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2/2010

The Latest on …

The Green Paper on pensions

A Green Paper, published on July 2010, entitled "*Towards adequate, sustainable and safe European pension systems*" aims to stimulate debate on the way the Union can contribute in supporting States to reform their pension systems.

This consultation on the future of pensions should lead to a White Paper, in the second half of 2011, according to Laszlo Andor, Commissioner for Employment, Social Affairs and Inclusion.

A collection of positions was completed November 15, 2010, but the position of the European Parliament is still to be made known. The report, compiled by the European commission for social affairs, with the Dutch MEP Oomen-Ruijten Ria acting as Rapporteur, offers an idea of the debate to come at the first reading in February 2011. The question of subsidiarity and sovereignty of the Member States concerning their pension systems is not central to the debate considering the pressure of the Stability and Growth Pact and the Open Method of Co-ordination to guide States in their pension policies.

There is however the problem of defining an adequate pension income in terms of the subsidiarity and diversity of national situations.

Lastly, there are the proposals of the Green Paper for an in-depth revision of European pension legislation, whether it concerns European coordination of social security or occupational pension institution directives and Solvability II.

A concern of the Paper is the need for applying the same rules to funded schemes: "*Reforms have led to some pension schemes, both public and private, being covered by EU regulations in some Member States but not in others. This is not consistent with the relevant G20 Pittsburgh declaration*".

Moreover, « *Similar pension schemes are covered by different EU rules thus raising issues of consistency. There are unclear boundaries between: social security schemes and private schemes; occupational and individual schemes; and voluntary and mandatory schemes».*

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THE LATEST ON … *(cont.)*

The Green Paper on Pensions

The Green Paper suggests a clarification and unification of regulations applicable to pensions: *«It is not always clear what differentiates general saving from pensions. This raises the question whether the label 'pension' should not be restricted to a product that has certain features such as security and rules restricting access including a payout design which incorporates a regular stream of payments in retirement»*. This corresponds to a definition of schemes benefiting from a tax advantage « at entry » in France (article 39 Tax Code, article 83 Tax Code, Perco i.e collective scheme, *Madelin* scheme for self-employed).

As for legislation aimed at the first pillar, the Green Paper observes that EU Regulations on the coordination of social security systems « *are limited to statutory and occupational pension schemes where rights are based on legislation and is considering an extension of the coordination regulations and minimum standards to improve mobile workers' access to supplementary pension rights within and between Member States*».

It is noted that European regulations for coordination, including a so-called simplified version applied since May 1, 2010, are more and more considered as unsuitable to new types of mobility and to the broadening of the composition of pension rights in the future.

Concerning second pillar schemes, the Green Paper mentions on several occasions the need to revise a 2003 directive, the so-called "IORP"[1] that « *only covers those funded pensions that are occupational in nature and not even all occupational schemes fall under its scope (e.g. book reserve schemes are excluded)*».

As for Solvability II, the Green Paper emphasizes the difficulty linked to existing differences between methods of setting up occupational pensions: book reserves, pension funds or insurance contracts. « *With the entry into force of the Solvency II Directive in 2012, insurance undertakings will be able to benefit from a three-pillar, risk-based solvency regime and the question is whether this new regime should also apply to IORPs*».

[1] Directive 2003/41/EC of 3 June, 2003, on the activities and supervision of institutions for occupational retirement provision.

A related question is whether, reflecting developments in banking, insurance and investment, "*there is a need for promoting pension benefit guarantee systems in the Member States, possibly coordinated or facilitated at EU level».*

Lastly, considering, cross-border activity the Green Paper considers that « *cross-border activity for life assurance products has also remained limited, representing well below 10% of total life assurance premiums written in most Member States*». Directive 2003 on IRP activities, even though constituting a « *« major achievement*», is not sufficient, « *there are still considerable barriers to cross-border activity* ».

The Green Paper evokes the 28th pension scheme, the proposition of the Monti Report[2] in favour of « *creating a regulatory framework for an EU-wide private pension regime alongside the existing pension regimes in Europe*». A worker opting for such a scheme would be subject to the same rules for extra-legal benefits no matter wherever he goes in Europe. The Monti Report, dedicated to boosting domestic markets, picks up on an old idea from the "16th scheme" allowing for economies of scale for supplementary schemes for expatriate workers in big companies.

ECONOMIC POLICY COMMITTEE

A Joint Report on pensions calls for continuing pension reforms

The Economic Policy Committee along with the Social Protection Committee and the two General Directorate of the European Commission (ECOFIN and EMPL) presented its report on November 16, 2010 on "*Progress and key challenges in the delivery of adequate and sustainable pensions in Europe*".

An assessment of 10 years of reforms in most European countries has been drawn up to establish the effects on public expenditures linked to ageing and on the capacities of systems to maintain an adequate standard of living for pensioners.

Despite reforms, projections show an increase of public expenditures for pensions in the EU of 2.5 points of GDP, a hike of 23% on the average.

[2] *A new strategy for a single market* - Report for the President of the European Commission – 9 May 2010.

Pointing out that "*in most Member States, the bulk of pension income will continue to be provided by public pay-as-you-go schemes*", the report shows that "*as the role of funded and defined-contribution pensions grows and public pensions increasingly become based on life-time earnings-related contributions, future pension adequacy will increasingly rest on good economic performance, the ability of labour markets to provide opportunities for longer and less interrupted contributory careers, a strengthened relationship between contributions and benefits in pension systems, and a combination of safe and appropriate returns from financial markets*".

The report reminds that « *adequacy and sustainability are two faces of the same coin*»: the balance between these two imperatives calls for a lengthening of an occupational career while overall only 40% of workers in the EU are still active at 60.

The French pension system as seen by Brussels

Classified as « medium risk» with regard to financial viability, the French retirement system seems currently successful in ensuring that retirees maintain their living standards after retirement. Based mainly on mandatory pay-as-you-go pensions, the system has not directly suffered from the effects of the financial crisis.

In 2008 the **net theoretical replacement rate** (a worker retired at 65 after 40 years of contributions and an average salary) amounts to 77.9% and projections for 2048 are for 61% without the November 2010 reform being taken into account.

The **at-risk-of-poverty rate** for people aged 65 and more in 2008 was markedly lower than the EU average (11% vs. 19%) and somewhat lower than for French population 0-64 (14%).

The **employment rate** for those 55-64 at 38.9% remains inferior nevertheless to the average of those 27 (46%) and particularly concerns those over 60 where only 17% continue to work (compared to an EU average of 30.4%).

According to Eurostat, France had the third highest current pension expenditure in the EU-27 in 2007 (13.3% of the GDP), while projected trends are significantly lower than in the EU-27.

FINANCIAL SERVICES

European Authority operational as of January 2011

The European Insurance and Occupational Pension Authority (former CEIOPS now EIOPA) has elected Gabriel Bernardino as Chairman. Mr. Bernardino is general directory of the Portuguese Authority for control of insurance and pension funds.

The three existing European Authorities for financial supervision as of January 2011have chosen their Chairperson for five years from short lists established by the European Commission.

The next step is a hearing before the European Parliament.

The Netherland's Steven Maijoor will managed the European Security and Markets Authority based in Paris; Italy's Andrea Enria will lead the European Banking Authority in London; Portugal's Gabriel Bernardino will preside the European Insurance and Occupational Pension Authority in Francfort.
(See Europe en Bref n° 1/2010)

MOBILITY

Court of Justice rulings on vesting periods

The Court of Justice could sanction, according to article 45 of the Treaty (freedom of movement for workers), the rules of a conventional retirement scheme applying, as German law permits, a vesting period below which the right to a pension is not constituted.

Mr. Casteels worked in several establishments of the firm British Airways in Belgium, France and Germany. He was successively affiliated to several local occupational pension schemes, including a scheme set up by a German collective agreement for three years, a period insufficient to permit him to benefit for a pension from the scheme.

In his findings, the Advocate General considered that encouraging loyalty and cost savings objectives justifying such an acquisition period, however legitimate, are not necessary and proportional with regard to the loss suffered by the worker due to his transfer to another establishment before a required five years.

The Advocate General felt that the occupational scheme should retain as a period of service, a period combining the total periods carried out in the employ of British Airways in all of its establishments. A way of applying Social Security coordination to an occupational scheme.

☞ *case. C-379/09 Casteels c/ BA*

The Directive 98/49EC of June 29, 1998 on *safeguarding the supplementary pension rights of employed and self employed persons moving within the Community* remains the sole text of derived law concerning free movement and pension rights not covered by European Social Security coordination. It does not limit though the right of Member States to authorize acquisition periods or limits on portability of supplementary pension rights

A proposal for a directive was drawn up in 2005 on "*improving the portability of supplementary rights*" and then redrafted in 2007 under the title "*On minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights*". A policy agreement of the Council was reached on a text concerning minimum prescriptions and mentioning neither portability nor transfer of rights. (see Briefing n°1/2008)

Nevertheless, following detailed discussions, it was found that the unanimity required could not be reached and certain questions remained without a solution, notably the length of a period for acquiring rights.

The Netherlands

Social Partners Agreement on complementary pensions

On June 4, 2010, Dutch Social partners agreed on a postponement of the pensionable age for the basic AOW retirement, proposed by the former government, to 66 in 2020 and 67 in 2025 as well as the articulation of rules for occupational pension funds for the basic pension.

This is an opportunity for Social partners to demonstrate their independence and take the lead in any upcoming pension reform, by adapting the rules for occupational pension contracts before the State intervenes with restrictive fiscal measures to accompany the increase in the pensionable age.

Demographic constraints will be taken into account by the occupational schemes through actuarial adjustments of pension paid at the legal age (66 the 67) in function of life expectancy determined in 2011. It will be necessary to contribute 6 to 8 months longer for a year of increase in life expectancy all the while providing for individual adjustments. Market constraints may also lead to limiting the guaranteed benefit.

The basic AOW pension whose monthly maximum of about 1 300 euros for a single parent is paid at 65 in function of the number of years of residence. Almost all workers contribute to a branch or company fund based for the most part on defined benefits. The 2008 financial crisis, coming 8 years after the 2002 internet crash, has seriously shaken these funds under the control of the Dutch central bank and whose minimum level of solvability is set by law at 105% of commitments. At the start of 2009, more than half of the 600 funds dipped below the solvability level and several funds considered lowering the pension of some 170 000 persons to correct the situation.

Competition

Notions of undertaking and services of general economic interest

Advocate General Paolo Mengozzi, in his opinion of November 10, 2010 in the AG2R Prévoyance case, cited 1999 jurisprudence (Albany, Brentjens and Drijvende Bokken): a collective agreement between social partners pursuing social policy objectives is by nature (a result of collective bargaining) and object (establishment of a supplementary health scheme), exonerated from qualification as an agreement between undertakings and from applying article 81 (newly article 101 of the Treaty) as well as from a decision of public authorities extending the obligation of adhering to a supplementary health scheme to all companies of the sector.

Nevertheless, as in cases concerning Dutch industry-wide pension funds, the qualification of undertaking applies, according to the Advocate General, to AGR2, which is registered with the prudential control authority and subject to the same legal obligations and regulations for reserves and solvability as insurance firms. The Advocate General pointed out that social partners have opted for confiding the management of the scheme they have set up to a paritarian provident society (*institution de prévoyance*), all the while conserving a choice among other possible suppliers, such as insurance companies and mutual societies (*mutuelles)*.

Concerning the fundamental question whether a the exclusive rights granted to AG2R could led to abuse its dominant position or to create a situation in which that undertaking is led to commit such abuses, the Advocate General concluded there was evidence of a service of general economic interest.

In the sense of article 86 (now 106) of the Treaty, as in the Dutch case. "*It is plausible that in the event of abolition of the exclusive right that the organization in charge of running the supplementary health care scheme is entitled to, this organization would find itself obliged to accept a growing part of "bad risks*". A mandatory affiliation guarantees that the "*principle of solidarity will not be compromised in ensuring health care coverage for all salaried employees of the sector, which for the most part is made up of small and medium firms that can not necessarily offer a comparable level of protection to their employees on their own".*

☞ *Opinon of Advocate General of November 11 2010 case. C-437/09*

State Aids

The British NEST scheme approved by the Commission

Last July 6, the European Commission approved creation of a NEST occupational pension scheme aimed at guaranteeing access to a supplementary scheme to some 6 million British employees earning low or moderate salaries.

The European Commission estimated that the measure was compatible with EU regulations relative to State aid. NEST provides a service of general economic interest and receives no special compensation for doing so.

Within the framework of pension reform, British employers must automatically as of October 2012 affiliate their employees with a minimum employer contribution of 3% of salary.

NEST, financed with a contribution rate of 8% (4% from the employee and 1% from the State) and managed as a funded scheme, will benefit from State funds thanks to a loan at a reduced rate assimilated to State aid of the order of 250 to 460 million euros.

Pension Information

A subject of interest at a European and international level

The importance and impact of pension information for citizens have become subjects of common interest, judging from two recent conferences, the one organized in October 2010 by EAPSPI (European association for public sector pensions), the other in November 2010 by the National Office for Belgian Pensions under the aegis of the Presidency of the European Union. The OECD has also made recommendations.

All of the States of the Union do not enjoy the same level of organization to offer citizens rapid and continuous access to their pension rights, with all schemes being included. Denmark, Finland and France seem the most advanced. Belgium is working on setting up exchanges of data among Social Security schemes to establish a comprehensive document such as in France.

Methods for pension information vary from one country to another. Denmark, which is highly advanced on a technological level, provides safe access to basic and supplementary pension data. Elsewhere, it's the postal service that is preferred.

In Sweden, 6 million orange envelopes are sent out each year. In France, which relies on postings by generation, there will be 5 million mailings this year. Germany also, where not less than 36 million documents are sent annually to those over 27. Finland, which initially chose only electronic access, has decided to use the post as of 2011, with a white envelope.

Concerning the age for providing initial pension estimates, the OECD feels the earlier the better. This is true for Germany while in other countries such as Finland; it is thought inappropriate to furnish information on the size of pension at the beginning of a career.

When it comes to measuring the satisfaction of beneficiaries, it seems mitigated in Sweden where the orange envelope does not integrate occupational pensions, even though they represent an important element of a future pension. An Internet site was set up in 2004 linking the State and insurers to provide access to an estimate based on data from the basic scheme and occupational schemes as well as a green envelope for Swedish occupational schemes.

☞ *See also La lettre de l'Observatoire des retraites n°17*

ISSA

New Presidencies elected for 2011-2013

The 340 member organizations of the International Social Security Association have elected the 15th president of the Association which was founded in 1927. Erol Frank Stoove (Netherlands) will take over from Corazon de la Paz-Bernardo (Philippines) who was elected in 2004.

The new ISSA president directs the Dutch Social Insurance Bank, a public administration with 3200 employees, responsible for managing first pillar social insurance of a universal type: i.e. family allowances, retirement pensions, survivors benefits, disability allowances for maintaining handicapped children at home, indemnities for asbestos victims, continuing acquisition of pension rights for unemployed workers over 40.

Jean-Louis Deroussen, president of the board of administration of the Caisse nationale des allocations familiales (Cnaf), was elected president of one of the 10 technical commissions (the technical commission for family allowances).

The 2nd World Forum (Le Cap November 29 to December 4, 2010) during which the 30th general assembly of the ISSA was held reaffirmed the crucial role of social security in crisis periods.

The 3rd Forum will be held in November 2013 in Qatar.

Agirc and Arrco are among the 24 French members of ISSA whose statutes welcome “institutions, government services, agencies or other social security organizations”.

The Social Insurance Bank of the Netherlands

The SVB is a public administration with a **board of administration** composed of three members (the General Director Errol Frank Stoove, a human resources director and a director of client relations and information and communication technologies).

The SVB is based in Amsterdam, with a network of regional offices around the country in charge of paying benefits and providing information to 4.9 million beneficiaries.

A consultative council, known as the Client Council, has improved public service by suggesting changes and reporting on problems encountered with clients. The Client Council meets 4 to 6 times a year and is composed of a president and ten members. Five represent organizations of elderly persons, national minorities and salaried workers. The five remaining seats are reserved for individual SVB clients.

The SVB initiated a group known as “Manifest Innovatie in Uitvoering” aimed at permitting efficient service and limiting administrative red tape. One of its achievements is DigiD, an access code allowing contact with public administrations through internet and in particular filing applications for benefits, communicating changes in situation and consulting personal data already recorded.

The SVB is also in charge of universal benefits, depending on length of residence, income, family status as well as a rather complex notion of “economic household”.

Combating fraud is a major objective, with exchanges of information with tax authorities, communes, schools and Dutch embassies in foreign countries.

With borders with several countries, the Netherlands displays an international dimension, with an internet site for social insurance translated into five languages (English, German, French, Spanish and Turk). One department handles voluntary insurance. Two offices, for Belgian affairs and German affairs, provide information to persons living or working in Belgium, Germany or the Netherlands on social insurance in the Netherlands, Belgium and Germany, including old age pensions, family allowances, unemployment allowances, work disablement benefits and health insurance schemes. It is these administrations that are in charge of implementing European coordination in paying pensions of the German basic scheme to Germans residing in the Netherlands. Moreover, there are branch offices in Turkey, Morocco, Surinam, South Africa and Spain.

ECJ Cases

Discriminations on grounds of age

A ruling of October 12, 2010 concerned Danish regulations excluding persons who fulfill conditions for pension entitlements from receiving special redundancy allowances.

Mr. Anderson, 63, contested the fact of not being able to receive special indemnities to permit transition of workers laid off after long seniority with their employer to another job. The ECJ held the Danish rules legitimate in that their aim was to limit combining the allowance with an old age pension.

Nevertheless, the limitation was considered disproportionate with regard to the objective. In excluding not only those who will receive an old age pension but also those who choose not to do so in favor of continuing a working career, the Danish law is discriminatory and forbidden by directive 2000/78/CE that creates an overall framework for treatment in matters of work and employment.

In another ruling of October 12, 2010, the ECJ considered on the other hand that directive 2000/78/CE did not oppose automatic clauses in labor contracts for reason of attaining an age for pension entitlements, such as that foreseen in a collective agreement of the industrial cleaning sector in Germany.

Mrs. Rosenbladt contested, for reasons of age discrimination, the automatic rupture of her work contract, according to a collective agreement of the sector, at age 65, the age for receiving a pension, which in her case would mean a drop in monthly income from 357 euros to 203 euros.

Here too, the European Court evoked the wide margin of appreciation accorded to Member States in choosing not only the pursuit of an objective in areas of social policy and employment but also in defining measures likely to accomplish it. In addition to their legitimacy, such clauses are judged appropriate in accordance with stated objectives. Automatic termination of a work contract does not have the automatic effect of obliging a person to stop working definitively and does not deprive workers of retirement age of protection against discrimination due to age when they hope to find new employment.

This ruling confirms the Palacios de la Villa ruling of October 16, 2007 (C-411/07) (see Europe en Bref n°1/2008) that found that an age limit set by collective agreement entailing automatic retirement was not necessarily unjustified with regard to policy objectives for employment as well as the Age Concern England ruling of March 5, 2009 (C-388/07) that judged that British legislation providing for specific procedures for terminating employees of pensionable age or at age 65 can be in conformance with the directive.

- *Case C-499/08 Andersen 12 October 2010*
- *Case C-45/09 Rosenbladt 12 October 2010*

Directive 2000/78 of November 27, 2000, establishing a general framework for equal treatment in employment and occupation, allows Member States in exceptional circumstances to provide differences of treatment on grounds of age that shall not constitute discrimination, if, within the context of national law, they are **objectively and reasonably justified by a legitimate aim**, including legitimate employment policy, labor market and occupational training objectives, and if the means of achieving that aim are appropriate and necessary.

EURO AREA

Estonia 17th member of Euro Area

As of January 2, 2011, Estonia has become the 17th member of the Euro Area. 1.3 million Estonians have abandoned their money, the Crown, which replaced the Soviet Ruble in 1992 and was aligned with the German Mark and eventually the euro immediately after its creation in 2002 at a rate of 15,6466 crowns for one euro (as Lithuania and Latvia which hope to join in 2014).

With a forecast for 2010 of a public deficit of 1.3% of gross domestic product (GDP) and debt of 7.2% of GDP in 2009, Estonia is the brightest student of the euro zone in matters of budgetary discipline.

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