he is firstly established.

The principle is combined with different types of derogations taking into account Community instruments such as social security coordination. It should not question the principle of the country of work for the affiliation of workers to co-ordinated pension schemes.

Furthermore, authorisations for the exemption of affiliation of posted workers (E 101 form) should remain required.

Nevertheless, according to the construction sector in particular, the directive would make the controls more difficult and favour the misuse of the freedom of establishment and the freedom to provide services through letter box companies.

## SERVICES OF GENERAL INTEREST

### *Questionnaire on social services*

A White Paper dated May 12, 2004 announced a Communication on social services of general interest to be published in 2005 (see *Bref 3/2004*).

A questionnaire has been provided by the Commission to the Member States in order to get bottom-up contributions on the definition of social services of general interest and the opportunity for an European framework in this matter.

The distinction between economic and non economic services is essential since it determines the application of the competition rules : whereas today it lies in the hands of the European Court of Justice through a list of indications.

As a consequence, the application of internal market rules has the effect of creating legal uncertainty regarding social protection schemes that, like AGIRC and ARRCO, are not formally statutory i.e. under State control.

- ☞ The draft prepared by the French government considers that the concept of social services of economic general interest does not refer to social security schemes, complementary pension included.

### **AEIP Common position – December 15, 2004**

AEIP calls for a legal framework to clearly distinguish economic services and non economic activities.

This legal framework should take into account :

- The specificity of social protection schemes based on collective agreement ;
- The solidarity mechanism and the collective negotiation as criteria of general interest.

- ☞ **The European Constitutional Treaty** brings some important changes in relation to social services of general interest :
  - article III-6 gives a legal base for European laws in this field ;
  - article II-36 contains fundamental social rights and also the right to access services of general economic interest.

## PORTABILITY

*Pension portability directive seen during spring 2005*

During the Conference organised last December in Leuven by Catholic University of Leuven (KUL), Integrale and AEIP, Georg Fisher (Head of Unit Social Protection-DG Employment and Social Affairs), announced that a draft pensions portability directive is going out probably next spring.

Jérôme Vignon (Director of social protection and social Integration at the EC) added that the enlargement of the European Union has made this issue of portable pensions urgent.

The implementation of “the Institutions for Occupational Retirement Provision (IORPs)” directive - [2003/41/EC](#) – needs a European framework to make feasible the transferability and the cross-border affiliation.

The Commission is preparing within the Pension Forum an impact assessment study of a so-called “minimal harmonization” approach on vesting rights, acquiring rights and actuarial assumptions.

## SOLVENCY II

*AIEP common position*

The European Commission’s so-called Solvency II project on insurance solvency was launched in 2000 and is aiming a directive to be proposed in the beginning of 2006. (*see Bref 1/2004*).

Solvency II is a review of the EU insurance industry which aims to establish a solvency system that is better matched to the real risks of an insurance company.

The European Solvency II project is likely to extend to occupational pension schemes as defined by the directive [2003/41/EC](#), the chairman of the EU Committee of Insurance and occupational pension supervisors has said.

## SOCIAL

*XVth anniversary of IPSE*

IPSE XVth anniversary on December 2004 in Brussels gave rise to a debate on the trends of the so-called Social Europe.

According to **Jérôme Vignon** – European policymakers started to keep a respectful distance from national social protection policies : the social security co-ordination [1408/71](#) is an illustration of this past trend. During the 90’s, the [open-method of co-ordination](#) and the creation of the social protection committee opened a new era of cooperation and benchmarking between Member States in order to define common objectives and guidelines.

For the future, the Commission has to deal with a new trend due to the liberalisation of social protection in some Member States, Jérôme Vignon analysed. Therefore, the Commission has to define the [services of general interest](#) and the extend of competition rules to such services.

## OPEN METHOD OF CO-ORDINATION

*Second round of National Strategy Reports*

The Social protection committee provided a guidance note to Member States for the preparation of the next round of National Strategy Reports NSR which are to be submitted by July 15, 2005.

The purpose of the NSR is to explain how Members States expect to meet [the eleven common objectives](#) endorsed by the European Council (the same as in the previous roundtable in 2002 (*see Bref 1/2003*)). The Commission invites the Member States to present their NSR according to a common format - based on the same three chapters – focusing on [adequacy](#), [financial sustainability](#) and [modernisation](#) –. To keep them as reader-friendly as possible, the Commission asks the Member states to publish them in an other language (probably English).

### Data/indicators on pensions

The guidance note integrates the work of the [Indicators Sub-group](#) (Social Protection Committee) by pointing out suitable indicators/statistics to be used in the various

sections of the national strategy report. These will be based as far as possible on EU sources, however some key indicators will have to be calculated on the basis of national data sources.

The trickiest indicator was the one related to **current and prospective replacement rates**, taking into account that Member States do not share the same objective of adequacy in their pension system.

The Social protection committee points out that data like prospective theoretical replacement rates might present a misleading picture : countries with automatic adjustment mechanisms to rising life expectancy will have less favourable replacement rates and, by contrast, will be in a better position with regard to financial sustainability.

## EQUALITY BETWEEN MEN AND WOMEN

### Recasting directives

#### ▶ Directive on non-workplace discrimination

The directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services **was adopted by the Council** on December 13, 2004.

Although the text does not directly affect occupational pensions, the prohibition of sex-based actuarial factors in calculating premiums and benefits generated considerable interest among financial services and insurance providers. Eventually, the directive reflects a political compromise through an opt-out clause for every Member States to allow proportionate differences in individuals' premiums and benefits based on actuarial and statistical data. However Member States will have to review their decision within five years and report to the Commission.

#### ▶ Recasting Directives on workplace gender discrimination

The proposal aims to simplify the Community law on gender discrimination by putting together in a single text provisions of various directives linked by this subject (*see Bref 3/2003*). The "workplace" antidiscrimination

directive is therefore **directly relevant to occupational pension provision**, including **inter-occupational schemes AGIRC and ARRCO** (since ECJ case in Podesta May 25, 2000) as well as specific pension schemes for civil servants (Beune September 28, 1994 / Griesmar November 29, 2001).

☞ **The proposal does not bring changes to the current directive 96/97/CE for occupational pensions** which was properly modified in 1996 according to the ECJ cases after the **BARBER** case. A specific provision just confirms that **statutory pension schemes for civil servants** are affected by article 141 of the Treaty, as well as any occupational pension scheme.

The stake for the pension industry remains the prohibition of sexbased actuarial factors, since the ECJ authorised such discrimination for calculating employers contributions and transfer values in DB schemes (ECJ case, Neath December 22, 1993).

## OTHER COUNTRIES

#### ▶ **United Kingdom** : over 9 million working people will face pensions they may consider inadequate

The first Report of the independent Pensions Commission published last October presents its conclusions on the adequacy of pension provision and saving in UK. Because it is unlikely the present voluntary private system combined with the present State system will solve the problem of inadequate pension saving, "major adjustments to average retirement age and to pension provision are required", Adair Turner, Chairman of the Commission said.

The report explains that society and individuals must choose some mix of four options. Either :

- pensioners becoming poorer relative to the rest of the society, or
- taxes/national insurance contributions devoted to pensions rising, or
- savings rising, or
- average retirement age rising.

The key points of the report include the barriers to the success of a voluntary pensions saving system : most people do not make "rational" decisions about pension saving ; the cost of advice significantly reduces the return on saving ; the UK system is extremely complex. The debate on a compulsory supplementary system might rise.

A second report including policy recommendations is expected in Autumn 2005.

► **Italy : success of the bonus of 32.7 %**

The pension reform in Italy was adopted last Summer to come into force in 2008. The main objective is to encourage Italian workers to postpone retirement after the age of 60. The age to get the so-called pension d'"anzianità" will progressively rise from 57 (with 35 years of insurance) to 60 by 2008, 61 by 2010 and possibly to 62 by 2014. Moreover, it will require 40 years of insurance (in place of 38) to get it at any age.

Up to 2008, wage-earners who decide to postpone their pension get a tax-exempted bonus of 32.7% of wage i.e. the amount of social security contributions.

According to the national institute for social protection INPS, around 25 000 wage-earners opted for this bonus. This provision financed by the State might be extended over 2007 as a result of the first review of the reform at the end of the year.

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