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Scope of the coordination system in the pension field

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Introduction

The present report summarises the main steps of the project carried out by the European Social Observatory (OSE) in response to the tender 'Scope of the coordination system in the pension field' (VT/2010/104) issued by the European Commission (DG Employment, Social Affairs and Equal Opportunities, EMPL/E.3). The reference is to the key research products delivered before and after the kick-off meeting held in Brussels on 31 January 2011 (Deliverable 1).

In line with the Invitation to Tender mentioned above, the key research questions centred on the following issues:

- What is the current articulation of the EU Framework on Pensions and its impact on the free movement of persons?
- How has this framework been affected by two decades of pension reforms at national level (with a specific focus on the complex articulation of pension systems)?
- What are the main gaps in EU legislation (resulting from the mismatch between the EU toolkit and national pension changes)?
- A specific focus is placed on the technical problems related to the mapping of supplementary schemes and their classification and articulation through typologies.
- What is the most promising strategy to plug such gaps and to improve protection of pension rights (especially for mobile workers and their relatives)?

In line with these questions, the project and the research activity have been defined in terms of four main steps (consistent with the tender specifications). The present report provides extensive evidence of the research activity carried out so far, and is organised around five main parts.

Part one of this final report focuses on the review of EU legislation in the field of pensions. This has been the result of Deliverable 3 written by Dalila Ghailani (law expert at OSE), with specific reference to Regulations 883/2004 and 987/2009, Directive 98/49 and proposed Directive no. 570 of 2005. The aim here is to provide a broad summary of the EU legal toolkit (with reference to the Treaties and secondary legislation).

Part two refers to the recent trends in pension policy at national level (Deliverable 2 provided by David Natali and Igor Guardiancich). The specific focus is on reform trends, and their impact on the application of single pieces of EU legislation.

Part three provides a more detailed review of the main gaps in EU legislation in the field of the coordination of social security schemes and for the transferability of supplementary pension rights. Here we shed light on the coexistence of Regulations 883/2004 and 987/2009 for the coordination of statutory supplementary pension schemes, and Directive 98/49 on the portability of pension rights. Our aim is to provide an exhaustive summary of voluntary notifications advanced by

Member States for the application of Regulations to supplementary pension schemes; to summarise ECJ rulings on the issues; and to provide an initial summary of the main problematic aspects of the EU legal framework in the field of pensions. This is the result of Deliverables 5, 6 and 7 (written by Dalila Ghailani with the contribution of the whole research team). The first reference to the literature has been integrated with the results of the Lime Survey that was launched in March/April 2011 to collect more information on some Member States, so as to map the application of individual EU legislation to supplementary schemes and to highlight any cases of lack of application of EU legislation and/or conflicts in applying it. The text of the survey and the complete data collection are set out in Annex 1.

Part four sheds light on the more technical aspects (and problems) of the application of EU legislation in the field of pensions. All parts are consistent with the project specifications and the aim of providing an updated study of EU legislation on the coordination of pension systems, the main problems at stake and possible solutions. This part provides an overview of different alternative classifications of pension schemes across EU countries. As proved by the recent literature and the survey/interviews conducted for the present project, the variety of pension schemes in Europe is one of the main technical problems policymakers - especially those at the EU level - must tackle to avoid discrimination and to improve the coordination of pension rights in the EU. This part is based on Deliverable 8, which is largely integrated with the results of the interviews collected in the context of the Deliverables 5 and 6. This part of the text also makes reference to the updated map of supplementary pension schemes in EU countries (see Annex 2).

Part five provides a summary of the future strategies to implement for improving the protection of social security and supplementary pension rights, for mobile workers. The first part gives a general overview of the main problems and the potential strategies to tackle them. The second part consists of a synoptic table: this is the sum of the most promising approaches for reducing if not eliminating obstacles to free movement of workers and for improving protection against old-age and related risks.

This contribution represents the final report of the project (Deliverable 10). It is the finalisation of the first draft final report presented on the occasion of the second meeting held in Brussels on 14 July 2011 (Deliverable 9). Comments and suggestions from the meeting's participants have contributed to the final version.

Part I: Review of the EU legislation on the coordination of pensions (1)

Dalila Ghailani

The EU role in the field of pensions has developed progressively. Different instruments (regulations and directives, and soft modes of governance) have been activated at different times in line with some key competences defined by the Treaties. EU action in the domain of pensions has been shaped by a variety of key aims: market integration, the tightening of fiscal, monetary and economic discipline, and the coordination of national social and employment policy. As a consequence of this, European integration has directly affected the boundaries of social citizenship: the traditional link between social rights and (national) territory has become much weaker (Ferrera, 2005 and 2008). The proliferation of directives and regulations and the key role played by the European Commission and the European Court of Justice are all an expression of increased regulatory powers for the EU (see Majone, 2005; Citi and Rhodes, 2007). We refer below to the main issues related to the coordination of pension schemes in the EU.

The EU has been actively engaged in promoting the free movement of workers for almost 55 years. Article 39 EC of the original Treaty of Rome sought to ensure that workers who exercise this right will not be discriminated against on the grounds of their nationality. Effective application of this right includes measures aimed at reducing obstacles to freedom of movement across Member States stemming from national legislation. Some of these obstacles may relate to the portability and transferability of pension rights. Since then, the right to free movement has developed and a legal framework has been established to facilitate such movement. However, this framework is not yet complete.

The European legal framework relating to the coordination of social security rights is built on Article 42 EC which provides that *"the Council shall adopt measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it must make arrangements to secure for migrant workers and their dependants:*
(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
(b) payment of benefits to persons resident in the territories of the Member States".

1. Part one of the present text consists of the review of EU legislation on the coordination of pension schemes (Deliverable 3 of the research project).

The most important legal instrument adopted on basis of this article is Regulation 883/2004 on the coordination of social security systems and its implementing Regulation 987/2009 ([2]). With regard to pensions, the EU coordination Regulation covers old-age pensions, survivors' pensions and invalidity pensions, and it encompasses only statutory schemes. The EU coordination rules lay down four general principles, namely equal treatment, aggregation of periods, assimilation of facts and exportability. The exportability of benefits is essential to the protection of acquired social security rights. The central role in satisfying this general principle of coordination is played by Article 7 of Regulation 883/2004, which waives residency rules for most of the social security benefits falling within the scope of the Regulation. Under this provision, neither the acquisition nor the retention of entitlement to benefits covered by the Regulation may be denied on the sole premise that the person concerned does not reside in the territory of the Member State in which the institution responsible for payment is situated.
Directive 98/49 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community is the second piece of secondary legislation based on Article 42 EC (Leppik, 2006). The European Commission also proposed in 2005 a Directive on improving the portability of supplementary pension rights (COM (2005)507). This measure aimed to remove obstacles to the acquisition, preservation and transferability of such rights, both within Member States and across borders within the EU, in order to facilitate the rights to EU-wide freedom of movement and to occupational mobility within a given Member State (Kalogeropoulou, 2006).

For many reasons, the portability of supplementary pension rights is now a more crucial issue than ever before. If portability of supplementary pensions is restricted, workers who move between or within Member States are penalised in relation to their pension rights. This would deter them from exercising their right to free movement and would restrict labour mobility. In Member States where supplementary pensions cover a high percentage of the population and contribute significantly to their pension income at retirement age, workers would be even more disinclined to exercise occupational or geographical mobility (Steinmeyer, 2001). Besides, the need to secure portability of supplementary pensions is also supported by the fact that various pension reforms focused on supplementary pensions are taking place, in response to challenges posed by demographic changes and ageing populations (CEC, 1997). Not dealing with this issue may lead to an even smaller number of people moving within the EU for employment purposes. People may also be reluctant to join such pension schemes if they face the possibility of losing out on their pension benefits in the event that they decide to change job and/or move to another Member

2. They replace Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community and Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.

State. Portability is also relevant to the functioning of the internal market, intended to establish an area without internal borders in accordance with Article 14 EC. To enhance labour mobility, workers must be able to acquire or preserve supplementary pension rights in order to secure their social security benefits (Kalogeropoulou, 2006).

This part of our paper reviews the three pieces of legislation in question, providing us with a clear overview of their respective objectives, material scope and main provisions guaranteeing workers' rights when they move within the EU. It shows how the coordination rules differ for statutory social security schemes and for supplementary private pension schemes.

Section 1: Regulations 883/2004 and 987/2009 on the coordination of social security schemes

1.1 Objective, material scope and definitions

Regulations 883/2004 ([3]) and 987/2009 ([4]) implement the coordination rules guaranteeing that persons moving within the Community, and their dependants and survivors, retain the rights and advantages already acquired and in the process of being acquired.

As far as the material scope is concerned, Regulation 883/2004 is much less innovative than the original Regulation 1408/71 ([5]). It still features the traditional set of social security risks deriving from the ILO Social Security (Minimum Standards) Convention No. 102. Regulation 883/2004 applies to all legislation concerning the following branches of social security, as specified in Article 3(1) of the Regulation: sickness benefits, maternity and equivalent paternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, pre-retirement benefits and family benefits.

This is a limitative list of benefits, and the material scope is determined by it. Benefits not mentioned here, such as study grants, are not covered. Furthermore, the material scope is confined to **legislation** on these benefits. As ruled in *Bozzone* ([6]), "*the expression 'legislation' within the meaning of Article 1(j) of Regulation No 1408/71 must be taken to cover all the national measures applicable in this case, not only within the metropolitan territories but also in territories maintaining special relations with those states*". This extensive definition, however, excludes schemes based on contractual provisions (Mavridis, 2003).

The ILO note of 1990 should be mentioned here as it proposed the development of a common concept usable at Community level, built from a selection of criteria based on the requirement for coordination. The concept of a supplementary scheme could be characterised by three elements:

- every social security scheme, whether supplementary or not, is based on a collective guarantee of protection. In the case of private supplementary schemes, this guarantee may cover a restricted or extended group within an undertaking or profession;

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3. Regulation (EC) No 883/2004 of the European Parliament and the Council of 29 April 2004 on the coordination of social security, OJ L, 30 April 2004, pp.1-123.
4. Regulation (EC) No 987/2009 of the European Parliament and the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security, OJ L 284, 30 October 2009, pp.1-42.
5. Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 149, 5 July 1971, p.2.
6. ECJ, *Bozzone*, 87/76, ECR 1977, I-87.

- a supplementary scheme may be defined by its nature as a supplement to the statutory social security scheme which is normally the basic scheme but can also be linked to a statutory supplementary scheme;
- a supplementary social security scheme should be compulsory for the employees protected.

Both agreement-based and contract-based private supplementary schemes meet these three criteria as they are collective, supplementary and compulsory (ILO, 1990). Hence they should be coordinated internationally and fall under the scope of EU Regulation 883/2004.

If a benefit is enshrined in legislation and matches one of the benefits mentioned above, Regulation 883/2004 applies to it, regardless of whether that benefit comes under a general or a special social security scheme, and whether it is contributory or non-contributory. Thus, benefits financed out of taxation also fall within the Regulation's scope ([7]). Medical and social assistance are excluded, as are war victim benefits ([8]). Special non-contributory benefits (at the cross-over of social security and social assistance) form a special category of benefits. They fall under the material scope of the Regulation, but the coordination system is not applied in full to these benefits as they are not exportable, as ruled in *Snares* and *Partridge* ([9]) (Jorens *et al*., 2009; Hennion *et al*., 2010).

Under Regulation 883/2004, the material scope was extended to paternity benefits and pre-retirement benefits. Pre-retirement benefits are defined as "*all cash benefits, other than an unemployment benefit or an early old-age benefit, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person concerned being available to the employment services of the competent State*". Their inclusion in Regulation 883/2004 introduces the principle of legislation applicable to these benefits and provides persons in such schemes with a guarantee that they may reside in any EU Member State while still receiving their benefits, they are covered for health care and will receive family benefits there. However, these benefits are not fully coordinated as Regulation 883/2004 excludes application of the rules on aggregation of periods for the acquisition of entitlement to pre-retirement benefits. Only legal systems are covered, whereas pre-retirement benefits are arranged through collective labour agreements in many countries (Jorens *et al*., 2009).

The precise degree of coordination depends on a mechanism whereby the Member States issue declarations concerning the material scope of the Regulation, as provided for in Article 9 (former Article 5 of Regulation 1408/71). According to this article, "*Member States shall notify the Commission of the European Communities in writing of the declarations referred to in Article 1(l),*

7. ECJ, *Commission v France*, C-34/98, ECR 2000, I-995.
8. ECJ, *Baldinger*, C-386/02, ECR 2004, I-8411.
9. ECJ, *Snares*, C-20/96, ECR 1997 I-6057; ECJ, *Partridge*, C-297/96, ECR 1998, I-3467.

the legislation and schemes referred to in Article 3, the conventions entered into as referred to in Article 8(2) and the minimum benefits referred to in Article 58, as well as substantive amendments made subsequently". Those declarations must be published in the Official Journal of the European Union. The Court of Justice interprets the impact of such notifications in a very restrictive manner. In *Vigier* ([10]), it held that "*the fact that a domestic law was not mentioned in the declaration made by a Member State pursuant to Article 5 of Regulation 1408/71 did not mean that that law had to be deemed to lie outside the scope of the Regulation*". According to the same logic, it follows from *Beerens* ([11]) and *Martinez Losada* ([12]) that "*the fact that a Member State has specified a law in its declaration must be accepted as proof that the benefits granted on the basis of that law are social security benefits within the meaning of Regulation No 1408/71*".

According to Article 1(w), "*'pension' covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances*". In *Frilli* ([13]), the Court ruled that the Belgian guaranteed income for elderly people constituted an old-age benefit: "*the legally protected right to a minimum pension conferred by national legislative provisions on all elderly residents must be considered as an "old-age benefit" within the meaning of Article 2(1) (c) of Regulation No 3 as regards wage-earners or assimilated workers who have worked for periods of time in that state and are entitled to a pension there. The grant of such a benefit to a foreign worker who fulfils these conditions cannot depend on the existence of a reciprocal agreement with the Member State of which that worker is a national since such a condition is incompatible with the rule of equality of treatment which is one of the fundamental principles of Community law*". It follows from the judgement in *Movrin* ([14]) that the German sickness insurance contribution subsidy provided for in Germany's legislation constitutes an old-age cash benefit. The recipient of an old-age pension payable under that legislation may claim such a subsidy even if he is resident in another Member State where he is compulsorily affiliated to the sickness insurance scheme.

In order to determine whether a pension scheme falls within the scope of Regulation 883/2004, it must be possible to describe that scheme as being based on legislation. The definition of legislation in Article 1(l) makes no distinction as to the mechanisms underlying pension schemes. These rules apply in principle to PAYG (pay-as-you-go) schemes as well as to funded schemes, including defined contribution schemes, provided that they follow directly from the application of social security legislation. According to the *Gaumain-Cerri* ruling ([15]), the fact that the insurance is

10. ECJ, *Vigier*, C-70/80, ECR 1981, I-229.
11. ECJ, *Beerens*, C-35/77, ECR 1977, I-2249.
12. ECJ, *Martinez Losada*, C-88/95, ECR 1997, I-869.
13. ECJ, *Frilli*, C1/72, ECR I-457.
14. ECJ, *Movrin*, C-73/99 ECR 1999, I-5625.
15. ECJ, *Gaumain-Cerri*, C-502/01, ECR 2004, I-6483.

provided in whole or in part by a private insurer on the basis of a private contract is irrelevant. If the conclusion of that contract follows directly from the application of social security legislation, the pension scheme is covered by the provisions of Regulation 883/2004. Coverage by these coordination instruments depends only on the statutory source of the relevant schemes, to be judged objectively and not depending as such on a declaration by Member States.

As pointed out by Verschueren (2009), this means that after EU enlargement in 2004, a significant number of funded pension schemes set up by virtue of legislation are in principle subject to coordination rules such as the aggregation of insurance periods and the *pro rata temporis* calculation. According to the above-named author, this is all the more true because of the new definition of pensions contained in Regulation 883/2004. Article 1(t) of Regulation 1408/71 refers to pensions as meaning "all benefits and pensions including all elements thereof payable out of public funds", whereas Article 1(w) of Regulation 883/2004 dispenses with this reference to public funds, defining pensions instead as covering not only pensions but also lump sum payments which can be submitted for them.

1.2 Application of the general coordination principles to pensions

As the most important aim of Regulation 1408/71 was to guard against discrimination on grounds of nationality in relation to entitlement to social security benefits, the Regulation enhanced the notion of non-discrimination based on nationality. It introduced a number of general principles: *single applicable legislation*, *equal treatment, aggregation of periods* and *export of benefits* (also known as the "waiving of residence clauses" principle). These principles still constitute the general framework of coordination in the field of social security. However, Regulation 883/2004 strengthens the principle of equal treatment, introducing a new separate provision for the equal treatment of benefits, income, facts or events.

According to the *principle of equal treatment* with nationals of the competent Member State (Article 4), persons falling under the scope of the Regulation who are resident in a Member State must have the same rights as the host State's own nationals and must be protected against discrimination based on nationality. The prohibition of discrimination has always been broadly interpreted by the Court of Justice and has always been a precious guarantee in the coordination system ([16]). This key principle of European social security coordination was reinforced in Regulation 883/2004, as in Article 4 the precondition of residence in the territory of a Member State is no longer required (Khalil-Wolff *et al.*, 2006).

The principle of waiving of residence clauses (export of benefits, Article 7) means that social security benefits can be paid throughout the Union and prohibits Member States from reserving

16. ECJ, *Van Pommeren-Bourgondiën*, C-227/03, ECR 2005, I-; ECJ, *Inzirillo*, C-63/76, ECR 1976, I-2057; ECJ, *Terhoeve*, C-18/95, ECR 1999, I-345.

the payment of benefits to people resident in the country. In *Giletti* ([17]), the ECJ ruled that "*under Article 10 of Regulation 1408/71 neither the acquisition nor the retention of entitlement to the benefits covered by that provision may be denied on the sole ground that the person concerned does not reside in the territory of the Member State in which the institution responsible for payment is situated".* However, this principle does not apply to all social security benefits ([18]): special rules apply to the unemployed and different rights apply to exporting cash benefits and benefits in kind. Cash benefits are usually paid in accordance with the rules of the country in which the person entitled to them lives or is staying. Benefits in kind are governed by the rules of the country in which the fund member is staying. If the competent State is not the State of residence, the competent State must reimburse the State of residence or stay for its expenditure on benefits in kind (Jorens *et al.*, 2009; Hennion *et al.*, 2010).

The application of these principles to pensions may be illustrated by the following cases brought before the ECJ. In *Borawitz* ([19]), the Court ruled that the German legislation "*which fixes the minimum amount of a cash benefit that can be paid to a Community national residing in another Member State at a higher level than that required where that payment is made within the same Member State"* was indirectly discriminatory on grounds of nationality. In *Habelt* ([20]), the ECJ overruled residence clauses allowed for in specific circumstances by several Annexes to Regulation 1408/71. These clauses specifically concerned Germany's refusal to take into account, for the purposes of paying old-age benefits to claimants who have established their residence in another Member State, contributory periods completed in the Sudetenland and in Pomerania during the period when those territories, which are not part of the present-day Federal Republic of Germany, were part of territories where the social legislation of the German Reich was applicable. The Court considered these residence clauses as being contrary to the principle of the free movement of persons, and in particular to Article 42 of the EC Treaty. It follows from the ECJ judgement in *Movrin* ([21]) that a subsidy for sickness insurance contributions provided in German legislation constitutes an old-age cash benefit, the recipient of which may claim such a subsidy even if he is resident in another Member State where he is compulsorily affiliated to the sickness insurance scheme.

With regard to the *principle of aggregation of periods*, Article 6 of Regulation 883/2004 obliges Member States whose legislation makes the acquisition, retention, duration or recovery of the right to benefits conditional upon the completion of periods of insurance, employment, self-employment or residence, take into account periods of insurance, employment, self-employment or residence

17. ECJ, *Giletti*, C-379/85, ECR 1987, I-955.
18. ECJ, *Skalka*, C-160/02, ECR 2002, I-5613; ECJ, *Snares*, C-20/96, ECR 1997, I-6057.
19. ECJ, *Borawitz*, C-124/99, ECR 2000, I-7293.
20. ECJ*, Habelt, Möser and Wachter*, C-396/05, C-419/05, C-450/05, ECR 2007, I-1895.
21. ECJ, *Movrin*, C-73/99, ECR 2000, I-7321.

completed under the legislation of any other Member State as though they were periods completed under its own applied legislation. This principle is essential for pensions.

Developed by the case law of the ECJ over the years as a manifestation of the principle of equal treatment, the *principle of equal treatment of benefits, income, facts or events* was incorporated into Article 5 of Regulation 883/2004. It means that where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State (Article 5(a)).

As highlighted by Verschueren (2009), in respect of pensions this principle means firstly that a person who is entitled to an old-age pension from a (first) Member State should be considered by the competent (second) State as a beneficiary of an old-age pension for the application of its legislation, even if the pension is paid by that other, first, Member State. Secondly, it means that where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State must take account of like facts or events occurring in any Member State as though they had taken place in its own territory (Article 5(b)).

The following cases illustrate the application of this principle. In *Kauer* ([22]), the ECJ interpreted the right to freedom of movement as "*precluding application of a Member State's legislation under child-raising periods completed in another State (…) are not treated as substitute periods for the purposes of old-age insurance unless (…) the applicant receives, or received for the children concerned, cash maternity allowances or equivalent allowances under the legislation of that same State*". In the legislation under discussion in this case, such periods completed in the national territory were treated as substitute periods for the purposes of old-age insurance without any other such conditions. In *Roviello* ([23]), the ECJ declared as invalid a rule concerning German law referred to in Annex VI to Regulation 1408/71, insofar as it permits entitlement to a specific invalidity pension to be determined by taking account solely of those activities subject to compulsory insurance under the German legislation. The Court considered the exclusion of activities pursued in another Member State to constitute indirect discrimination on grounds of nationality. In *Paraschi* ([24]), the Court declared it unlawful where national legislation does not provide for the possibility of prolongation of the reference period for the grant of an invalidity pension, where the events or circumstances corresponding to those which make prolongation possible arise in another Member State. In *Duchon* ([25]), the Court stated that a piece of legislation, insofar as it makes no provision for the possibility of prolonging the reference period for the grant of an occupational disability pension where events or circumstances corresponding to those which enable the period to be prolonged occur in another Member State, is liable to have a much greater

22. ECJ, *Kauer,* C-28/00, ECR 2002, I-1343.
23. ECJ, *Roviello*, C-20/85, ECR 1988, I-2805.
24. ECJ, *Paraschi*, C-349/87, ECR 1991 I-4501.
25. ECJ, *Duchon,* C-290/00, ECR 2002, I-3567.

adverse effect on migrant workers. For the same reasons, the Court declared invalid "*a provision (…) in so far as it excludes the possibility of taking into account, for the purposes of the prolongation of the reference period under the legislation of a Member State, the periods during which industrial accident benefits were paid under the legislation of another Member State*". It follows from the judgement in *Oztürk* ([26]) that the equal treatment provision must be interpreted "*as precluding the application of the legislation of a Member State which makes entitlement to an early old-age pension in the event of unemployment conditional upon fulfilment of the requirement that the person concerned has received within a certain period prior to his application for the pension unemployment insurance benefits from that Member State alone"* (Jorens *et al*., 2009).

1.3 Special coordination rules for old-age pensions

The provisions of Regulation 1408/71 concerning the calculation and award of old-age benefits were redrafted and simplified by Regulation 883/2004. Regulation 883/2004 continues to be based on the principle that a person is entitled to an old-age benefit determined under all the legislation of the Member States to which this person has been subject and by all the relevant competent institutions (new Article 50(1)).

Regarding the *rules on the award of benefits*, Regulation 883/2004 confirms the dual calculation of the amount of benefit: the competent institution must start by calculating the benefit under the legislation it applies where the conditions for entitlement to benefits have been satisfied exclusively under national law. The benefit calculated is called "*the independent benefit*". A pension is an independent benefit if it is not necessary to invoke the provisions of the regulation for the purpose of acquiring a right to this pension and for the calculation of its amount. For a person who worked for three years in Germany, the independent pension would be zero, since the waiting period of five years required by the German Law is not satisfied.

Subsequently, the competent institution must calculate an actual amount which is called *"the pro rata benefit"* in Regulation 883/2004, as explained by Pennings. First, all Member States in whose territory a claimant has been insured must make a calculation of the pension a person would receive if the conditions for entitlement to benefits had been satisfied exclusively under national law (the so-called independent benefit). Second, the Member States have to calculate the proportioned pension which is the pro rata benefit due from their system.
For the calculation of the proportioned pension, two steps have to be taken (Article 52(1)(b)). First the so-called *theoretical amount* must be calculated. For the purpose of this calculation, the State concerned has to apply the legislation which is in force at the moment of calculation. The number of theoretical pensions is the same as the number of Member States where the person concerned

26. ECJ, *Oztürk*, C-373/02, ECR 2004, I-3605.

has been insured. In *Weber* ([27]), the Court held that the competent State must take into account the wages earned at the moment of the materialisation of the risk ([28]).

The second step is that each Member State involved calculates the pro rata benefit. This is calculated for each State by taking the ratio between the duration of periods completed before the materialisation of the risk under the legislation of that State and the total duration of the periods completed under the legislations of all Member States concerned ([29]). Finally, the person concerned is entitled to receive from the competent institution of each Member State the higher of the amounts of the "independent benefit" and the "pro rata benefit" (Pennings, 2010).

The rules to prevent overlapping of benefits (Articles 53-55), the provisions on the award of a supplement (Article 58), on the recalculation and revaluation of benefits (Article 59) and the special provision for civil servants (Article 60) were not altered significantly. Article 53(3)(b) on the application of rules to prevent overlapping with a benefit of the same kind or a benefit of a different kind or with other income should however be mentioned as an innovation. It provides that the competent institution must take into account the amount of benefits to be paid by another Member State before deduction of tax, social security contributions and other individual levies or deductions, unless the legislations it applies provides for the application of rules to prevent overlapping (Verschueren, 2009).

The former Article 46c (1) of Regulation 1408/71 was also substantially modified. It provided that where a pension overlapped with benefits of a different kind or other income, the amounts which would not be paid in strict application of the national provisions of the Member States concerned would be divided by the number of benefits subject to reduction, suspension or withdrawal. This provision could result in putting a migrant worker with pension benefits from more than one Member State in a better position than a non-migrant worker whose benefit is calculated only on the basis of one Member State's legislation. In the latter situation the person concerned might even lose his/her benefit if the other benefit of a different kind or other income were too high

27. ECJ, *Weber*, C-181/83, ECR 1984 I-4007.
28. For example, Irma has been insured for forty years altogether in three different countries. She was insured for ten years in system A, where the growth of pension rights is two percent for each year of insurance. The theoretical amount of State A is 80% of the full national pension (forty times two per cent). She also worked in country Y. In this country the level of pension is 1.75% of the last income for each year of insurance. The theoretical amount is forty years (all her periods of work) times 1.75, which is 75 percent of the last earned income. She was also insured in country W, which has a flat-rate pension of 1500 euro regardless of the period of insurance or residence. In that country 1500 euro is the theoretical amount. For Irma, these three theoretical amounts apply (Pennings, 2010).
29. For example, Simon works from the age of 25 until the age of 65. He works 10 years in country X. In Country X, pension rights increase by 2% of the full pension for each year a person is insured in that country between 15 and 65. The full pension is 2000 euro. Suppose Simon's full career is forty years (10 years in State X, 20 years in State Y and 10 years in State W). For Simon the pro rata pension is 10/40 of 2000=500. In country Y for each year of work 1.75% of the last income is acquired as a pension right. Simon's theoretical amount is 40 years times 1.75: 75% of his last earned income. The pro rata amount is 20/40 times 75% of his last earned wage. Country W, where Simon reaches pension age, has a flat rate pension of 1500 euro regardless of the period of insurance or residence if a person reaches 65 in this country. Thus 1500 is the theoretical amount for State W. Simon works ten years in this country. The pro rata amount is 10/40 of 1500 (Pennings, 2010).

(Verschueren, 2009). Article 55(1)(a) of Regulation 883/2004 now provides that where there are two or more independent benefits, the competent institutions must divide the amounts of the other benefits or income by the number of pension benefits subject to the rules. This might also result in the loss of the pension benefit if half of the other benefit of a different kind or other income were so high that it would entail in a full reduction or withdrawal of the pension. In order to alleviate the consequences of this new rule, Article 55(1)(a) goes on to state that "*the application of this subparagraph cannot deprive the person concerned of his/her status as a pensioner for the purposes of the other chapters of this Title under the conditions and the procedures laid down in the Implementing Regulation*" (Pennings, 2010).

The provision on *periods of insurance or residence* of less than one year was maintained in Article 57 of Regulation 883/2004, and provides that "*all periods of insurance, employment, self-employment or residence shall be taken into account for the calculation of the one year period, which either qualify for or directly increase the benefit concerned*". Therefore these periods, which as such do not qualify for the award of the benefit, but which only contribute to increasing it, must also be taken into account (Verschueren, 2009).

1.4 Special provisions for funded schemes

The coordination rules are clearly meant for classic PAYG pension schemes and their application is not always appropriate for funded schemes, the benefits of which depend solely on the accrued value of the capital built up through contributions. For instance, Article 47(1)(d) of Regulation 1408/71 stipulates special provision for the method of calculating benefits on the basis of the amount of earnings, contributions or increases. According to this provision, the competent institution of the Member State concerned shall determine the contributions or increases to be taken into account with respect to periods completed under the legislation of other Member States, on the basis of the average contributions or increases recorded in respect of the insurance period completed under the relevant legislation. As highlighted by Verschueren (2009), the application of this provision could lead to an additional and unexpected financial burden for the pension scheme if the average contributions or increases in respect of the periods of insurance completed under the legislation of the Member State concerned are higher than the average contributions or increases under that legislation during the period when a person was subject to the legislation of another Member State. Some exceptions to this rule have already been introduced by Regulation 647/2005 ([30]) and by Regulation 592/2008 ([31]) for the legislation of certain Member States listed in Annex VI of Regulation 1408/71 ([32]).

30. Regulation 647/2005 of the European Parliament and the Council of 13 April 2005 amending Council Regulations (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, OJ L of 4 May 2005, p.1.

The provisions of Article 47(1)(d) of Regulation 1408/71 have been redrafted in Regulation 883/2004 (new Article 56(c)), the application of which is subject to the procedures laid down in Annex XI for the Member States concerned. In accordance with these special procedures, a Member State may determine the basis for the calculation of benefits in accordance only with periods of insurance completed under the legislation it applies and may use only the elements determined and recorded for the periods of insurance completed under the legislation it applies.

The original Article 52(4) of Regulation 883/2204 allowed for the waiving of the pro rata calculation where the calculation invariably results in the independent benefit being equal to or higher than the pro rata benefit, such situations being set out in Annex VIII. The Commission proposed in 2006 ([33]) to waive the pro rata calculation in all cases where the pension is based on a defined contribution scheme. The new paragraph added to Article 52 (§5) reflects this idea by stipulating that the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, on condition that such schemes are listed in part 2 of Annex VIII. The provisional agreement reached by the Council at the end of 2006 also ruled out the application to these schemes of Article 57 on periods of insurance or residence of less than one year (new Article 57(4)) (Verschueren, 2009). These amendments to Regulation 883/2004 aimed at better adapting it to funded pension schemes were introduced in Regulation 988/2009 of 16 September 2009 ([34]). Thus, part 2 of Annex VIII lists the Hungarian pension benefits based on membership of private pension funds, the Estonian mandatory funded old-age pension scheme, the Polish old-age pensions under the defined contribution schemes, etc.
Many experts argue these measures are partial and insufficient to take the specificity of funded scheme in due account (see the interviews listed in Annex 1).

31. Regulation 592/2008 of the European Parliament and the Council of 17 June 2008 amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community OJ L 117 of 4 July 2008, p.1.
32. An example is the Austrian pension scheme of the liberal professional associations, financed exclusively by the funded scheme method or based on a pension account system. For the calculation of the benefits under this scheme the competent institution shall, to calculate the theoretical amount, take into account, in respect of each month of insurance completed under the legislation of any other Member State, capital in proportion to the capital actually accrued in the Austrian pension scheme (Verschueren, 2009).
33. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of Annex XI, COM(2006)7 final, 24 January 2006.
34. Regulation (EC) 988/2009 of the European Parliament and the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems and determining the contents of its Annexes, OJ L 284/43, 30 October 2009, p.1.

Section 2: Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

Non-statutory social security does not fall within the material scope of Regulation 883/2004, unless a Member State has issued a declaration that a scheme does fall under it (see page 14 above). The European Commission however undertook various initiatives in order to eliminate some of the problems regarding supplementary pensions. The most important initiative was Council Directive 98/49 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community ([35]). This Directive, however, gives considerably less protection than Regulation 1408/71 (now 883/2004) and has proved disappointing.

2.1 Objective, material scope and definitions

The aim of the Directive is to protect the rights of members of supplementary pension schemes who move from one Member State to another. Such protection refers to pension rights under both voluntary and compulsory supplementary pension schemes, with the exception of schemes covered by Regulation 883/2004.

The Directive applies to members of supplementary pension schemes and others holding entitlement under such schemes who have acquired or are in the process of acquiring rights in one or more Member States. It defines a supplementary pension scheme as any occupational pension scheme established in conformity with national legislation and practice such as a group insurance contract or PAYG scheme agreed by one or more branches or sectors, a funded scheme or a pension promise backed by book reserves or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons.

The scope of the Directive excludes those schemes which are covered by the term "legislation" as defined by Article 1(l) of Regulation 883/2004, or in respect of which a Member State makes a declaration under that article. It applies regardless of whether the supplementary pension scheme is based on funding, PAYG schemes or book reserves.

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35. Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, OJ L 209, 25 July 1998, p. 46.

2.2 Measures for safeguarding the supplementary pension rights of workers moving within the Community

- ***Equality of treatment as regards preservation of pension rights***

Article 4 of the Directive stipulates that a person who leaves a pension scheme must not be confronted by a loss of vested pension rights when he moves to another Member State, if he would not have lost these rights had he started to work for another employer in the same Member State. Member States have to take the necessary measures to ensure the preservation of vested pension rights for members of a supplementary pension scheme in respect of whom contributions are no longer being made to that scheme, now that they have moved to another Member State. The protection must be the same as for persons who remain within the same Member State.

- ***Cross-border payments***

Article 5 provides that supplementary pensions must also be paid in another Member State. Consequently, payment can no longer be restricted to the territory of the competent State.

- ***Contribution to supplementary pension schemes by and on behalf of posted workers***

In general it would often be preferable for an insured person to remain insured under the supplementary scheme in which he was already insured in the event that he moves to another Member State. The Directive requires this in exceptional cases only, as in the case of a posted worker who is a member of such a scheme during the period of his posting in another Member State. In this case, the posted worker and his employer are exempted from the obligation to pay contributions in another State (State of employment). According to Article 3, a posted worker is a person who comes under the posting rules of Regulation 1408/71 subject to the legislation of the Member State of origin.

Member States are obliged to take measures to ensure that employers, trustees or others responsible for the management of supplementary pension schemes provide adequate information to scheme members when they move to another Member State, in relation to their pension rights and the choices available to them under the scheme (Mauclaire, 2004; Hennion *et al.*, 2010).

Section 3: Draft proposal on the portability of supplementary pension rights COM(2005)507

In 2005 the European Commission proposed a Directive on improving the portability of supplementary pension rights, aimed at removing obstacles to the acquisition, preservation and transferability of such rights, both within Member States and across borders within the EU, in order to facilitate the rights to EU-wide freedom of movement and to occupational mobility within the same Member State ([36]). The proposal was in line with the renewed Lisbon strategy aiming to deliver growth and create more and better jobs, by increasing the adaptability of workers and enterprises and the flexibility of labour markets, which restated the intention of proposing legislation to remove obstacles to mobility arising from occupational pension schemes (Kalogeropoulou, 2006).

3.1 Objective, material scope and definitions

The proposed Directive aims to remove obstacles to the acquisition, preservation and transferability of such rights, both within Member States and across borders within the EU, in order to facilitate the rights to EU-wide freedom of movement and to occupational mobility within the same Member State.

It applies to supplementary pension schemes apart from schemes covered by Regulation 1408/71. Supplementary pensions in the meaning of this Directive are retirement pensions and, where provided for by the rules of a supplementary pension scheme established in conformity with national legislation and practice, invalidity and survivors' benefits, intended to supplement or replace those provided in respect of the same contingencies by statutory social security schemes.

The proposed Directive defines a supplementary pension scheme as any occupational pension scheme established in conformity with national legislation and practice, such as a group insurance contract or PAYG scheme agreed by one or more branches or sectors, a funded scheme or a pension promise backed by book reserves or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons.

Portability of supplementary pension rights includes the acquisition and transferability of supplementary pension benefits as well as the preservation of dormant pension rights.

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36. CEC (2005a), Proposal for a Directive of the European Parliament and the Council on the improvement of portability of supplementary pension rights, COM (2005) 507.

3.2 Measures for safeguarding the supplementary pension rights of workers moving within the European Union

- ***Acquisition of supplementary rights***

In relation to the acquisition of supplementary pension rights, the proposal includes the obligation to reimburse or transfer the contributions of outgoing workers who have not yet acquired pension rights when employment is terminated. One striking suggestion contained in the proposal is the requirement of a two-year vesting period, which will apply directly and without an intervening transitional period. It also suggests a waiting period of one year and a minimum age of no more than 21 years for acquiring pension rights. The proposed directive also allows Member States to introduce more favourable rules.

- ***Preservation of dormant pension rights***

On the issue of preservation, the proposed directive leaves the Member States a great deal of flexibility, bearing in mind the considerable heterogeneity of supplementary pension provision, to adopt appropriate measures for ensuring that workers who exit an occupational scheme are not penalised. The Member States may however allow for supplementary pension schemes not to preserve acquired rights. This option is to be applied to low-value dormant rights where their preservation can lead to excessive administrative costs (LeBarbier-Le Bris, 2006).

- ***Transferability***

As far as transferability is concerned, the proposed directive provides workers with the possibility of transferring their acquired rights to another scheme or to a similar financial institution, should they so wish. However, for reasons of financial sustainability, unfunded schemes (as well as those based on the book reserve or PAYG system) are exempted from the obligation to make transfer possible, until they can ensure that they can accommodate such transfers. Besides, the transfer and the actuarial estimations of the value of the acquired rights, as well as the administrative charges for the transfer, should not result in workers being penalised in their entitlements. The calculation method is left to the Member States. Although these provisions on transferability are necessary, tax issues that were considered by the Pensions Forum working groups as the greatest obstacle to cross-border transfers were not dealt with in the proposal. Taxation practices within the various Member States may also result in substantial losses of the fair value of acquired rights (Hennion *et al.*, 2010).

The proposal also envisages the adequate provision of information to workers on the way in which a termination of employment will affect their supplementary pension rights.

The table below gives a clear overview of the legislation described above in terms of material scope, objective and main provisions.

Table 1. Key traits of EU legislation for the coordination of pension schemes

	Regulation 883/2004	**Directive 98/49/EC**	**"Portability" Directive (Draft proposal)**
Objective	To simplify and modernise previous Regulation 1408/71 on the coordination of social security schemes	To protect the rights of members of both voluntary and compulsory supplementary pension schemes	To remove obstacles to the acquisition, preservation and transferability of supplementary pension rights
Material scope	All *legislation* concerning (…) 'old-age benefits' (…)	Supplementary pension schemes as defined in the directive	Supplementary pension schemes as defined in the directive
Definition	"Legislation": laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1)	Any occupational pension scheme established in conformity with national legislation and practice such as a group insurance contract or PAYG scheme agreed by one or more branches or sectors, a funded scheme or a pension promise backed by book reserves or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons	Any occupational pension scheme established in conformity with national legislation and practice such as a group insurance contract or PAYG scheme agreed by one or more branches or sectors, a funded scheme or a pension promise backed by book reserves or any collective or other comparable arrangement intended to provide a supplementary pension for employed or self-employed persons
Pension techniques	"PAYG" schemes and funded schemes are covered	Funded schemes, PAYG schemes and book reserves	Funded schemes, PAYG schemes and book reserves
Exclusion	Excluded: *contractual provisions* other than those which serve to implement an insurance obligation arising from laws and regulations or have been the subject of a decision by the public authorities which makes them obligatory or extends their scope by means of a declaration	Excluded: schemes covered by Regulation 1408/71	Excluded: schemes covered by Regulation 1408/71
Provisions	*Aggregation of periods* *pro rata temporis for calculation of pensions* *prevention of overlapping of benefits* *exportability of pension rights*	Equality of treatment as regards pension rights exportability of pension rights adequate information **no transferability!**	Acquisition of supplementary pension rights preservation of dormant pension rights **transferability of benefits: removed in the amended proposal (2007)!** adequate information

Source: compiled by Ghailani (2011).

Part II: Pension systems in the EU: reform trends and outcomes ([37])

Igor Guardiancich and David Natali

In the field of pension policy, the "Community method" has led to direct and indirect pressures of integration. Pension regulation has initially served to advance *direct (and positive) integration*. Social policy initiatives have been pursued by central institutions on a few issues: fundamental social rights, anti-discrimination and equality. In parallel, EU regulation has consisted of *direct (and negative) integration* in order to grant freedom of movement for workers and provision of services through the market-building process. Completion of the single market for private insurance has been a further line of intervention consistent with *indirect pressures* that do not legally constrain but nonetheless encourage the adaptation of national retirement programmes (Leibfried, 2005; Natali, 2008).

With the various strategies mentioned above, the coordination of national social security schemes has represented a key dimension of "Social Europe", with direct effects on the exportability of social rights. Such strategies are inspired by one of the fundamental freedoms of the European Union, enshrined in the Treaty: the free movement of persons (i.e. citizens' right to live and work in another Member State) ([38]). Much emphasis has been placed on the free movement of workers (see for instance the "European Year of Mobility for Workers" in 2006) as a means of promoting geographical mobility within and between Member States as a contribution to improving the efficiency of European labour markets, economic performance, the professional prospects of workers and the quality of living and working conditions (CEC, 2005b). For the Commission, policies and regulation need to facilitate the free movement of production factors, notably labour and capital, so as to use resources efficiently and create favourable conditions to maximise incomes. Greater flexibility in job mobility supports the adjustment capacity of the economy and strengthens the European social model. According to the Green Paper published by the Commission in July 2010, in today's labour market, with the added challenges from the financial and economic crisis, people need to be able to change jobs easily throughout their working life and employers should be able to recruit the right person with the right skills (CEC, 2010a).

Proper protection for mobile workers through EU legislation is increasingly under pressure because of three factors that tend to interact with each other: the increased complexity of the EU legal

37. Part two summarises the main traits of the most recent reform process in EU countries. This is the Deliverable 2 of the research project.
38. Article 48 TFUE (ex Article 42 EC) clearly states "The European Parliament and the Council (...) adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self employed migrant workers and their dependants" and Article 21(3) TFUE (ex Article 18 TEC): "3. For the same purposes as those referred to in paragraph 1 (...) the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection…".

framework on pension policy; the growing relevance of migration in the EU; and the ongoing reform of national pension systems.
Firstly, EU legislation on the portability of social insurance rights, on the completion of the single market for pension funds and on pension fund solvency provides a complex and wide-ranging framework. Yet EU intervention to date has revealed major limitations in a context of widespread reforms of national pension systems. This is the case concerning the portability of pension rights. Unlike with social security pensions, which are aggregated under EU rules, people who have supplementary pension rights may lose out when they change jobs within or between countries (CEC, 2010a; 2010b).

Secondly, Europe has the highest number of immigrants in the world (more than 33 percent of all migrants worldwide). Today 42 million people residing in the European Union (EU27) and 4 associated countries (other EEA, CH) are regular international and intra-EU migrants. They represent 8.3 percent of Western and Central Europe's total population. Some 14 million of these migrants have come from other EU Member States. The remaining 28 million have come from elsewhere, although this number may include parts of Europe and other world regions (Munz, 2008). The EU's labour market integration policy has created the most advanced (and complex) multilateral system worldwide of legal provisions on the portability of social security benefits for migrants (Holzmann *et al.*, 2005). The point here is that while mobile workers are still a minority of the EU workforce, their number is increasing in parallel with the social relevance of the issues at stake for the protection of their pension rights.

Further need for action comes from the rising importance of funded pension schemes in diverse forms. Two decades of reforms across the EU have involved some retrenchment of public protection against old-age risks. This has been consistent with the further development of supplementary non-public pension schemes. The latter largely fall outside of the regulations on the portability of social security rights, and they thus risk not being fully protected by the EU framework (Natali, 2008).

This second part of this final report sheds light on the latter issue: the recent wave of reforms in EU Member States and its impact on the application of different pieces of EU legislation (especially concerning the protection of migrants' pension rights). The following pages provide a summary of the reforms' outcomes and output in EU Member States, with specific reference to the most recent measures introduced after the economic crisis of 2008-10. Section one provides a basic glossary for the analysis of national pension institutions. By referring to some key contributions in the literature (Holzmann *et al.*, 2008; Immergut *et al.*, 2007), we present concepts and terms that enable us to assess innovation in the institutional design of national pension systems. Section two introduces pension models in the EU at the end of the 20th century, while section three looks at their recent transformation and the changing role of different pension programmes (that belong to the first and supplementary pillars). Section four goes back to the EU legal framework (summarised in the first part above) and the single pieces that are applicable to individual pension pillars. Section five draws some conclusions.

Section 1: Basic Glossary for the Analysis of Pension Institutions

Different instruments usually coexist within a single pension system. In fact all systems consist of different programmes or schemes, each with its own rules of access, financing, benefit calculation and administration. The complex set of programmes providing protection for the elderly represents the *institutional design* of pensions. This gives information about the role of different institutional spheres: state, market, civil society and social partners (the pension mix).

Many authors use the terms "pillar" and "tier" to summarise the key parts of a pension system. After the seminal works by the World Bank (1994; Holzmann and Hinz, 2005), many scholars have used similar (even if inconsistent) terminology. This helps define the main characteristics of the pre-reform and post-reform systems in different European countries. In line with some of the most recent contributions (see Bonker, 2005; Immergut *et al.*, 2007; Jochem, 2007), the present work uses the following concepts:

- the first pillar refers to the basic mandatory programmes introduced through legislation. Usually financed on a PAYG basis, these programmes are public in that they are established by law and managed by a public body ([39]). They often have redistributive aims. In some of them, benefits are targeted or flat-rate; in others they are income-related and/or contribution-related;
- the second pillar consists of non-public schemes in which membership is collective and linked to employment status or occupation. These are defined occupational or professional schemes usually operating on a funded basis. Pensions can be defined-benefit or defined-contribution. Each programme covers a group of workers defined at the company and/or sectoral level. It is private in that it is not established by law (but by collective agreement) and is run by the social partners. It can be mandatory, quasi-mandatory or voluntary;
- the third pillar comprises voluntary savings put aside by an individual for his/her old-age. These consist of individual contributions, and this pillar is private in that it is not established by law but is based on contracts signed by insured individuals with private institutions (e.g. life insurance companies, banks, or pension funds still with individual membership). Third pillar schemes are fully-funded, with limited if any redistributive aims (Figure 1).

39. These are some of the criteria usually proposed for assessing the public/private nature of pensions (SPC, 2005).

Figure 1: Institutional Design of Pension Systems

		Risk-pooling	Funding	Management
Third pillar		Personal	Funded	Private
Second pillar		Occupational	Funded	Private
First pillar	3rd tier	Personal	Funded	Public/Private
	2nd tier	Occupational	PAYG	Public
	1st tier	Universal/Targeted	Means-tested/ flat-rate	Public

Source: Natali (2008).

While these terms are widely used (even if with different meanings), the boundaries between them are not always clear and they do not accurately describe the mix of public and private institutions. The famous template established by the World Bank (1994), which is based on the definition of pillars, has certainly had an influence on the reform of European pension systems, but many countries have introduced new measures that have represented a kind of compromise between new ideas and old institutions (Holzmann and Hinz, 2005; Holzmann *et al.,* 2008).

Hence in countries that experienced partial privatisation of mandatory programmes (i.e. Sweden and Poland), privately-managed schemes belong to all three pillars. Moreover some public programmes have been developed in parallel: some of them are means-tested, financed through general taxation and aimed at representing a basic safety net for elderly people in need; while others are employment- and income-related and financed through social contributions. To deal with those complications, a growing body of literature has referred to the concept of "tiers" (see Jochem, 2007; Immergut *et al*., 2007; Natali, 2008). In what follows, this term is used to describe the internal structure of the first mandatory pillar:

- the 1st tier consists of schemes providing basic protection against the risk of poverty in old age. These can be selective, if they provide means-tested benefits targeted at the elderly in need; or they can be universal flat-rate schemes providing homogeneous protection for the entire elderly population on the base of citizenship;
- the 2nd tier consists of traditional PAYG income-related programmes based on employment. These provide greater protection for workers, and are funded through contributions paid by employees and employers, or from taxation.

- the 3rd tier comprises funded (still mandatory) schemes financed by a share of total contributions. They provide individual pension rights separately from those of the first and second tiers (Figure 1).

These schemes are mixed: partly public and partly private. They are public in that they are introduced and regulated by law, and the state (or public institutions) has some administrative and regulatory tasks. But they are private in that their assets are usually managed by private funds. These programmes are among the most interesting innovations of the reformed systems in Europe ([40]). In part five of the present report, we will review the key typologies proposed by the literature and will advance some proposals on how to overcome their main shortcomings.

1.1 Supplementary pension schemes: key concepts

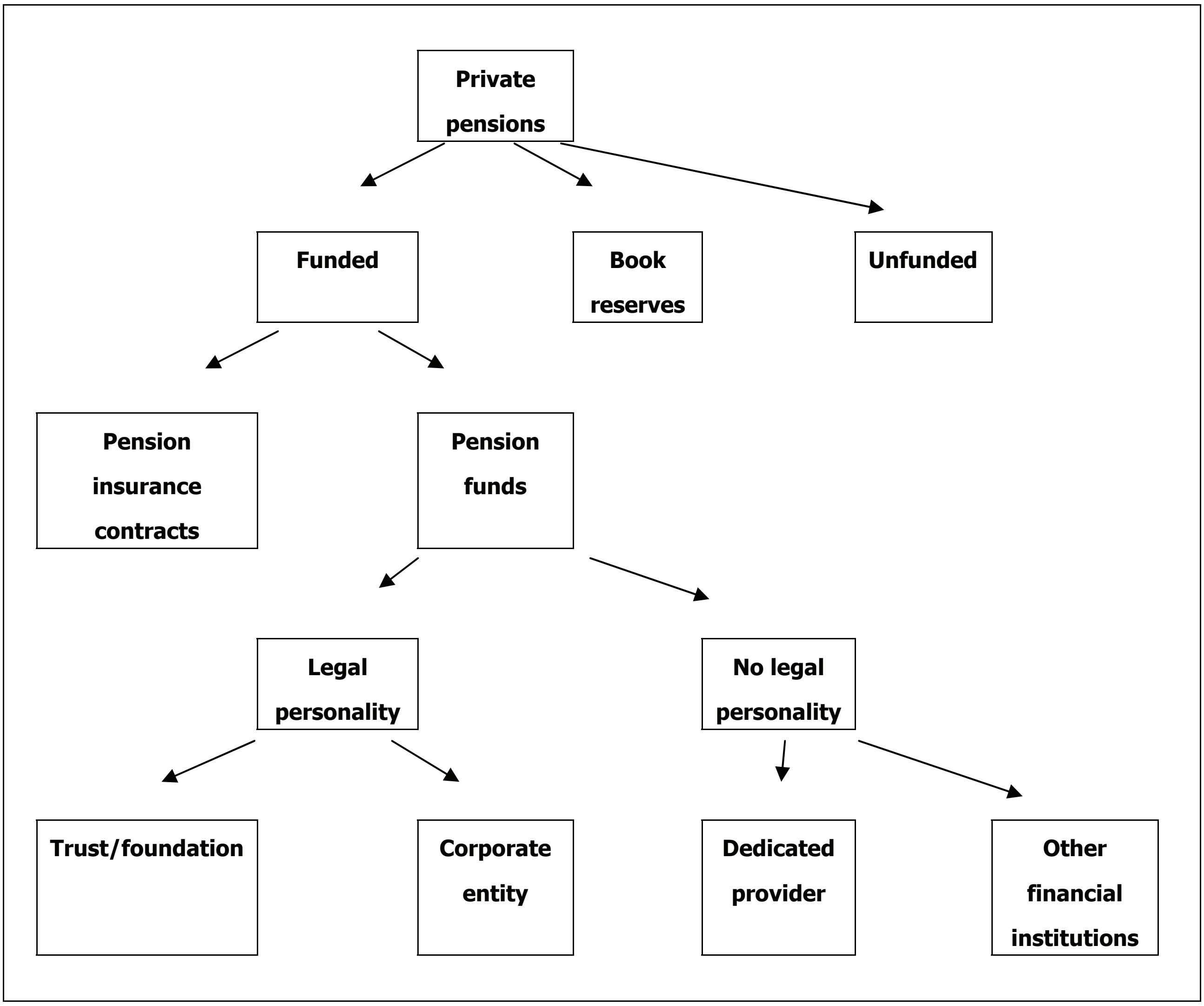
This section is devoted to an analysis of second and third pillar schemes and of funded pension schemes in a broader sense. An introduction to key concepts and terms is necessary in order to critically assess the application of single pieces of EU legislation on the portability of pension rights. Figure 2 summarises the different supplementary pension schemes that have been introduced in EU Member States.

A first distinction is based on the method of financing and the allocation and administration of the assets (SPC, 2008). On the one hand, we have funded pension schemes: occupational or personal pension schemes that accumulate dedicated assets to cover the plan's liabilities.

These assets are assigned by law or contract to the pension plan. Their use is restricted to the payment of pension plan benefits. On the other hand, we have book reserves: sums entered in the balance sheet of the plan sponsor as reserves or provisions for occupational pension plan benefits. Some assets may be held in separate accounts for the purpose of financing benefits, but are not legally or contractually pension plan assets.

40. The 3rd tier was introduced in Sweden, Denmark, Poland, Latvia, Lithuania, Estonia, Slovak Republic and Hungary (SPC, 2005).

Figure 2: Supplementary pension schemes



Source: OECD, 2005.

Funded schemes can take the form of pension funds or insurance contracts. The former (pension funds) consist of the pool of assets forming an independent legal entity that are bought with the contributions paid into a pension plan for the exclusive purpose of financing pension benefits. The fund members have a legal/contractual right against the assets of the pension fund. Pension funds take the form of either a special purpose entity with legal personality (such as a trust, foundation or corporate entity) or a legally separate fund without legal personality managed by a dedicated provider (pension fund management company) or other financial institution on behalf of the plan/fund members (OECD, 2005).

The latter form (pension insurance contracts) are contracts that specify pension plan contributions to an insurance undertaking, in exchange for which the pension plan benefits will be paid out when the members reach a specified retirement age or on earlier exit of members from the plan.

Based on the rules for accession we can then distinguish between open and closed pension funds. Open pension funds support at least one plan with no restriction on membership, while closed pension funds support only pension plans that are limited to certain employees. Single employer pension funds pool the assets of pension plans established by a single sponsor. Multi-employer pension funds pool the assets of pension plans established by various plan sponsors. There are three types of multi-employer pension funds: a) for related employers, i.e. companies that are financially connected or owned by a single holding group (group pension funds); b) for unrelated employers who are involved in the same trade or business (industry pension funds); c) for unrelated employers that may be in different trades or businesses (collective pension funds). Related member pension funds comprise the assets of a limited number of related members who are all in the governing body of the pension fund. Individual pension funds comprise the assets of a single member and his/her beneficiaries, usually in the form of an individual account.

Section five below will show pieces of EU legislation applicable to each pension scheme (pillar and/or tier). The next section describes recent reforms which have led to the growing role of supplementary pillars, where the more limited application of the regulations on the portability of social security rights has had significant effects.

Section 2: Pension Models in Europe: the status quo ante

Contemporary literature on pensions usually proposed two main clusters (*Bismarckian vs. Beveridgean*; *social insurance vs. late-comers*; *social insurance* vs. *multi-pillar* systems) to describe pension systems across Europe (see Bonoli, 2003; Green-Pedersen and Lindbom 2006).

In **social insurance** systems the state provides the greater part of pension benefits through public mandatory schemes which are basically earnings-related (e.g. Italy, France, Germany, Sweden). The financing method is of a pay-as-you-go (PAYG) type. Current contributions paid in by both employers and employees (or revenue coming from current taxation) are not accumulated but immediately used for financing current benefits. The main goal of such pension programmes (which represent the so-called first pillar) is to grant the same level of earnings before and after retirement (*income-maintenance*). The high generosity and coverage, and the encompassing character of public pensions, are expected to limit the role of private schemes (or at least the level of their benefits).

In **multi-pillar** systems, by contrast, the state has responsibility for basic entitlements with the aim of preventing poverty, while additional benefits are provided by supplementary occupational and/or individual schemes (e.g. Denmark, Netherlands and UK). The financing methods are thus mixed: on the one hand, public pension programmes (first pillar) provide flat-rate or means-tested benefits, on the other hand supplementary occupational schemes and individual pension funds are mainly funded. Current revenues are saved and then used to finance future benefits.

Pension systems in countries which joined the EU on 1st May 2004 have largely followed a different institutional and historical course. While the Mediterranean countries (Cyprus and Malta) took their first steps in line with the Anglo-Saxon family, countries from Central, Eastern, and Baltic areas were highly influenced by the Communist ideology and by the institutions adopted in the USSR. Under the so-called **'Soviet' model** the state had a monopoly of protection against social risks, and non-public schemes were not permitted. Public pension benefits had the main policy goal of ensuring equal protection for pensioners *('benefit-equality')*. That aim was implemented through highly redistributive public schemes. Equality was ensured by means of short eligibility periods and a truly fair distribution of resources (with higher replacement rates for lower paid groups). Pensions were financed through contributions paid by public employers, calculated on the basis of workers' income, and administered by state authorities, official trade unions and public enterprises. The social insurance principle was in fact quite limited. Benefits were related more to seniority and age than to contributions. Moreover, the lack of effective indexation contributed to two outcomes. On the one hand, pensions became homogeneous if not flat. On the other, they consisted of just a 'basic safety net' for the majority of the population (Natali, 2008).

Section 3: Pension Reform Trends in the EU

Since the early 1980s, policy-makers have faced new challenges (population ageing, new labour markets, globalisation, etc.) and shared new aims (first and foremost to improve the financial sustainability of public pension systems) (Palier, 2003). But, in recasting pensions, governments have had to interact with different *policy legacies*. This section looks first at the evolution of pension systems between the end of the 20th and the beginning of the 21st century. Then we briefly summarise the most recent reforms following the economic and financial crisis of 2008-10.

3.1 Two Decades of Institutional Trends, Pension Models in Europe (1990-2007)

Some convergence can be detected as concerns public policy goals, pensions' institutional design and risk-pooling. In the words of Hemerijck (2006), we are seeing a process of 'contingent convergence' of pension policy and the adoption of similar policy initiatives. Much of the innovation has concerned social insurance and (post-) Communist systems. In many of these countries, public schemes are still the backbone of pension systems, but they no longer have a quasi- or full monopoly over old-age benefit provision. Their policy goal is less ambitious than in the pre-reform phase and average public pensions are expected to decline in the future. Both groups of countries have thus partly revised their policy goal and the public pillar ambition.

In **social insurance** systems the generosity of the public pillar is decreasing as a consequence of recent reforms and new features of the socio-economic context (e.g. new social risks; more flexible labour markets, etc.). EU projections show an expected future decline in gross and net replacement rates in all countries. For future pensioners, public benefits are going to be lower than in the past and more strictly related to contribution records. This means a gradual innovation in the goal of public programmes: from 'income maintenance' to 'salary savings' (Palier, 2003).

In the **post-Communist** countries the old paradigm based on a public monopoly over old-age protection (consistent with the policy goal of *benefit equality*) was abandoned too. Despite the huge variation of policy changes within the cluster, reforms in Poland, Estonia and Slovenia have led to the opening of the market to supplementary pension funds and to the present (and/or future) lowering of public benefits. In the case of Estonia and Poland (after the first transition period with a huge public spending increase), recent reforms have been consistent with the widening of coverage by supplementary schemes. In both, pension funds are mandatory for younger cohorts of workers. This is paralleled by the progressive reduction of public pensions, particularly evident in the case of Estonia. By contrast, Slovenia has followed the less radical innovation trend of Western European social insurance countries. Supplementary pension funds are not mandatory, while coverage has widened. Yet in Slovenia as well as in the other post-Communist countries public protection (in terms of replacement rates) is set to decline.

In **multi-pillar** systems (implemented in UK, Ireland, Netherlands and Denmark), the public mandatory pillar represents just one part of the pension system and provides basic protection (poverty-prevention goal). In this cluster, total public spending is far lower than in social insurance countries. In terms of institutional design and policy instruments, the cluster has proved stable. The public and private spheres are kept separate and the private sector is regulated. Recent reforms have aimed at extending the coverage of supplementary schemes, especially for atypical workers, while increasing the adequacy of basic benefits (Anderson, 2007; Natali, 2011).

As a consequence the institutional design of many national systems is changing. Pension systems characterised by a 'single-pillar' design at the end of the 1980s are now converging towards some forms of 'multi-pillar' systems. Pensioners' income is, and will be increasingly in the future, the result of benefits coming from different sectors (public, occupational and individual schemes). The parallel development of these schemes will provide broad protection against old-age risks. This is consistent with the partial privatisation of pension systems and the progressive 'individualisation' of old-age risks. In other words, risk-pooling and thus redistribution have been reduced in all the countries under examination: not only in Continental and Eastern Europe and Scandinavia but in multi-pillar systems too. While in the pre-reform systems old-age risks were 'socialised' and thus individuals were covered against many unpredictable factors (economic recession, high unemployment, demographic ageing, investment risks, etc.), in the post-reform scenario some of these risks are no longer socially protected. The progressive reduction of redistribution has been implemented in second pillar programmes.

Does the convergence of national systems in Europe towards some forms of 'multi-pillar' institutional design mean that pension systems are increasingly consistent with one model? It is quite evident that important differences between clusters of countries persist. This section provides a categorisation of pension systems after reforms. In what follows we give a more detailed summary of the recent evolution of the pension systems broadly introduced above. Table 2 summarises what we call the 21st century pension models.

Table 2: 21st century pension models

	1st Generation Multi-pillar	***2nd Generation Multi-pillar***	***1st Generation Social Insurance***	***2nd Generation Social Insurance***
Public schemes' goal	Basic protection (poverty prevention)	Salary savings (some adequacy)	Salary savings (some adequacy)	Salary savings (some adequacy)
Private schemes' coverage	Mandatory or quasi-mandatory	Mandatory	Voluntary	Quasi-Mandatory
Earnings-related schemes	(mainly) Private	Public/private	(mainly) Public	(mainly) Public
Countries	UK, NL, IRL, DK	PL, SK, HU, EE, LT, LV	DE, FRA, ITA, SPA	SWE, FIN

Source: Natali, 2008.

For the first group represented by the UK, Denmark, Ireland and the Netherlands we use the label *first generation* of multi-pillar systems. In that case, the system has proved stable. Earnings-related schemes are mainly private while the key role of public programmes is to prevent poverty risks.

Central-Eastern European countries (for instance Poland, the Baltic states etc.) represent the *second generation* of multi-pillar systems. The role of supplementary schemes is increasing (through mandatory coverage) but the provision of future earnings-related benefits will be based on both public and non-public programmes. While in the first generation of multi-pillar systems public programmes provide basic and homogenous protection (with flat-rate and/or means-tested benefits), in these post-Communist systems the public programme provides contributions-based and earnings-related benefits. This is consistent with the actuarial (insurance) principle. Further voluntary pension funds are of limited importance.

The level of public protection varies between countries. The interaction between public earnings-related schemes and minimum (means-tested) pensions is crucial to defining the future role of public programmes. If minimum benefits are set at a high level, most earnings-related benefits could be under that threshold and then pensioners would be included in the group receiving means-tested benefits. This should lead to a pension system very similar to the first generation of multi-pillar systems.

Continental and Southern European countries (Germany, France, Belgium, Italy, etc.) represent the third group: *first generation* of *social insurance* systems. Recent innovations have aimed at bringing public spending under control. Average old-age benefit is projected to decline. And non-public schemes are going to have a greater role in the future. If compared to the pre-reform scenario, the goal of maintaining similar living standards before and after retirement is shared between public and non-public programmes. Just as in the *second generation* of multi-pillar systems, public pensions are earnings-related and based on the actuarial logic. But public benefits are more generous and expected to play the principal role in providing incomes for the elderly. Moreover, supplementary schemes are not mandatory. This has led to the much slower widening of their coverage. These systems are still in transition and some alternative scenarios can be advanced for their future evolution (Natali, 2008).

Nordic countries (Sweden and Finland) are part of the *second generation of social insurance systems*. Both introduced public earnings-related schemes in the second half of the 20th century. Most recent innovations have been consistent with the projected decrease in earnings-related public pensions, while supplementary schemes are playing a much bigger role (more than in the first generation of social insurance countries). Supplementary schemes are quasi-mandatory (see Ebbinghaus, 2011). These systems have advanced the most towards a multi-pillar architecture.

3.2 Aftershocks and Pension Policy (2008-2010)

The recent crisis consisted of three major episodes: the financial crisis (worsened following the collapse of Lehman Brothers in 2008); the widespread economic recession that hit Europe in 2009; and the Greek crisis and the ensuing budgetary tensions in the EU in 2010 (Natali, 2010). In the literature on pension policy, there is a broad consensus on the fact that pension programmes (be they public or private) are not immune to the consequences of economic recession and financial crisis (OECD 2009; 2010a; CEC, 2010b). Yet the impact differs a good deal if we consider first, second and third pillar schemes. We therefore analyse below the challenges to supplementary schemes and then to public first pillar programmes (with a specific focus on the four countries under scrutiny).

Supplementary pension schemes with a fully-funded method of financing are the ones worst affected by negative economic and financial trends. Recent data from OECD (2011) clearly shows hugely negative effects in 2008 and the limited recovery of 2009. In 2008, supplementary pension funds - both defined benefit (DB) and defined contribution (DC) plans - were hit hard by the crisis. The impact of the crisis on investment returns has been greatest among pension funds in countries where equities represent over a third of total assets invested, with Ireland the worst hit at -30% in nominal terms followed by Belgium, Hungary and the United Kingdom. Irish pension funds were the most exposed to equities, at 66% of total assets on average (*ibid.*, 3-5). During the first half of 2009, pension funds regained a fraction of the investment losses made in 2008. In June 2009 pension fund assets were 14% below their December 2007 levels. The recovery in pension fund performance has continued throughout the year on the back of strong equity returns, but it will be some time before the 2008 losses are fully recouped. A further issue related to the crisis has to do with the expected low interest rates (OECD, 2010b). Protracted low interest rates could impact on pension funds and insurance companies on both the asset and liability sides of their balance sheets. This could to a certain degree increase the liabilities of pension funds and insurance companies and could reduce the returns on future portfolio investment. As a result, the solvency status of insurers and pension funds could deteriorate. In particular, low interest rates affect the level of benefits that annuity providers and DB pension funds can offer and that beneficiaries can receive. In a context of increasingly long periods of retirement due to longer life expectancy, this might have serious consequences for retirement income.

But the crisis has affected public schemes too. First of all, owing to the most recent round of reforms, funding has become increasingly important within publicly managed pension systems. Even if to a much lesser extent than private pension schemes, public buffer funds have been hit by negative investment returns. The impact of the crisis on investment returns varies greatly between countries. It has been greatest among public pension reserve funds where equities represent a large part of total assets invested.

Moreover, public social protection schemes have been widely used to face up to the initial social consequences of recession. EU countries have thus increased public social spending to limit the consequences of the financial crisis on individuals and families. According to the Commission (2010a), as a result of automatic stabilisers and discretionary measures to reinforce social benefits, social expenditure in the EU is expected to increase by 3.3 percentage points of GDP between 2007 and 2010. In a broader perspective, economic recession (followed by more tentative growth) presents long-term challenges to public pension schemes. The first challenge is a result of the fiscal stimulus many countries implemented to reduce the impact of the crisis. This has led to a rapid deterioration in public finances. The IMF (2009) projects an increase in the average debt-to-GDP ratio in the euro area of 30%, to reach 90% of GDP by 2014. This average masks substantial increases for some Member States. Part of the budgetary deterioration is cyclical, but part of it is permanent.

Some common trends can be detected. On the one hand, many EU countries have introduced short-term measures to grant additional protection for elderly people at risk of poverty: more generous indexation and *ad hoc* benefits are the most evident attempt to improve old age protection. On the other, there have been attempts to reduce mid- and long-term financial tensions on public pension schemes while improving the regulation of pension markets. All the countries under scrutiny have proposed and implemented a rise in the statutory retirement age and incentives for active ageing. This is a major difference from the usual reaction of national governments to previous economic crises. Early retirement has not been systematically used to reduce unemployment.

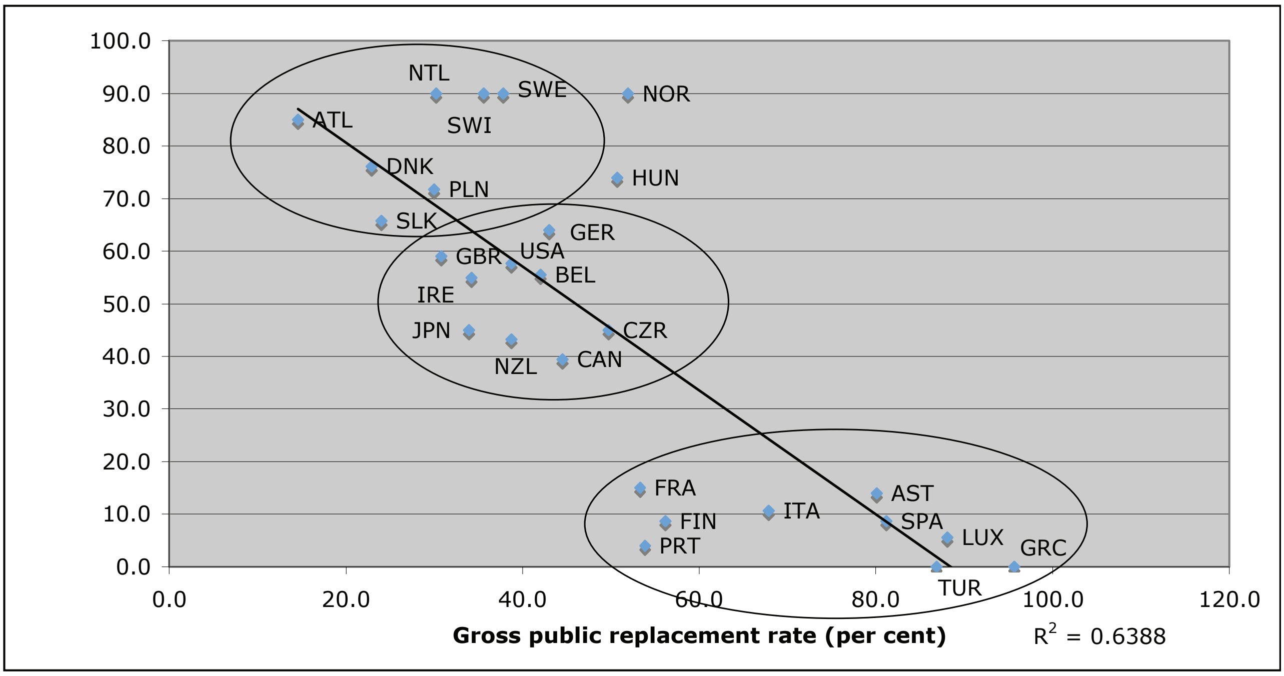
The role of private pension funds has been at the core of a renewed intense debate with opposite strategies pursued in Western and Eastern EU countries. The former countries have pursued their attempt to reinforce the public/private mix. The measures undertaken after the crisis have not altered the system design but have been primarily focused on further strengthening the systems' sustainability. Supplementary schemes have been reformed through new regulation and the attempt to increase members' protection. By contrast, Central Eastern countries (Hungary, Poland, Bulgaria, etc.) have debated the advisability of reducing the role of private pension funds. Some countries (Baltic states) have reduced statutory contributions to be used for financing private pensions and have in parallel increased the portion to be used for public pension schemes. Others (e.g. Hungary) have recently re-nationalised private pension schemes (Angelaki and Natali, 2011). While it is too early to provide an in-depth explanation of this 'u-turn' in CEE pension policy, some initial insights may be posited. First of all, the economic crisis has had two main consequences in these countries: on the one hand, it has contributed to the strains on public budgets; and on the other, the crisis has made negative trends in the pension market more evident. All this has led to a more critical reading of the role of private pensions.

Section 4: Changing Public/Private Mix, a state of flux

As stressed above, new pension models are 'on the move'. It is still too early to fully assess the reforms' outcomes, and alternative paths could be followed in the next decade. Beyond the institutional design, the present public-private mix depends on a number of factors. And countries sharing the same design may be more or less advanced in the coverage and generosity of each pension pillar.

Figure 3 shows that three clusters are emerging among OECD countries, which neatly position themselves on a two-dimensional grid consisting of private occupational pension coverage (mandatory, quasi-mandatory or voluntary) and gross replacement rates provided by public schemes only. A clear negative relationship between the two emerges.

Figure 3: Private (occupational) pensions and public replacement rates



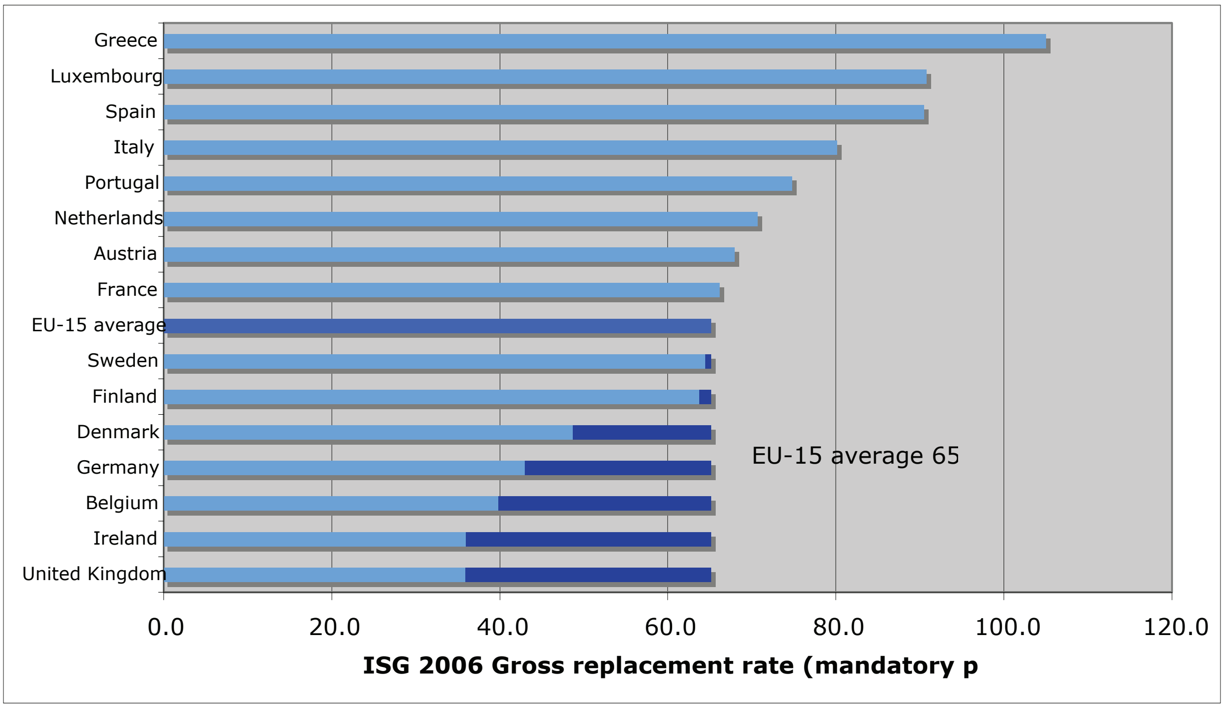
Source: OECD (2009).
Notes: [a]OECD data are being used instead of either those provided by EPC (2009) or ISG (2009), because the latter omit both occupational and individual private scheme coverage.
[b] Not all countries include only occupational private pension coverage. The Anglo-Saxon ones count the combined coverage of occupational/personal plans (because data exist), whether mandatory or voluntary. The East European ones have World Bank-inspired personal mandatory plans. In Denmark, we counted quasi-mandatory DC occupational schemes and not the ATP. The OECD does not record coverage rates above 90%.

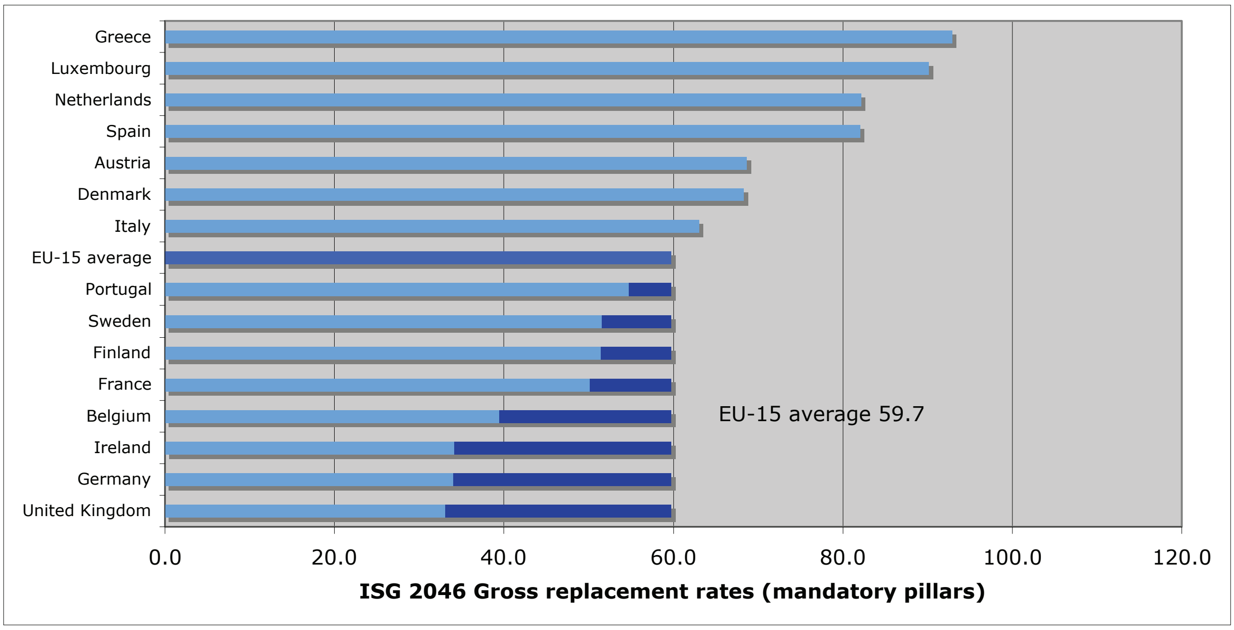
The first cluster (bottom right) comprises traditional Bismarckian countries (first generation of social insurance systems), which did not reform sufficiently (or have extremely long transitional periods) and have introduced only limited private arrangements to compensate for the future replacement slumps – for example France, Austria, Greece, Spain and Italy (Guardiancich, 2010). The second one (top left) mainly consists of first generation multi-pillar countries, which made occupational pension coverage mandatory (the Netherlands, Denmark, Sweden), but also starts incorporating those EU states that heavily cut back their public schemes and followed the World Bank's advice to make private, personal pensions compulsory (e.g. Poland and the Slovak Republic). Most recent reforms are reversing these trends and may lead to further innovations (see Hungary).

The third (roughly in the middle) and most surprising cluster is a mix of first generation multi-pillar countries that opted for a voluntaristic approach to expanding their private retirement provision (keeping the usual state-market dualism), such as the United Kingdom and Ireland, and of an increasing number of Bismarckian countries, with newcomers such as Germany, Belgium and the Czech Republic, that equally have not made occupational private schemes mandatory.

What must be stressed about the third cluster is that some countries here are undergoing a transition. It is possible that formerly Bismarckian countries may slowly migrate towards the Beveridgean cluster and develop low, but universal public benefits topped up with high-coverage private schemes. However, this transition is far from complete and is reflected in these countries' pension gaps. Using recent ISG data (which are based on OECD calculations), Figure 4 shows the current (2006) and prospective (2046) pension gaps of EU-15 countries.

Figure 4: The pension gap in 2006 and 2046





Source: adapted from ISG (2009).
Notes: gross replacement rates in light blue; pension gap in dark blue.

The pension gap is defined as the difference between the base-scenario gross replacement rate of all the mandatory (and quasi-mandatory) pillars of a pension system with respect to the EU-15 average. This should be offset by means of voluntary arrangements and is hence a useful indicator of the extent to which voluntary pension insurance could be encouraged in an individual country that ranks below the average. By providing both current and prospective replacement data, the paper can extrapolate some general trends introduced by the recent pension system reforms implemented in the EU. The decision to use ISG data on gross replacement rates stems from two considerations: i) it covers all EU-15 countries, whereas the 2009 Ageing Report (EPC, 2009) does not; ii) it differentiates between public and private benefits only in gross terms. Hence, the data are very sensitive to assumptions and the picture for some countries significantly improves by netting out the results.

Figure 4 clearly shows three on-going trends. First, most of the countries retrenched their pension systems, which in the future will yield substantially lower benefits (exceptions are Denmark and the Netherlands, whose quasi-mandatory occupational schemes more than offset any public retrenchment). The EU-15 average decreases by 5.5 percentage points. Second, the differences in the systems' generosity increase, as more countries will record a pension gap. France and Portugal fall below the average and Denmark rises above it. Third, pension gaps vary widely, i.e. from 29.3% (2006) and 26.6% (2046) in the UK to 0.7% (2006) in Sweden and 5.0% in Portugal (2046). This means that the extent to which these gaps have to be plugged by voluntary private arrangements (with respect to the contribution rate in particular) varies vastly as well.

Section 5: Initial assessment of EU legal framework for mobile workers

Following the recent reforms in Member States, the distinction between the various pension pillars has also become less straightforward in recent years. And the changing role of first, second and third pillar schemes will largely shape the application of single pieces of EU legislation. Here we briefly summarise the evidence provided by comparative studies (CEIOPS, 2008; CEC, 2010c) that provide a detailed mapping exercise of the EU regulation applying to the different pension schemes/institutions (Figure 5). In Part five we will return to the modelling of pension schemes and the need for a revision in order to contribute to a more coherent application of EU legislation.

Figure 5: Institutional Design of Pension Systems and EU regulation

		Risk pooling	***Financing***	***Management***	***EU legislation***
Third pillar		Personal	Funded	Private	Life, UCITS, banking and investment services (MiFID) Directives***
Second pillar		Occupational	Funded	Private	Directive 98/49 IORP Directive**, Life Directive, UCITS Directive
First pillar	3rd tier	Personal	Funded	Public/Private	Regulations 883/2004 and 987/2009 No prudential rules*
	2nd tier	Universal/ Occupational	PAYG	Public	
	1st tier	Universal/ Targeting	Means-tested/ flat-rate	Public	

* Estonia represents an exception
**Some countries (France, Sweden and Lithuania) apply IORP to life assurance undertakings.
*** IORP directive is applicable to individual schemes in Italy, Romania and Latvia

Source: CEC 2010c

While in Part one we have focused on the pieces of legislation related to the implementation of the principle of coordination of pension schemes, in the following we do refer to further legislation. The EU Directives considered are Directives 2003/41/EC (IORP), 2002/83/EC (Life) and 85/611/EEC (UCITS). Some Member States also referred to Directives 2006/48/EC (Banking) and Directive 93/22/EEC (Investment Services), repealed by Directive 2004/39/EC (MiFID). The remainder of this section summarises the main results of this mapping exercise.

5.1 First Pillar Schemes

Statutory funded pension schemes/institutions, whether mandatory or not, are covered by EU Regulations 883/2004 and 987/2009 (replacing Regulations 1408/71 and 574/72 since 1 May 2010). According to the mapping exercise, they exist predominantly in Central and Eastern

European Countries. Employers can pay contributions into these schemes in the case of EE. There are no EU prudential rules for pension funds that are part of statutory funded pension schemes/institutions. Most of the Member States concerned therefore do not apply EU prudential regulation. Some Member States have, however, applied the Life or UCITS Directive to these pension funds (Figure 5).

5.2 Second Pillar Schemes

Unlike with social security pensions which are aggregated under EU rules, people who have supplementary pension rights may lose out when they change jobs within or between countries. A first step to tackle this issue was Council Directive 98/49/EC, which effectively ensured that people moving across borders were treated no worse than those moving within a Member State. The Directive does not, however, cover what is often called the "portability" of supplementary pensions even though this may have a serious effect on worker mobility. The IORP Directive covers many occupational pension schemes/institutions, but not all. The Directive has been implemented by almost all the Member States, with only a few exceptions. Article 4 of the IORP Directive, allowing many of the rules in the IORP Directive to apply to the occupational retirement provision business of life assurance undertakings, is used in three Member States. The IORP Directive explicitly excludes book reserve and PAYG schemes from its scope. In many Member States there are also occupational pension schemes that are subject to the Life or UCITS Directives. As argued above, recent reforms are bound to increase the role of supplementary schemes in providing protection against old-age risks.

5.3 Third Pillar Schemes

Individual pension schemes/institutions are covered by a broad range of directives: Life, UCITS, banking and investment services (MiFID). The IORP Directive is also used by some Member States that have chosen to apply it to individual pension schemes in their national transposition (e.g. Romania). There are, however, also a number of individual pension schemes/institutions that are not covered by any EU prudential regulation. These are voluntary supplementary pensions in the form of individual DC schemes in some eastern and western EU countries (e.g. Bulgaria, Hungary and Portugal). In some of these Member States, employers can act as a third person to contribute to personal accounts (Bulgaria and Czech Republic), while in another country it is common practice for employers to pay contributions on behalf of the member (Hungary). By contrast, in some Member States (see Spain), employers are not allowed to contribute to personal accounts.

Part III: Gaps of EU legislation on the coordination of pensions: key issues (41)

Dalila Ghailani

Having summarised the main traits of the EU legal framework (Part I of this final report) and the recent evolution of pension policy in the Member States (Part II), this third part of the report summarises the key limitations of both Regulation 883/2004 and Directive 98/49 and offers some initial proposals on how to revise the EU legal framework (section two).

Regulation 883/2004 lays down extensive and detailed rules on the coordination of social security schemes, while removing obstacles to cross-border mobility of workers in relation only to statutory pension benefits. However, it does not apply to supplementary private pension schemes.

Directive 98/49 is rather meagre and fails to provide adequate protection for supplementary pension rights as it does not address the crucial issues of transferability and taxation. The so-called portability directive was highly ambitious, but the Council was unable to agree a position on it. The scope of the directive, the desirable level of harmonisation and whether or not to include transferability measures were key issues that led the Commission to replace it with a "Directive on Minimum Requirements for Enhancing Worker Mobility by Improving the Acquisition and Preservation of Supplementary Pension Rights", instead of the earlier proposal on "Improving the Portability of Supplementary Pension Rights" (Oliver, 2009). The round of interviews and replies to the survey have confirmed and highlighted the key problem here: the lack of fiscal coordination (see Annex 1 below).

41. Part three sheds light on the main shortcomings of EU legislation for the Coordination of pension schemes. This is the sum of Deliverable 5, 6 and 7 of the research project.

Section 1: Lacunas and weaknesses in the relevant existing legislation

1.1 Exclusion of non-statutory schemes from the material scope of Regulation 883/2004

The material scope of the Regulation is limited to benefits governed by legislation. The meaning of the term legislation can be found in Article 1(l) of the Regulation. Pursuant to this Article, legislation means laws, regulations and other statutory provisions, and all other implementing measures relating to the social security branches covered by Article 3(1). The term legislation has a broad meaning and, by referring to implementing measures, also encompasses ministerial and royal decrees, regulations made by the benefit administration, etc.

According to the same article, the term legislation excludes contractual provisions other than those which serve to implement an insurance obligation arising from the above-mentioned laws and regulations or which have been the subject of a decision by the public authorities making them obligatory or extending their scope, provided that the Member State concerned makes a declaration to that effect, duly notifying the President of the European Parliament and the President of the Council of the European Union. The declaration must be published in the Official Journal of the European Union.

Consequently, a collective agreement which serves to implement a law is also covered, provided that the Member State makes a declaration to this effect and notifies the President of the European Parliament and the President of the Council. Under the same notification requirement, contractual provisions which have been the subject of a decision by the public authorities rendering them obligatory or extending their scope are covered. If a collective agreement including social security provisions is made obligatory or extended and notified to the said Presidents, it comes within the material scope of the Regulation. If collective agreements and supplementary schemes fail to comply with these requirements, they do not fall under the scope of the Regulation. Collective agreements govern substantial parts of social security in some countries, but as a result of these provisions, these do not fall under the Regulation, even if the collective agreement concerned has been declared generally binding.

This exclusion has two negative consequences: firstly, the export of benefits established by a collective agreement is not required by the Regulation. Secondly, periods fulfilled abroad cannot be used to satisfy waiting periods in supplementary pension schemes. This can be particularly problematic for posted workers, as contributions levied on the basis of collective agreements for supplementary benefits in the state of employment may overlap with the benefits for which they remained insured in the state of residence (Pennings, 2010).

The European Commission had proposed in its initial proposal of 12 December 1998 that the definition of "legislation" should include the contractual provisions which have been the subject of a decision by the public authorities rendering them compulsory or extending their scope. The purpose of this proposal ([42]) was to bring a large number of non-statutory occupational pension schemes within the scope of the new coordination system insofar as the public authorities had rendered them compulsory or extended them to persons who were not themselves part of the contract. As a consequence, the regulation's principles, including the exportability of benefits, the pro rata calculation and the aggregation of periods of insurance, would become applicable to these pension schemes. The main obstacles to the right to full implementation of free movement for workers covered by these pension schemes would then be overcome. However, the Commission backtracked as it did in the case of Regulation 883/2004, maintaining the approach of Regulation 1408/71 toward non-statutory social security (Verschueren, 2009).

Pennings (2005) highlighted how hard it was to gauge the effects of extending the coordination rules to collective agreements and other contractual schemes, since all kinds of provisions can be found in collective agreements. Holiday pay, study and training grants, and sabbatical leave are all examples of supplementary social security. Sometimes, collective agreements provide for supplements to statutory social security or replace statutory protection which has been withdrawn. It would then be too easy to bring all these advantages within the scope of all the coordination rules.

However, the same author also recognised that some coordination rules could very well be applied to advantages governed by collective agreements, such as the non-discrimination clause and the provision on export of benefits. Other coordination rules could lead to problems if they were applied to these advantages. Pennings pointed out that difficulties could arise in the case of employees working in two countries. If the rules for determining the legislation applicable apply to these agreements as well, the employee concerned falls under one collective agreement only, insofar as its social security provisions are concerned. The effects are hard to monitor and some of them are undesirable. He suggested that Member States could prevent these problems by no longer extending collective agreements (Pennings, 2005).

1.2 Lack of transferability of supplementary pension rights in Directive 98/49/EC

There was strong opposition from some Member States during the discussions, fearing quite rightly that their systems may be at risk since, in the case of supplementary pensions, it was not just a matter of coordination without changing the systems but also of harmonisation by amending the national acts. For this reason, the Directive is disappointing (Steinmeyer, 2001). It is confined to some minimum standards which are easy to meet. Clearly, free movement in the area of supplementary pensions is not fully achieved through this Directive. The Directive itself expresses this view by stating that it is only a contribution towards achieving free movement of workers (Article 1).

42. COM (1998) 779 final, OJ C 38, 12 February 1999, p.10.

The Directive calls for payment of benefits without restrictions to pensioners residing in another Member State, which causes no problems for most systems. It also calls for provisions enabling posted workers to remain in the original country's system when staying abroad. Again, this is mostly unproblematic (Verreth *et al.*, 2001).

When it comes to obstacles to mobility in general, the Directive only demands equal treatment of domestic and cross-border cases. After all, if a country has obstacles to mobility when moving within the country, as is the case with vesting periods, these can also be applied in cross-border cases. At first sight this seems fair, but free movement of workers not only means equal treatment of domestic and cross-border cases but requires a broader approach to removing all obstacles which may hamper movement between countries. There still remains a need for more protective rules on excessive waiting periods or aggregation rules which help to fulfil the waiting periods of a particular scheme.

What is not addressed by the Directive is the issue of transfer of rights or entitlements from one country or scheme to another. During the discussions prior to the Directive, this was considered as a possible solution for some of the problems associated with free movement of persons and supplementary pensions. The problem with this approach is that methods of financing supplementary pensions are very different from country to country. Not all systems are funded systems, where it seems to be easier. There are still PAYG schemes as well as schemes financed via book reserves where a transfer verges on the impossible (Steinmeyer, 2001). Nor does the Directive address the main problem facing people when moving between countries: tax rules still differ from one country to another, which causes problems in cross-border cases.

1.3 Waiting and vesting periods: a lack of harmonisation

Waiting and vesting periods are applied throughout the European Union following different rules and are geared to fulfilling various objectives. However, their failed harmonisation – or more simply mutual recognition – hinders the mobility of workers, especially those on short-term contracts. Among these, the special category of researchers (the most skilled and mobile labour force) has recently received a good deal of attention at EU level (Hewitt Associates, 2010; Federation of Dutch Pension Funds, 2011).

The distinction between waiting and vesting periods is relevant, as the former refer to *pre-entry* periods to become part of a collective or employer-led fund and the latter instead to *post-entry* periods spent within the scheme to be entitled to receive a benefit at retirement.

Waiting periods include both restrictions on the age at which one can enter a pension scheme, as well as the period of employment after which an employee becomes a scheme member. When a waiting period is applied, early leavers will have spent time in a firm/company without accumulating any pension rights.

Vesting periods apply to employees who are already members of a scheme, but have to complete a certain period working for the company (contributing to the scheme) before having established vested rights. A scheme member who leaves the employment relationship before having completed the vesting period will lose out, as he/she will be entitled only to the reimbursement of his/her own contributions, but not to vested rights to a future pension.

Many countries apply vesting periods and sometimes these are unreasonably long. According to Hewitt Associates (2007), 15% of all DB schemes in Europe still require five or more years of vesting periods, and 32% require two or more years. So far, attempts by the European Commission to bring vesting periods down to one year maximum have failed. One possible solution would be to mimic what Regulation 883/2004 does for statutory pension schemes and introduce the mutual recognition of vesting periods. This means that a worker moving from one fund to another would see his entire vesting period recognised in both funds, which would then pay benefits on a *pro rata temporis* basis. In this case, however, no transfers of capital or rights take place: vested rights remain in the scheme in which they were acquired. One disadvantage is that the person then receives several pension parts from different providers.
However, as already stated in the annex to the proposal for the Portability Directive, such mutual recognition – part of the extension of Regulation 883/2004 to supplementary schemes – does not capture the essence of different pension schemes and, hence, is extremely difficult to achieve.

1.4 Lack of fiscal coordination and the consequent limits to transferring pension rights

The different fiscal arrangements regulating supplementary pensions across the EU represent the principal barrier to the transferability of pension rights and therefore to freedom of movement for workers. This is a major issue, especially in terms of cross-border transferability. That view was endorsed by the report of the working group of experts looking at transferability of pension rights within the Pensions Forum, which acknowledged that "tax issues are the most important obstacle to cross-border transfers". Lack of transferability of pension rights within the EU arises principally because of unequal taxation regulations and discriminatory taxation practices (Hennion, 2010). This implies the need for an initiative to deal with the fiscal aspects of transferability of pension rights, addressing in particular the following three main problems:

1. Double taxation for workers moving between Member States because of different tax exemption and payment systems, resulting in some workers being taxed twice, on both contributions and benefits
2. Taxes on transfers of accrued capital across borders but not within Member States

3. Discriminatory rules such as taxation on contributions paid into an occupational pension scheme in another Member State, which creates obstacles for cross-border affiliation of occupational pension schemes ([43]).

1.4.1 Different taxation regimes

There are three systems of taxation. Most Member States have the EET (Exempt-Exempt-Taxed)-system which exempts contributions and capital gains but taxes benefits. The ETT (Exempt-Taxed-Taxed)-system (Sweden, Italy and Denmark) exempts contributions but taxes capital gains and benefits. The TEE (Taxed-Exempt-Exempt)-System (Hungary, Luxembourg and Poland) taxes contributions but exempts capital gains and benefits. Changes between Member States can lead to double taxation, if an employee is working in a TEE State and retires to an EET State, as well as to non-taxation, if an employee works in an EET State and retires to a TEE State (Schonewille, 2007).

Table 3 Taxation regimes across the EU-27 (2007)

Country	***Pension taxation system***	***Discrimination***
Belgium	EET	Abolished in 2007
Bulgaria	EET	No info
Czech Republic	No second pillar	No
Denmark	ETT	Condemned by ECJ
Germany	EET/TEE	No
Estonia	EET	Abolished in 2007
Greece	No second pillar	No
Spain	EET	No
France	EET	No
Italy	ETT	No
Cyprus	EET	No info
Latvia	EET	No
Lithuania	EET	No
Ireland	EET	No
Luxembourg	TEE	No
Hungary	TEE (claims to have no second pillar)	No
Malta	No second pillar	No
Netherlands	EET	No
Austria	EET	No
Poland	TEE (claims to have no second pillar)	No info
Portugal	EET	No
Romania	EET	No info
Slovenia	EET	No
Slovakia	EET	No info

43. UEAPM (2002), Response to the first Commission consultation of the social partners on the portability of supplementary pension rights, www.ueapme.com/docs/pos.../Position%20UEAPME%20200802e.doc

Finland	EET	No
Sweden	ETT	Abolished in 2007
UK	EET	No

Source: Schonewille (2007)

The Commission advocates wider application of the EET principle within the European Union for three main reasons ([44]). Firstly, most Member States use it already, secondly the tax deferral on contributions encourages retirement provision, and thirdly it helps to cope with ageing by reducing tax revenues today in exchange for higher tax revenues once the demographic situation has become more unfavourable (Schonewille, 2003). But it has to be stressed that the EET systems vary widely among the different states as regards the conditions of tax deductibility. Progress in this field has failed because Member States fear a loss of tax revenue.

1.4.2 Tax neutrality with respect to premia

Since EET regimes differ substantially across Member States, it took time and two milestone ECJ judgements to establish that deductions for premia should apply regardless of the pension plan provider (Ernst & Young, 2009). In fact, many Member States did not allow tax deduction of pension contributions paid to a pension fund in another Member State, thereby sealing off their national pensions markets from competition from other Member States and creating major obstacles to pan-European funds and to the free movement of workers (Esposito and Mum, 2004). Tax obstacles to the realisation of pan-European schemes are being gradually removed. In October 2002, the European Court of Justice ruled in the *Danner* case ([45]) that the Finnish authorities were wrong to impose income tax deductions on contributions to a pension insurance scheme established in Germany. Furthermore, in *Skandia* ([46]), the Court ruled against the Swedish tax authorities for refusing deduction of contributions paid to foreign pension providers. In another case, the European Commission achieved a court ruling against Belgium ([47]) to prevent the taxation of capital transfers from a Belgian pension fund to a fund in another Member State. In *Commission v Kingdom of Denmark* ([48]), the Court required the Danish tax authorities to amend their legislation so that contributions to foreign-based pension funds would be given full tax deductibility in line with contributions made to domestic funds. In practice, the overwhelming majority of Member States with the EET or ETT system now also allow tax deductibility of such cross-border payments.

44. CEC (2001), Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, The elimination of tax obstacles to the cross-border provision of occupational pensions, COM(2001) 214.
45. ECJ, 3 January 2002, *Danner*, C-136/00, ECR I-8147.
46. ECJ, 26 June 2003, *Skandia*, C-422/01, ECR I-6817.
47. ECJ, 5 July 2007, *Commission v Kingdom of Belgium*, C-522/04, ECR I-5701.
48. ECJ, 30 January 2007, *Commission v Kingdom of Denmark*, C-150/04, ECR I-1163.

The focus must now shift to any discrimination concerning the cross-border transfer of pension capital. In some Member States domestic transfers are tax exempt, whereas cross-border transfers are taxed or forbidden (Stevens, 2011).

1.4.3 Dividends and interest paid to foreign pension funds

Before the implementation of the IORP Directive and the drafting of the Pension Taxation Communication of April 2001, there was widespread discrimination against foreign pension funds with respect to corporate taxation. The European Federation for Retirement Provision (EFRP) and PricewaterhouseCoopers lodged 26 complaints with the Commission in December 2005 against 18 Member States, aimed at ending their discrimination against non-resident European Economic Area (EEA) pension funds concerning the taxation of dividends and interest. In the vast majority of cases, domestic funds are taxed on a net basis (or are even exempt), whereas foreign ones are taxed on a gross basis. The Commission agreed that this practice breaches EU rules on the free movement of capital (EFRP, 2009a, 2009b). Finally, a number of recent court judgements at both EU and national level reinforced the view of the Commission.

The infringement procedure follows Article 226 EC and consists of a letter of formal notice, a reasoned opinion and the final referral to the European Court of Justice. The situation in June 2009 was as shown in Table 4 below.

Table 4. Infringement procedures

Member State	Letter of formal notice	Reasoned opinion	ECJ referral	Closed
Austria				X
Czech Republic	X – 7 May 2007	X – 26 Jun 2008		X
Denmark	X – 7 May 2007	X – 25 Jun 2009		
Estonia	X – 31 Jan 2008			X
France	X (unknown)	X (pending)		
Finland	X – 23 Jul 2007	X – 25 Jun 2009		
Germany	X – 31 Jan 2008			
Hungary				X
Italy	X – 23 Jul 2007	X – 26 Jun 2008	X (pending)	
Latvia				X
Lithuania	X – 7 May 2007			
Netherlands	X – 7 May 2007			X
Poland	X – 7 May 2007	X – 14 May 2009		
Portugal	X – 7 May 2007	X – 6 May 2008	X – 27 Nov 2008	
Slovenia	X – 7 May 2007			
Spain	X – 7 May 2007	X – 6 May 2008	X – 27 Nov 2008	X (pending)
Sweden	X – 7 May 2007			
United Kingdom				X

Source: adapted from EFRP (2009a: 32, 2009b: 1-3).

1.4.4 VAT on outsourced services

Paradoxical as it may seem, the VAT Directive dealing with exemptions for financial services gives insufficient legal certainty and is not interpreted uniformly by all Member States. Occupational pension funds are financial service organisations whose services are largely exempted from VAT. The problems start when a fund outsources its services and third party providers charge the tax. Due to different interpretations within each Member State, this may lead to differences in the competitive position of individual funds (EFRP, 2009a: 30).

1.4.5 Transferability of capital

An even greater fiscal obstacle with respect to pension benefits accumulation is the difficulty of transferring pension capital across borders, as it may attract unjustified tax liabilities. In certain cases discrimination is obvious: a Member State taxing the value of the pension capital upon cross-border transfer, whereas it would not tax a transfer within its own territory. In other cases, transfers are being prohibited due to different rules governing the pay-out phase. In fact, according to the Federation of Dutch Pension Funds (2011), transferring pension rights to and from the Netherlands has become more difficult in recent years. Transferring pension rights to, for example, a British Superannuation Scheme has been prohibited since 2007 because of a wider possibility in the UK to receive part of one's pension benefit in the form of a lump sum.

Moreover, there are other reasons which render the transferability of pension capital an unlikely option in the near future, as certain countries, such as the Netherlands, are well aware. In their experience, transferability is a complicated, time consuming and expensive process, even within one country. Even if the expenses are borne by the fund and not by the individual concerned, the benefits to members are unclear. A comparison between DC and DB funds (and also among DB only) is difficult, because of differences in funding requirements and actuarial calculations. All of this, including the possibilities of abuse, led to the exclusion of capital transfer from the draft directive on portability in 2007.

1.5 Other persisting gaps: indexation, limitations to choice and information asymmetries

- ***Indexation***

Given the lack of portability and transferability of pension rights or capital across the Member States, it often happens that mobile workers leave these rights in the original scheme. These dormant rights are not always preserved and guaranteed against inflation, leading to a deterioration in the real value of these rights over time. What is more common, and is basically applied across the board by fully funded DC schemes, is that dormant rights are included in the

returns with the whole mass of other contributions. This relatively satisfactory solution is absent in DB schemes. Moreover, here, the pay rises of an employee (that would have happened if he/she did not change job) are not reflected in future benefits, leading once again to substantial losses in entitlements.
At the moment the only applicable legislation is Directive 98/49, establishing equal treatment between the dormant rights of a worker moving to another job within a Member State and the dormant rights of a worker moving to another Member State.

- ***Limitations to choice***

Due to the financial crises, stricter investment rules and low interest rates, the future prospects of supplementary pension funds have deteriorated in many countries, leading to great differences in contribution rates, funding requirements and a general flight from generous DB schemes to average-income or DC ones. A mobile worker may, hence, wish to stay and continue contributing to his/her chosen supplementary pension scheme (also in other Member States). However, as noted by the Federation of Dutch Pension Funds (2011), neither the employee nor the employer may be willing or able to pay into it.

- ***Information asymmetries***

Neither the supply nor the demand for information from pension schemes is effectively tackled at EU level. On the one hand, Directive 98/49 prohibits discrimination between scheme members who move abroad and those who do not (but nonetheless cease to pay contributions into the scheme). The IORP Directive, for its part, prescribes that funds have to manage two information streams: they must provide statements to members and beneficiaries and they have reporting duties to supervisory authorities. Since information requirements are often part of the social and labour law of each Member State, these may vary widely - especially, as CEIOPS (2008: 9) found out, with respect to official reporting and less so with respect to the communication to members. The dissimilarities apply not only to the amount of information to be supplied but also to its content, the time interval and frequency of submission as well as the institutions on which the reporting obligation lies. Some Member States even have different reporting requirements for different types of schemes. Of course, this runs counter to the objective of providing a single set of documents to members moving across Member States.

With respect to the demand side of information, there are two problems, one of which is related to mobility of employees. First, most surveys show that employees irrespective of their educational attainment are (when young) rather uninterested in and uninformed about their pension rights (Federation of Dutch Pension Funds, 2011). Second, a problem arises during the pay-out phase for mobile workers who have contributed to a number of funds. The cost of retrieving information from a considerable number of funds paying out tiny benefits may actually be unreasonably high and unmanageable.

The Green Paper's (2010) call for a modernisation of information standards, possibly not based on minimum harmonisation, is therefore very welcome.

1.6 Failure of the draft directive on portability: from an ambitious "portability directive" to a directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights

The Council was unable to agree a position on the "portability directive" and later announced that it would explore the possibility of resuming work on the basis of an amended proposal from the Commission. The scope of the directive, the desirable level of harmonisation and whether to include transferability measures were key issues that generated strong opposition from some Member States, the Netherlands in particular. As explained by Mabbett (2009), the Dutch Labour Foundation had produced a highly critical commentary on the draft directive. Its central argument was to condemn legislative interference in supplementary pension schemes, instead favouring governance by the social partners. It also raised substantive objections to the rules on transferability. It noted that PAYG and book reserve schemes were at least temporarily exempt from the transferability rules, meaning that the rules only applied to a few countries with funded schemes, including the Netherlands. This meant that the Directive could have an asymmetric effect: people moving from the Netherlands to France or Germany could take their funds with them, while those moving the other way could not. The issue of capital flight also attracted attention in Sweden, although unlike the Netherlands the Swedish government did not threaten a veto, making it impossible to reach an agreement at the EPSCO Council on 30 May 2007 ([49]). In response to the deadlock and to amendments put forward by the European Parliament, the Commission produced a substantially revised and renamed "Directive on Minimum Requirements for Enhancing Worker Mobility by Improving the Acquisition and Preservation of Supplementary Pension Rights" ([50]).

References to transferability and portability were removed and the emphasis was placed on minimum standards (Oliver, 2009). Other significant changes included the replacement of references to "actuarial standards" with "national law and practice". There were compromises and clarifications of the minimum age and term of employment for the vesting of pension rights, which continued even after the revised directive was published. By the time the proposal reached the December Council meeting, a minimum age of 23 and term of two years had been put forward.

Despite all these changes, no agreement was achieved at the Council meeting in December 2007. German opposition to short vesting periods surfaced, with Germany proposing a minimum age of 25 and a term of five years. The Netherlands' objections were addressed by dropping the provisions on transferring pension rights but, given the lack of agreement, the Dutch delegation

49. Council of the European Union (2007), 2803rd Council Meeting EPSCO, Brussels, 30-31 May 2007.
50. Amended proposal for a directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights, COM (2007) 603 final, 6 October 2007.

put on record its view that vesting terms should be shorter (one year). This position, that further concessions should not be made towards restricted vesting, was supported by Italy, Greece and Spain. These delegations expressed reservations that the directive was insufficiently ambitious, a view supported by the Commission. The will to agree was not forthcoming and the proposal was left for further discussion (Mabbett, 2009).

1.7 Consequences: a lack of protection for migrant workers' pension rights and a barrier to mobility within the Union

Whilst Regulation 883/2004 successfully protects people's rights under statutory schemes, its effectiveness is diminished by the trend towards increasing reliance on supplementary provisions which are not covered by the coordination rules. Adequate coordination rules for these schemes are still lacking and it is proving politically difficult to agree on such rules. This leaves a major lacuna in the European legislation protecting workers and persons moving within the EU, who may suffer a loss of rights or be subject to double contributions in some circumstances.

The application of Article 30 of Regulation 883/2004 (former Article 33 of Regulation 1408/71) may be a good illustration here. There are special rules in respect of pensioners' contributions if they receive benefits at the expense of a State other than the State of residence. The competent institution of a Member State may deduct contributions for sickness, maternity and equivalent paternity benefits from the pension calculated in accordance with its legislation, but only to the extent that the cost of the benefits is to be borne by that State. This rule allows contributions to be levied on the whole income, including the pension paid by another Member State. In 1985, the European Commission brought a case against Belgium concerning deductions from statutory pensions ([51]). The Belgian law on sickness and invalidity insurance had provided since 1980 for "*a deduction (…) from a statutory old-age, retirement, service-related and survivors' pension or any other advantage replacing such a pension and from any benefit supplementing the aforementioned pensions…The deduction shall be made from every payment of the pension or the advantage by the institution responsible for payment. That institution shall pay the sum of the deductions to the national sickness and invalidity insurance institution*". The Court ruled that by applying this provision to insured persons residing in another Member State, Belgium had failed to fulfil its obligations under the EEC Treaty.

Conversely, cases brought by the European Commission against *France* ([52]) and *Belgium* ([53]) concerning supplementary and early retirement pensions were rejected. According to the Court, national social security schemes introduced under agreements concluded by the competent

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51. ECJ, *Commission v Kingdom of Belgium*, C-275/83, ECR I-1097.
52. ECJ, *Commission v France*, C-57/90, ECR I-75.
53. ECJ, *Commission v Kingdom of Belgium*, C-256/90, ECR I-531.

authorities with trade or inter-trade bodies or under collective agreements concluded between both sides of industry which have not been the subject of a declaration mentioned in the second paragraph of Article 1(j) of Regulation No 1408/71 do not constitute legislation within the meaning of the first paragraph of Article 1(j) and the benefits which they provide do not come within the matters covered by that Regulation. Thus the Court ruled that "*Article 33 of the Regulation, which prohibits Member States from making deductions from statutory pensions received by nationals of EEC countries where the cost of the benefits received in return is not borne by one of their institutions, cannot therefore be invoked against a Member State which, under its sickness and maternity scheme, introduces a contribution which is deducted from payments of early retirement or supplementary pensions provided for under industrial agreements, where such payments are made to persons resident in another Member State who enjoy sickness benefits under the legislation of that other State*".

The lack of coordination is therefore a serious obstacle to workers' mobility within the Community. However, these disadvantages would not have arisen if the Commission's cases had been based not only on Regulation 1408/71 but also on the Treaty. In *Paraschi* ([54]) and *de Wit* ([55]), the Court recalled that "*the aim of Articles 48 to 51 of the Treaty would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose their advantages in the field of social security guaranteed to them by the laws of a single Member State*". As with the case law of the European Court in *Commission v France* ([56]), *Sehrer* confirmed that supplementary pension schemes had to comply with the requirements of Article 39 EC and Regulation 1612/68 as social advantages ([57]). The residence conditions imposed by some national laws are thus discriminatory and Member States must respect the principle of equal treatment between nationals and non-nationals even when it comes to supplementary schemes and to removing the barriers to free movement of workers (Mavridis, 2003).

In France, in addition to the general old-age insurance scheme, there are supplementary retirement pension schemes established pursuant to collective agreements concluded by the two sides of industry. These schemes are financed by contributions paid by both employers and employees to the institution which manages the scheme. Pursuant to Article L 731-5 of the Social Security Code, membership of a supplementary scheme is compulsory for employees. Under Article 27 of the Agreement, workers are provided with certain social security cover, including the award of `free' supplementary retirement points (`concessionary points') until they reach normal retirement age. But workers resident in Belgium are not granted concessionary points akin to those awarded under Article 27(2)(1) of the Agreement covering employees residing in France. The Court first recalled that "*supplementary retirement pension schemes introduced under*

54. ECJ, *Paraschi*, C-349/87, ECR I-4501.
55. ECJ, *de Wit*, C-282/91, ECR I-1238.
56. ECJ, *Commission v France*, C-35/97, ECR I-5325.
57. Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257, 19 October 1968, p.1-12.

agreements concluded by the competent authorities with trade or inter-trade bodies, trade-union organisations or individual undertakings or under collective agreements concluded by both sides of industry, membership of which has been rendered compulsory by decision of the public authorities, do not constitute legislation within the meaning of the first subparagraph of Article 1(j) of Regulation No 1408/71. Consequently, those schemes - together with a system for the validation of concessionary retirement pension points which forms part thereof - are not covered by that Regulation, and cannot be assessed in the light of its provisions". However, a Member State may not exclude frontier workers who have been placed in early retirement from qualifying for supplementary retirement pension points until they reach normal retirement age. Such a system for the validation of retirement pension points, which forms an integral part of the advantages granted to workers in the sector concerned, constitutes one of the conditions applicable to their dismissal, within the meaning of Article 7(1) of Regulation No 1612/68 on freedom of movement for workers within the Community. The equal treatment rule laid down in Article 48 of the Treaty and in Article 7(1) of the Regulation prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, through the application of other distinguishing criteria, lead in practice to the same result. Consequently, "*a residence condition laid down in relation to the award of retirement pension points, which can more easily be fulfilled by workers possessing the nationality of the Member State concerned - most of whom reside in that State - than by workers from other Member States, is indirectly discriminatory since it is intrinsically liable to affect migrant workers more than national workers and there is a consequent risk that it will place the former at a particular disadvantage*".

This case law was confirmed in *Sehrer* ([58])**,** involving a former miner of German nationality resident in Germany. Since reaching 60 years of age, Mr Sehrer had drawn a statutory retirement pension and a supplementary retirement pension from the German association for miners and metallurgy. Since he had also worked as a miner in France, he received in addition a French supplementary retirement pension, subject to a deduction by way of a contribution to the French sickness insurance scheme. It was a 'solidarity' contribution which as such conferred no benefit entitlement. When the *Bundesknappschaft* (pensioners' sickness insurance scheme) learned of Mr Sehrer's French supplementary pension, it demanded from him payment of arrears of sickness insurance contributions calculated on the basis of the gross amount of that pension. The Court held that "*provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned. That is precisely the case with the German legislation at issue which, while applying to migrant and non-migrant workers in the same way, is liable to prejudice only the former. It is unlikely that sickness insurance contributions will be levied twice in Germany on the gross amount of the supplementary retirement pension of a worker who has been employed only in Germany. By contrast, that risk is*

58. ECJ, *Sehrer*, C-302/98, ECR I-4585.

real for a worker who, like Mr Sehrer, has been employed in another Member State where he draws a supplementary retirement pension. It follows that national legislation of the kind at issue in the main proceedings constitutes an obstacle to freedom of movement for workers, prohibited by Article 48 of the Treaty".

The case law shows that, where Regulation 883/2004 and Directive 98/34 prove ineffectual, the general rules of the Treaty (Articles 45 and 48 TFEU) may be put to the test, although there can be no certainty that such attempts will always be successful given the complicated nature of supplementary benefits.

Part IV: Mapping Pension Systems in the EU: Technical Problems in the application of EU legislation to Different Pension programmes

Igor Guardiancich and David Natali

While Part III has focused on the main legal shortcomings in the coordination of pension systems, the present Part provides an overview of different alternative classifications of pension schemes across EU countries. Here the reference is thus to more technical problems. There are at least two reasons, why the current dichotomic (statutory vs non-statutory) classification used at EU level is unsatisfactory, especially with respect to the application of the coordination regime of Regulation 883/2004.

First, the past two decades have witnessed a number of paradigmatic reforms of the pension systems, sometimes following the predicaments of the 'new pension orthodoxy'. This encompasses two systemic shifts: from collective to individual risk bearing, by eliminating extreme imbalances between contributions and benefits (in public schemes); and from state to market provision, aimed to diversify risk. These reforms led to the appearance of substantial 'pension gaps' in state-run schemes and, consequently, in order to fill them out, to the multi-pillarization of the most European retirement systems. Even though, the recent financial crisi(e)s, led in a number of countries to the partial reversal of some of these measures, the development of supplementary, privately-managed pension insurance is in our opinion a long-term phenomenon that is not going to be reversed anytime soon.

Second and intimately connected to the recent reform trends, the development of a supplementary pensions panorama dramatically diminished the scope of application of the EU coordination regime. The correct classification of the variety of pension schemes in Europe would solve one of the main technical problems policymakers at the EU level must tackle to eliminate the obstacles posed by imperfect social security coordination to the free movement of labour in the EU.

Part 4 of this final report proceeds as follows. Section 1 focuses on the different attempts to classify pension systems. We look at three models: the seminal work of the World Bank (WB), the OECD and EU typology, and the most recent effort from Ebbinghaus and Wiß (2011). A coherent typology of pension schemes is of great importance for the application of EU legisaltion in the field of the coordination of statutory pension rights and the portability of pension rights (in all its forms). Section 2 looks at the main incoherence of the proposed classifications and the complex application of EU legislation for the coordination of pension rights. Section 3 analyses the alternative strategies to apply a new typology at European level. Section 4 concludes through the summary of some key steps for improving the monitoring capacity of national and EU policymakers.

Section 1: A critical assessment of different classifications of pension systems

In the last decades there has been a proliferation of pension system classifications. This is the result of the ongoing innovation of pension programmes in many Western countries. The last rounds of reforms have in fact increased the complexity of national systems and, as shown above, led to the growing role of supplementary pension schemes.
In particular, the two canonical taxonomies – the World Bank's and the one used by OECD and EU-based scholars, do a relatively poor job with respect to a number of issues that are of relevance for the coordination of pension rights in the EU.

1.1 The World Bank's Proposal

The famous World Bank's three pillar system (Table 1), devised in 1994 in the seminal book 'Averting the Old-Age Crisis' and later amended to include an anti-poverty zero pillar and a broader social fourth pillar (including healthcare, housing and other social benefits) has been adopted in most New Member States. Its most characteristic feature, a mandatory funded set of individual pension plans, is present also in Denmark and Sweden.

Table 5. World Bank's 1994 three-pillar scheme

Redistributive plus coinsurance	Savings plus coinsurance	Savings plus coinsurance	**Objectives**
Means-tested, minimum pension guarantee, or flat	Personal savings plan or occupational plan	Personal savings plan or occupational plan	**Form**
Tax-financed	Regulated fully funded	Fully funded	**Financing**
Mandatory publicly managed (first) pillar	**Mandatory privately managed (second) pillar**	**Voluntary (third) pillar**	

Source: World Bank (1994: 15).

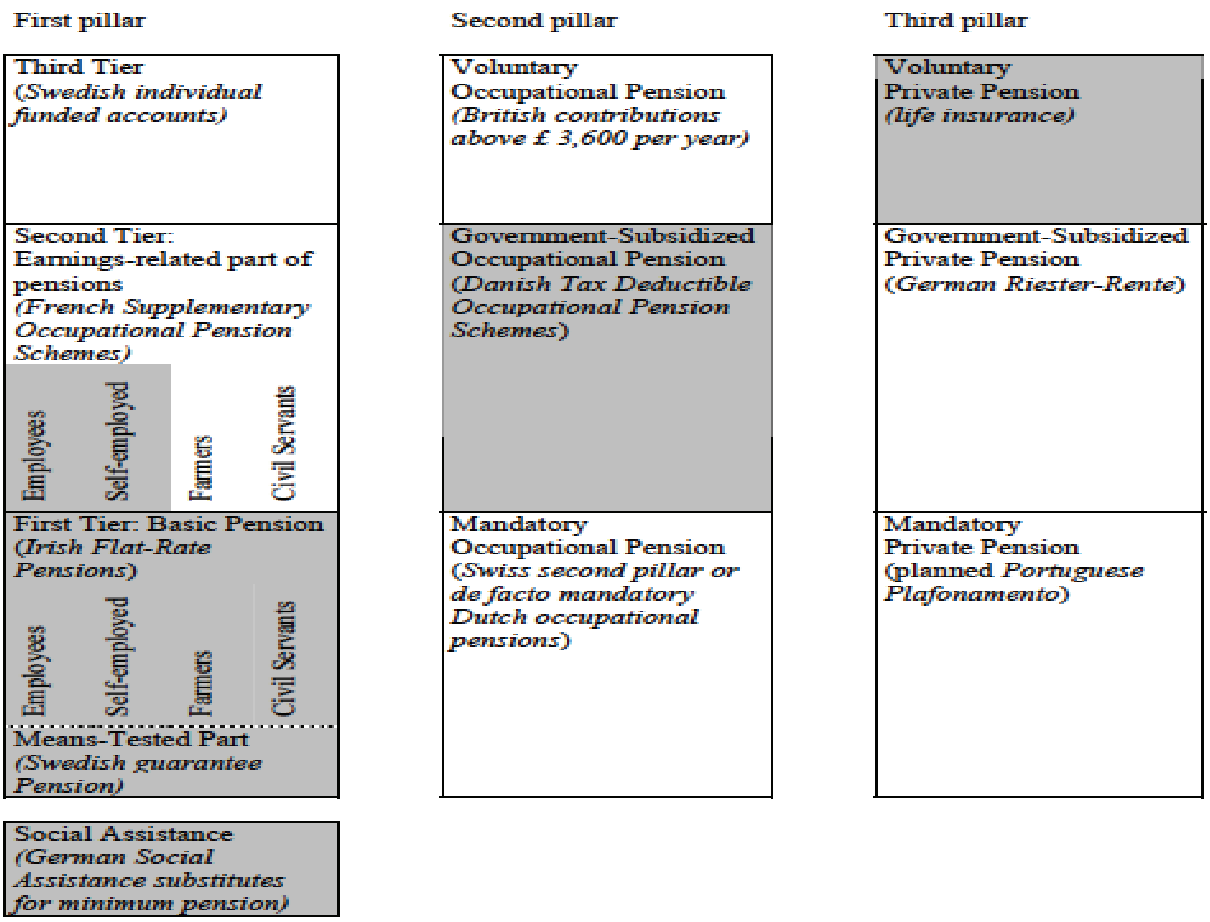
The World Bank's policy mix, prescriptive and normative, has been widely criticized: "*Taking a step back, we see that the objectives of pension systems are threefold: poverty relief, consumption smoothing, and insurance. Rational policy design starts by agreeing objectives and then discusses instruments for achieving them. The problem with the World Bank analysis is that its categorization starts from instruments rather than objectives and thus presupposes the choice, and to some extent the mix, of instruments.*" (Barr, 2002: 26).

1.2 The OECD and the EU

European scholars have mainly shunned World Bank's classification and widely adopted the one used by the OECD (2005; 2009) and the EU (CEC, 2009; SPC, 2005; 2008), further developing it to include rather unclear cases. The taxonomy rests upon the scope of applicability of the old Regulation 1408/71, which is limited to benefits governed by legislation. In the following 40 years, the scope has been only very mildly updated and, especially, no explicit definition of supplementary pensions exists at European level, if not in purely negative terms. In fact, Directive 98/49/EC states that all old-age pension schemes that are not covered by Regulation 1408/71 and 883/2004, and have a relation with the collective or individual labour arrangement of the worker, shall be deemed as supplementary.

Elaborating on this, scholars have devised a taxonomy that divides pension systems into three pillars, according to the 'initiator' of the pension insurance: the state, the employer, the insured/employee himself. Additionally, as shown in Figure 1, the pillars have been arbitrarily fragmented into tiers – especially the first, state one – to include very different corporate governance arrangements (cf. Immergut and Anderson, 2007).

Figure 6: The OECD/EU classification of pension systems



Source: Immergut, Anderson and Schulze (2007).

This is probably the main shortcoming of this classification. The different relationships between the principals (state, employer, employee) and agents (state, employer in book reserve systems, trust fund, insurance company) that these corporate governance arrangements entail have served heterogeneous purposes and have developed under various historical circumstances. To this end, Ebbinghaus and Wiß (2011) have recently devised a new classification, analysed below.

1.3 Ebbinghaus and Wiß's typology

Spotting the incoherence intrinsic to the traditional EU typology, Ebbinghaus and Wiß (2011), have proposed a new categorization, based on the type of governance, i.e. the relationship between sponsor and beneficiary. We decided to amend it and cover state-run arrangements as well, leading to the following repartition:

- state-led schemes (no decision by the individual),
- collective schemes (negotiation between employer and employee representatives),
- employer-led schemes (decision by the firm)
- and individual schemes (the whole or part of the decision to be insured lies within the individual).

Hence, Table 6 shows such classification crossed with the mechanisms of inclusion.

Table 6. *Alternative classification, based on the mode of governance*

State-run	Collective	Employer-led	Personal
Mandatory public: all Member States	*Mandatory quasi-public*: France (PAYG) and Finland (mixed PAYG and funded)	*Pension fund, various arrangements (funded)*: Belgium, Germany (also book reserves), Hungary, Poland, the Netherlands, Switzerland	*Mandatory*: Bulgaria, Denmark (Special Savings Pension), Estonia, Hungary (MPFs), Latvia, Lithuania, Poland (OFEs), Romania, Sweden (Premium Pension)
	Reg. 883/2004 applies above		**Reg. 883/2004 applies above**
Mandatory public for certain categories (PAYG): various schemes for e.g. public employees in Denmark, Germany (VLB), Switzerland and the UK; for unhealthy or heavy occupations in Poland	*Sector-wide* (funded): Belgium, Denmark, Germany, Italy (also book reserve, TFR), the Netherlands, Slovenia (for public employees), Sweden, Switzerland	*Opt-out*: UK pension fund trusts	*Voluntary*: Czech Republic, Germany (Riester), Italy (PIP), Hungary, Poland, Slovenia
Mandatory public for certain categories (funded): various schemes for unhealthy or heavy occupations, e.g. in Slovenia, etc.			*Opt-out*: UK (Personal Pension, Stakeholder Pension).
Reg. 883/2004 applies above			

Source: Ebbinghaus (2011), own modification.

As it transpires clearly from Table 6 extremely different schemes are being now covered by Regulation 883/2004, their only common feature is that they are statutory (i.e. mandated by law), as opposed to non-statutory. This creates substantial confusion, because the corporate governance, and hence the objective of the schemes vary.

Section 2: Most critical aspects of OECD/EU typology

As mentioned above, Regulation 883/2004 is most closely related to the OECD/EU typology in its simplified form: the criteria for the application of the Regulation, and of other pieces of EU legislation, is related to the statutory vs. non-statutory nature of the schemes. In line with the ILO (1990) note on the 'Coordination of Supplementary Pension Schemes', the legal base of pension schemes is the key criteria for applying legal protection.

Yet, this led to definitional problems, blurring the boundaries of application between EU prudential regulation and coordination rules; as well as constitutes the ground for much of the opposition against a one-size-fit-all coordination regulation or portability directive encompassing different pension insurance arrangements. The two aspects are analysed separately.

2.1 Blurred boundaries of application

Decades of reforms at Member State have led to the potential increased incoherent application of EU legislation, which risks engendering legal inequalities. In fact, very similar supplementary pension schemes are covered by different rules with a different protection of pension rights for mobile workers, as shown, for example, in the Annex to the Green Paper on pensions.

There are at least two types of incoherence in the application of EU pension rules: i) Regulation 883/2004 applies to heterogeneous pension schemes; ii) there are pension schemes that are covered neither by coordination nor by prudential rules; iii) some Member States have the possibility for 'regime shopping' between different EU rules. Examples follow.

First, Table 6 shows that under the current coordination regime fall two very different categories of pensions ([59]), i.e. public statutory PAYG schemes (with some exceptions), present in each Member State, and the third tiers, i.e. individual accounts in countries like Bulgaria, Denmark, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia and Sweden. Being this third tier similar to individual pension plans anywhere else in Europe, apart from the fact that it is mandated, it is paradoxical that it is being so uncritically compared to PAYG statutory schemes.

Second, various schemes fall through the interstices between coordination and prudential rules. An example is provided by Czech Republic (see the Annex). The widespread supplementary private open funds are not covered by the EU toolkit. As stressed by a Czech expert: *'(...) we are not really capable of putting the Czech pension funds under the definitions of the EU rules. They are not IORP institutions, because they're not occupational, they're purely individual. And the Czech pension funds are neither banks, nor Insurance Companies (…) despite they have some features similar to those of Life Insurance'* (Interview, 15 April 2011).

Finally, the choice between coordination and prudential rules offers ample room for abuse, and fuel the potential for discrimination. Individual pension schemes, for instance, are now covered by

59. Leaving aside the voluntary participation of the French AGIRC and ARRCO, which could simply be considered as occupational pension schemes based on a collective agreement.

different pieces of EU legislation, with a variety of rules and levels of protection. Those schemes that are mandated by law (e.g. Personal Pensions in Sweden, Open Pension Funds in Poland, and Private Pension funds/Joint Stock Companies in Romania) are covered by the EU coordination regime through Regulation 883/2004 even if they are fully funded and defined-contribution (DC), and they are freely chosen by the insured. At the same time, mandatory but sectoral pension schemes (e.g. those covering public employees in Slovenia) are covered by the IORP Directive. Yet, they are fully-funded, of a DC type and endow the insured with an even lower degree of freedom, as he/she is not allowed to chose the fund).

In the first case, a Member State may rationally avoid the prescriptive prudential rules of the IORP Directive by claiming that its schemes are of a statutory nature. In the second case, more common, schemes that could be easily categorized as statutory are instead subtracted from coordination rules.

More to the point, discrimination can happen within individual countries as well, for example, regarding the treatment of those individual (or collective) schemes set up through either opting-out or auto-enrolment. This is the case of supplementary schemes in the UK or Ireland and, to some extent, of those introduced in Italy and Austria and which replaced mandatory severance insurance. In the case of opting-out (as it used to be the case in the UK), those insured who decide to leave the state-run schemes automatically fall outside the scope of Regulation 883/2004. In the case of auto-enrolment, if the worker does not express any explicitly request, contributions are automatically transferred to supplementary funds, without, however, falling within the scope of Regulation 883/2004 as happens with mandatory individual plans.

2.2 The case against one-size-fit-all coordination

Using Ebbinghaus and Wiß's (2011) pension scheme typology (Table 6) it is also possible to show that a one-size-fit-all approach to pension coordination is implausible at best, because the interaction between pension schemes and labour mobility is so heterogeneous.

State-run schemes are financed through general taxation or earmarked social security contributions paid in by employers and/or employees. The state runs, supervises and regulates the scheme. With the sole exception of the UK, the individual or, alternatively employer-sponsor, has no exit option. They are all covered by Regulation 883/2004, which it has been reported to run most smoothly for old-age pension schemes in particular. In fact, there is basically no mobility problems associated with these schemes, internally and externally, due to two main reasons: i) state-run schemes have been adapting for almost 40 years to cross-border coordination; ii) there are on average only very few state-run schemes in each Member State.

Collective schemes (usually sector-wide collective agreements) are agreed between the social partners – employer (the state for public employees) and employee associations – who jointly regulate and govern these schemes. These agreements, in certain countries extended by law to entire sectors, e.g. in the Netherlands, allow for broader coverage and risk pooling, limiting the voice of stakeholders (sponsors and beneficiaries) to indirect representation. Interestingly, these

schemes allow for intra-sectoral mobility of workers, which is particularly fitting for those countries that have pro-cyclical turnover of employees (a prime example is Denmark).
The application of Regulation 883/2004 (or of a portability directive) appears to be problematic due to the fact that an individual Member State's social and labour law often affects how these agreements are stipulated. The subsidiarity principle, on the one hand, and very complex internal mobility rules (again, in the Netherlands) seem to be major obstacles in the way of extending the portability of these pension rights (or even just of the capital) on a cross-border level. These are particularly relevant factors that explain why only in France – the exception that proves the rule – AGIRC and ARRCO (occupational schemes that are based on collective agreements, are managed by social partners, unfunded with a reserve fund) – decided to be voluntarily included under the aegis of Regulation 883/2004. In certain countries, the state acts as the employer-sponsor for public sector employees. As mentioned above, this is the case of Slovenia, where the State outsources the scheme to a private fund. Here Regulation 883/2004 does not apply simply because the scheme is seen as supplementary and not part of the basic pension system.
Employer-based schemes were originally devised to bind employees to the firm; hence, in those countries that promote lifetime jobs in single firms, such as in Germany, vesting periods are very long. Employer-based schemes are managed by book-reserves (directly by the firm), trust funds independent of the firm, or outsourced through contracts with insurance company. Employers as sponsors oversee these schemes and beneficiaries have almost no voice – usually only through trustees, who are often picked by the sponsors themselves. Theoretically, the problems with the application of Regulation 883/2004 are similar to collective agreements, however, these are here exacerbated due to the greater variety of existing pension arrangements. The one country that does not have collective schemes – due to an excessively weak labour movement – is the UK. Here employer-based schemes proliferated (there are 55 thousand of them applying very different rules).

Individual contracts usually stipulate personal pension plans offered by banks, insurance companies, or other financial providers. In this case, the individual has little control over the fund management, hence the regulator or supervisory agency steps in to monitor the funds. Apart from important tax issues (moving from a TEE - Taxed Exempt Exempt - fund to an EET - Exempt Exempt Taxed - by default discourages mobility), these plans are amenable to some sort of more coherent coordination and/or portability. These schemes usually calculate benefits on a defined-contributions basis and are not tied to any employment status – hence vesting or indexing arrangements *de facto* constitute a minor problem. Some of these schemes are placed under Regulation 883/2004, especially those mandated by law (as mentioned above, in Denmark, Sweden and much of Central and Eastern Europe). These can be still grouped under personal plans. Against more stringent supervision and operational rules, the state still leaves the option to the individual to choose a pension vehicle, and often the investment strategy and amount of contributions.

Such heterogeneity clearly prevents a one-size-fits-all approach. As argued by a Dutch expert: *'Every member state has one set of rules for first pillar pension schemes. That can't be said for the second pillar, and the differences between the member states and within the member state regarding the second pillar are huge. So I would say it's impossible to develop a system like 883 that cover all those different pensions schemes that you have in the EU (more than 100.000 schemes)'* (Interview, 14 April 2011).

Section 3: Does the EU need a more coherent taxonomy?

The unclear boundaries of applicability of Regulation 883/2004 as well as the potential for discrimination that this entails show, at a minimum, that dichotomy statutory vs non-statutory does not reflect the complexity of supplementary pension schemes present in Europe. However, whether an entirely new categorization of pension schemes is needed, or whether the adaptation of current rules to other pension system aspects (e.g. benefit calculation) is sufficient, is uncharted territory. Here, we tentatively provide some pros and cons of the various approaches.

3.1 New categorization

Since 1971, there have been no major advancements with respect to the OECD and EU classification of pension systems. Already in 1990, an ILO Note proposed the development of a common concept usable at Community level. This would require a number of criteria selected to fulfill the needs for coordination. The concept of a supplementary scheme could be characterized by three elements:

- every social security scheme supplementary or otherwise is based on a collective guarantee of protection. In case of private supplementary schemes, this guarantee may cover a restricted or extended group within an undertaking or a profession;
- a supplementary scheme may be defined by its nature as a supplement to the statutory social security scheme which is normally the basic scheme but can be also linked to a statutory supplementary scheme;
- a supplementary social scheme should be compulsory for the employees protected.

Both agreement-based and contract-based private supplementary schemes would thus meet the three criteria, in they are collective, supplementary and compulsory. They should then be coordinated internationally (ILO, 1990).
Yet, those criteria find a large opposition between the Member States. As argued by a Belgian expert: *'it is difficult to coordinate second pillar schemes because there is large diversity and a large ingredient of social and labour law, but (...) member states don't want to harmonize social and labour law'* (interview Brussels, 12 April 2011).
According to the ILO Note, other classification methods could be proposed (on the base of the *fundamenta divisionis* stressed above). We put forward an extended version of Ebbinghaus and Wiß's (2011) typology, which divides schemes into: state-run, collective, employer-based and individual; according to the corporate governance criteria guiding their institutional design. However, such categorization should be thoroughly tested to assess the applicability of the coordination principle to supplementary schemes and would require a major redrawing of the boundaries between coordination and prudential rules at EU level.

3.2 Adaptation of current rules

If a new categorization is needed, but would require excessive legislative manoeuvring to be implemented – at least in the short run – the existing rules of Regulation 883/2004 could be stretched without being substantially modified.

One possibility is based on the new Annex VIII Part 2, which has been added to Regulation 883/2004 in 2010. The new Article 52 states: *"Notwithstanding the provisions of paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned."*

Hence, all funded, DC schemes (but also unfunded NDC ones) have been excluded from pro-rata calculations, meaning that the EU could introduce a dichotomy based on whether a scheme is defined-benefit (with full application of the pro-rata coordination mechanisms) or defined-contributions, where this is waived. Such distinction would be beneficial, as a substantial number of schemes would be excluded from the full application of the coordination regime.

However, there have been various objections to such solution as well ([60]). One objection was raised by AEIP officials (Interview, Brussels, 18/07/2011) claim that such exemption is simply insufficient and that funded schemes have to be treated differently, requiring a specific set of rules annexed to Regulation 883/2004. The pro-rata mechanisms is only related to vesting periods (which effectively become irrelevant), but has nothing to do with the schemes' financing mechanisms – hence such objection applies also to an eventual extension of the Regulation to other supplementary schemes.

Even though AEIP does not provide tangible solutions, it enumerates at least two major problems that need to be addressed.

First, the accumulated capital may prove to be insufficient: it may be too small due to short accumulation; future salary increases would not be reflected here, as this capital will not be augmented and will not participate to economies of scale; participating to returns does not mean that the capital's real value will be maintained and there may be relevant exchange rate problems at retirement. Hence, even with adequate safeguarding, the dormant rights (capital) accumulated may prove to be too small in the final calculation.

Second, there are clear inconsistencies with the pro-rata regime – which is a very similar problem to that encountered by Dutch and Danish insurers, who find it extremely difficult to make proper calculations of movements between DC and DB schemes ([61]). A logic to combine the pro-rata

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60. One of the problems is also the relative infancy of these schemes. Only in Denmark is the funded mandatory scheme, included under Regulation 883/2004, 25 years old. Everywhere else, the schemes are much younger, thereby not revealing much of the problems that may arise during the payout phase.
61. Interview with Danish representative of Pension Funds Association (Copenhagen, 15/05/2011), 'I think as long as we have such big differences on how social systems are organized, it's difficult to see one model that will fit all different national systems, it's difficult to transfer from DC to DB, and what about

regime with the one, which is waived, has to be found. What happens to the capital and vested rights while moving, for example, from a mixed regime such as Slovakia to a pro-rata one, such as Germany?

The AIEP suggests that capital transferability between countries that have funded schemes under Regulation 883/2004 could be a partial solution, which does not require substantial new pieces of legislation (such as a new Portability Directive). However, there would still be purchasing power problems, as capital moved from countries with low GDP per capita levels to richer ones may in the end prove totally insufficient.

The other objection is that even this approach requires a detailed mapping of the EU pensions panorama, to individuate which schemes are DC and which are not.

3.3 An EU-27 matrix of pension schemes

Hence, we may conclude that the groundwork of classifying all the existing pension schemes in the Member States is probably needed to re-launch the debate on EU-wide portability. This is recommended by some authoritative institutions.

The European Federation for Retirement Provision (2010: 16): *"An EU-27 matrix on European pension systems would allow Member States to fit their pension systems into a European template. Once the systems have been mapped, we could then have a discussion on which schemes should be considered as social security arrangements and which should be considered as social protection schemes. The boundaries between the different layers or tiers of retirement income should be clarified at EU-level based on commonly agreed indicators for each layer or tier."*

The European Parliament (2011), as well, suggests that a uniform classification system of pension schemes be developed, in order to avoid the current problems of applicability of different EU laws([62]).

The present Part of the final report has shown the key technical problems related to the extension of the scope of coordination of pension in the EU. These problems have been shaped by the most recent waves of pension reforms across Europe. Pension systems are nowadays more complex than thirty years ago and the demarcation between pension schemes and the application of different pieces of EU legislation appears increasingly difficult.

Recent reforms have been consistent with the growing importance of supplementary private schemes (especially those fully-funded) and the 'addition' of new pillars to the first public one. These reduce the scope of application of the EU toolkit in the area of coordination of social

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different vesting periods, different treatments of dormant rights… I think you have a very uneven ground but you want to put something even on top of it, it's very difficult'.

62. Interview with EFRP representatives (Brussels, 12/05/2011): 'the European Parliament has also advocated to make this kind of matrix (a coherent map of different pension schemes in the Member States) (...) the Parliament is really calling for that. This is the groundwork that has to be done before any initiative to be taken'.

security and have led many experts to ask for the more effective monitoring of supplementary pension schemes in EU countries.

However, already at first glance, the pension typology used at EU level have proved poor in not only defining the traits of single pension schemes, but also in the application of relevant EU legislation. In particular, the basic distinction between statutory and non-statutory (supplementary, usually private schemes) is inadequate to reduce the risk of discrimination in the legal recognition of pension rights of mobile workers. However, the uncritical extension of the coordination regime to non-statutory schemes starkly clashes against their heterogeneity: a one-size-fits-all approach is being fiercely resisted by most stakeholders.

Hence, the EU has either the option to devise a new pension categorization or to find innovative ways to adapt existing regulations and directives to the European pensions panorama. Either way, an updated and coherent EU matrix on pension programmes is largely viewed as the first step the EU needs to better coordinate social security rights and to reinforce the portability of supplementary pension rights.

Part V: Proposals for a better coordination of Pension Schemes in the EU: A Synoptic Table

Igor Guardiancich and David Natali

The present Part deals with the current relevance of Regulation 883/2004 and proposes a Synoptic table on the future scenarios for the (better) coordination of pension schemes in Europe.
Among the various social security aspects covered by Regulation 883/2004, the experts interviewed by the OSE team have indicated pensions as being the least problematic of all. However, this is limited to pensions within the Regulation's material scope. In fact, the development of supplementary pension schemes has gradually eroded the importance of the Regulation vis-à-vis both the mobility concerns of workers in the EU as well as to other pieces of legislation at EU level, which (at least potentially) solve the persistent problems of portability and coordination of social security rights.

As shown in Part two, two decades of reforms have largely affected the implementation of EU legislation (namely Regulation 883/2004) adding more limitations to the EU toolkit. On the one hand, undeniably we have seen a progressive partial privatization of the old-age risks with the expansion in all Member States of (supplementary) collective, employer-based and personal pension plans. The effect is here univocal: coordination of pension regimes has deteriorated and is more limited, leading to initiatives such as the failed Portability Directive of 2005 and 2007. On the other hand, a limited number of Western European countries and the majority of New Member States have experienced the inception of mandatory, i.e. statutory, personal pension plans, which are – as opposed to voluntary ones – entirely subordinated to Regulation 883/2004. In this respect, its scope of application has shifted from public to private providers (although the actual scope did not vary, because most of the new schemes simply carve out existing contributions).
While this is the picture provided by two decades of pension reforms between the 1980s and the early 2000s, the most recent financial, economic and budgetary crisis has partially reversed the privatization trend. In fact, most of the Eastern Member States have decided to thwart the contributions flowing into mandatory private accounts (and in the worst cases renationalising them altogether, as in Hungary), leading to a proper reversal of reforms and a return to the status quo ante. In light of the applicability of the coordination regime, this might be actually a positive development, as some of the complications foreseeable due to the different financing method of these schemes may be forgone in the future.

In the first section we briefly summarise the main sources of problems and inconsistencies in the application of the EU legislation in the field. Section 1 illustrates the persistent gaps in the portability of those supplementary pension schemes not covered by Regulation 883/2004. Main shortcomings illustrated in Part one and three are summarized.

Section 2 reviews issues of coverage and show why the current material scope adopted by Regulation 883/2004 is partly out of line with the recent developments in the public/private pension mix in Europe (main shortcomings proposed in Part IV are summarized here). Section 3 provides a first list of complementary steps for improving the coordination regime and its application. A specific reference is done to the few strategies that seem promising but difficult to implement. Between them, in particular Directive 41/2003 on the Institutions for the Occupational Retirement Provision (IORPs), does encompass partly and may potentially cover much of what an extension of Regulation 883/2004 would do.

Section 1: Persisting gaps in portability

As the previous paragraphs made clear, supplementary private pensions, in its various forms (collective, employer-led and individual) are developing fast and are expected to constitute a growing share of future retirement benefits. Given the failure, at EU level, to tackle the various portability issues related to these supplementary social security rights, this simply means that the obstacles to mobility of workers across the European union persist.

As shown by Part 1 and Part 3, these are mainly related to the following issues (see Table 7 for a summary): waiting and vesting periods; indexation; limitations to choice; fiscal problems (transferability of capital and taxation issues); information (both throughout accumulation and pay-out phases).

Table 7. Legal Problems in Portability of Pensions: A Summary

1. Exclusion of non statutory schemes from the material scope of regulation 883/2004
2. Lack of transferability of supplementary pension rights in Directive 98/49/EC
3. Lack of harmonisation on waiting and vesting periods
4. Lack of fiscal coordination and the consequent limits to transferring pension rights
   - Different taxation regimes
   - Tax neutrality with respect to premia
   - Dividends and interest paid to foreign pension funds
   - VAT on outsourced services
   - Transferability of capital
5. Other problems
   - Indexation
   - Limitations to choice
   - Information asymmetries

Source: Ose (2011)

Some options are available to tackle these problems and shortcomings: a new Portability Directive, the recalibration of Regulation 883/2004, more advance interpretations from the ECJ, the revision of the IORP Directive, non-binding rules to coordinate national legislations (see the Synoptic table for a summary).

Section 2: More Technical Problems and Issues of coverage

The material scope of the Regulation is limited to benefits governed by legislation. The meaning of the term legislation can be found in Article 1(l) of the Regulation. Pursuant to this Article, legislation means laws, regulations and other statutory provisions, and all other implementing measures relating to the social security branches covered by Article 3(1). Hence no explicit definition of supplementary pensions exists at European level. The closest attempt at defining them is purely negative, thereby stating that they are the mere obverse side of Regulation 1408/71 and 883/2004. In fact, Directive 98/49/EC states that all old-age pension schemes that are not covered by the (two) Regulation(s) and have a relation with the collective or individual labour arrangement of the worker, shall be deemed as supplementary.

As noted above, this state of affairs: i) is in many respects arbitrary, in the sense that the connection between legal instrument and type of pension scheme is irrelevant at best; ii) does not reflect in any aspect the connection between different pension schemes and the mobility of their members.

State-run schemes

According to the interviews carried out by the OSE team, the Regulations fully cover state-run schemes – according to our classification (following Ebbinghaus and Wiss, 2011) – thereby providing an effective and full coordination of retirement-related social security rights provided directly by the state. Moreover, the interviewees (France, Slovenia) argued that among the various social security rights included under Regulation 883/2004, pensions are the least problematic. Coordination here is effective for at least two reasons. First, state-run schemes have had 40 years to adapt to the coordination regime, as first spelled out by Regulation 1408/71. Second, this is directly related to the fact that the number of these schemes is limited and diminishing due to greater coherence in basically all Member States.

However, we noticed that even here – apart from unsolved technical issues that are addressed on a case-by-case basis – there are few instances where coordination may be incoherent and discriminatory. The major example, an exception to the otherwise well-functioning rule, is provided by the UK system of opt-outs. The latter element has been a typical trait of the British pension system since the late 1950s and has been enhanced in the early 1980s. Opting out consists of relinquishing the state-run (statutory first-pillar) pension scheme (SERPS, then S2P), which can be substituted under specific circumstances by employer-led and/or personal plans. These are, of course, by definition not covered by Regulation 883/2004, thereby leading to a major inconsistence of the British system with respect to individuals who are in all respect equally insured.

Collective schemes

With respect to collective schemes (be they inserted under the first or second pillar, according to the EU classification), both the existing literature as well as the interviews point to three interrelated problems.

The first one, and possibly the most irreconcilable one, is the persistence of subsidiarity as a key element of 'sovereignty' of the signatories of collective agreements, who are free to decide what to include under their social and labour provisions. This means that, considering for example the Dutch case, their agreements – despite the legal extension to entire sectors – are not covered by the Regulation 883/2004 and that the social partners are unwilling to have them coordinated ([63]).

Second, and consequently, the voluntary extension of the application of the EU Regulation has not been even considered as an option by any Member State, except for France (AGIRC and ARRCO). Interestingly, even schemes that most closely resemble state-run systems (e.g. the mandatory public employee pension scheme in Slovenia, where the state is the provider of retirement insurance) have not been seen as part of the statutory regime, but rather as supplementary pensions and have been therefore excluded from Regulation 883/2004 to be included under, for example, the IORP Directive.

Third, and finally, in contrast to state-run schemes, collective arrangements differ in two important ways with respect to international coordination. On the one hand, the huge heterogeneity of rules incorporated by the agreements is such that a one-size-fits-all approach to coordination (such as the one that would be applied via an uncritical extension of Regulation 883/2004) is deemed by the whole industry as totally unacceptable. On the other hand, the persistent exclusion of these schemes from any type of coordination, as well as the failed application of voluntary inclusion, has generated policy and institutional legacies that will be almost impossible to overcome: as opposed to state-run schemes, occupational collective schemes have not undergone similar adaptive processes to be coordinated at European level.

Employer-led schemes

A similar, but more acute problem than collective schemes, are employer-led pension plans. As mentioned in previous deliverables, the heterogeneity is here even greater than for collective agreements for a number of idiosyncratic reasons. For example, Continental countries – Germany *in primis* – have developed firm-based supplementary pension schemes as parts of broader benefit packages to retain workers and discourage their mobility, especially through long vesting periods and by tightly linking the invested capital to the firm (through book reserves). This is of course juxtaposed to the objectives of the coordination regime by Regulation 883/2004 ([64]). A different

63. This is the 'institutional' objection Mabbett (2009) refers to for explaining the failure of the 'old' Portability Directive proposed in 2005.
64. As shown by a vast literature - see Mabbett 2009, EPPF, 2004 – German op position to the Portability Directive was largely inspired by the defence of book reserve schemes; while the Dutch position was just opposing potential capital flows from the Netherlands towards Germany. Interviews done by the OSE team confirm these positions (at least for the Netherlands).

example, is again the United Kingdom, where mobility of workers is high; however, due to the fragmentation of the labour movement, the proliferation of different firm-based schemes has been extreme (according to personal communication by experts, there are more than 55 thousand different employer-led schemes in the country).

Personal schemes

Finally, personal pension plans have seen a major expansion throughout Europe with the accession of the New Member States in 2004 and 2007, as the majority of them have in the past decade introduced mandatory (statutory) personal pension schemes. Among Old Member States, such system exists only in Sweden (Premium Pensions) and in Denmark. The only difference between these schemes and individual pension savings accounts that are present in each and every Member State is that these are mandated by law and more heavily regulated by the state. That the mandatory ones, as opposed to the voluntary ones are coordinated, is of course incoherent from an individuals' point of view.

Notwithstanding, here the problems are at the moment relatively limited and this for two reasons. On the one hand, all of these schemes function according to a similar logic: they are fully funded and defined contribution, hence, distributional and calculation problems are marginal (as opposed to collective and employer-led plans). On the other hand, however, the limited difficulties encountered with these schemes are also related to the yet partial maturity of the system. In fact, the first of these schemes was introduced in 1986 (Denmark), whereas all the others are less than 15 years old. Consequently, it is yet impossible to appreciate whether there are significant coordination problems between these schemes and systems financed according to other logics. As it will be mentioned later, some experts stress the need to include these funded statutory personal plans under a different heading; possibly, drafting an Annex to the current Regulation 883/2004 (see Annex 1, and the Synoptic table).

Section 3: Future Scenarios for the Coordination of Pension Schemes in the EU

The present section summarises the key strategies to be followed for the further reinforcement of the EU legal framework on the coordination of social security schemes and the transferability of supplementary pension rights.

The Synoptic table below (Table 8) shows different options are in the hands of policymakers. They must be interpreted as the complementary – rather than alternative – options that could be advanced. For instance the need for better monitoring and a more systematic clustering of pension schemes could represent the preliminary step for the implementation of EU legislation, while it could serve the purpose of the revision of the EU toolkit.

For each option we have added a letter to mark its relevance and the potential effectiveness in addressing problems, and a light to indicate the probability to accomplish the initiative. The 'H' letter means the option is highly relevant; letter 'L' means the option is less relevant.

The green light means the action is quite feasible, there are no major obstacles to its implementation, and a large consensus between all the stakeholders could be reached. The yellow light means the option could be activated but some problems for its adoption and/or implementation are to be considered. The red light means the political and/or institutional context does not seem particularly favourable. The risk of a failure is high ([65]).

We envisage here five main lines of action. The first line of action consists of the recalibration of EU legislation with specific reference to Regulation 883/2004. Evidence shown in the previous parts proves this piece of legislation is somehow outdated and both the evolution of national pension policy and the more articulated EU toolkit demand for some revision. The latter could be implemented through the introduction of new annexes. Part one shows (page 21) amendments introduced through Annex VIII of Regulation 883/2004 on the rules for the application of pro rata for the calculation of pension benefits for migrant workers prove the feasibility of such a strategy. Recalibration may also consist of the extension of the material scope of Regulation through the relaunch of voluntary declarations. All these initiatives are of high relevance (H) but are the object of strong opposition (red light).

The second line of action consists of launching a new initiative for the new Directive on the portability of supplementary pension rights. This action is highly relevant (H) while opposition from single Member States and stakeholder is strong (red light). Yet, some more optimism may come from the Treaty of Lisbon (introducing qualified majority voting) and from the recent ECJ rulings.

65. Both indicators are very rough and aim at summarizing both opportunities and problems related to each strategy.

Table 8. Synoptic Table on the strategies for better coordination

1		**RECALIBRATION OF REGULATION 883/2004**
	H	**More clear demarcation between single pieces of EU legislation** A pension scheme which falls under Regulation 883/2004 cannot come within the scope of Directive 98/49 and vice versa. However, this dichotomy has some obvious limitations. The situation of the mandatory funded defined-contribution pension schemes in some Eastern and Central European Member States has made the shortcomings of this legal construction evident as those schemes, by their nature were at the same time statutory and supplementary. **Annex on funded statutory schemes** As proposed by some European experts, new annex should focus on the statutory personal (fully funded) pension schemes to increase the broad coherence of EU legislation and amending the legislation applicable to this 'new' form of statutory schemes. **Relaunching voluntary declarations** Member States could be encouraged to issue declarations in larger numbers so as to bring contractual schemes within the scope of Regulation 883/2004. One way to do so would be to make the Member States shoulder the burden of proof explaining why no declaration can be made to bring a generally binding scheme within the scope of the Regulation. **Extension of the material scope** An extension of the material scope of Regulation 883/2004 to encompass supplementary pension schemes might be an appropriate way to fully protect moving workers' pension rights. Yet, three main problems make this strategy difficult. First, it would require a system of mutual recognition between supplementary pension schemes which would be difficult to achieve because of the great diversity of such schemes. Secondly, it would have proved extremely costly for the schemes/employers. And thirdly, such a coordination system in the form of a regulation would, moreover, not have allowed for the flexibility needed to take into account the huge diversity of supplementary pension provision in the Member States.
2		**NEW PORTABILITY DIRECTIVE**
	H	The re-emergence of the draft directive on portability is supported by some national trade unions (but opposition is still strong). The new directive should improve information for the users, strengthen the regulations concerning the transparency of private pension schemes, their investment strategies and solvency, remove obstacles to mobility in supplementary pensions. **ECJ Rulings + QMV under Lisbon Treaty** The case law shows that, where Regulation 883/2004 and Directive 98/34 prove ineffectual, the general rules of the Treaty (Articles 45 and 48 TFEU) may be put to the test, although there can be no certainty that such attempts will always be successful given the complicated nature of supplementary benefits (see the recent ECJ's decision in *Casteels v. British Airways).* According to some national experts, a new Directive based on the new article 48 TFEU requiring a qualified majority might have more chances to be adopted. However, Article 48 §2 provides for an emergency brake mechanism.
3		**CHANGE IN THE SCOPE OF IORP DIRECTIVE**
	H	IORP Directive and its eventual extension could help addressing the portability problems. But this does not represent an alternative strategy (rather a complement) of new EU portability legislation. The set up of IORP pension funds is lengthy and many problems seem to limit its development.
4		**EU-27 MATRIX OF PENSION PROVISION**
	L	The development of a matrix mapping out the different pension schemes would be a useful preliminary tool for a better coordination. According to the interviewees, this *would provide legal consistency and clarity for citizens and scheme sponsors'.* This is an instrument that could help both application and revision of the EU legal toolkit (in its different parts).

5		**PRINCIPLE-BASED APPROACH**
	L	In line with some of the experts we have interviewed, a principle-based approach consistent with minimum regulation and/or non-binding guidelines on portability could represent a step forward in the attempt to coordinate national legislations and practices. The strategy could be to add a new legislative measure to the Directive 98/49.

H. Of High relevance;

L. Of Low relevance;

Most feasible, least problematic

Feasible but problematic

Least feasible, most problematic

Source: Ose (2011)

The third line has to do with the application of the IORP Directive for the further development of pan European pension funds. This may lead to the (partial) solution of the mobility issue. But there seems to be limited consensus to use this strategy while results are not certain. While the three actions proposed above aim at addressing the most pressing problems, the fourth and fifth lines could contribute have to do with the technical problems of mapping pension programmes in the EU (through a new EU-27 Matrix of pension provision) and the introduction of new tools consistent with a 'principle-based' approach with the definition of minimum principles for coordination through binding and/or non-binding rules.

3.1 Recalibration of Regulation 883/2004

The distinction between 'statutory' and 'supplementary' schemes, as put forward by Regulation 1408/71 and complemented by Directive 49/98/EC, has become increasingly unclear due to the numerous reforms that characterized the past two decades of European pension politics.

Existing Community legislation has recognised that different pension schemes cannot be coordinated along the same lines. The Commission stressed it in the preamble of the draft portability directive: "supplementary pension schemes should…be subject to specific measures in order to take account of their nature and specific characteristics and of the diverse nature of these schemes".

Some authors have proposed a new demarcation line: instead of differentiating coordination methods using the dichotomy 'statutory' versus 'supplementary', legislation should rather distinguish between mandatory versus voluntary, defined-benefit (DB) versus defined-contributions (DC) and funded versus pay-as-you-go schemes. Others, and this is the case of the OSE team, have advanced a new taxonomy that could improve the selective application of the pieces of EU legislation (on the base of the pension schemes' governance).

Hence, the following paragraphs will explore a number of option regarding a recalibration of Regulation 883/2004 to better adapt it to the current European retirement system reality.

More clear demarcation between 'exclusive' pieces of EU legislation

Exclusivity of applicable EU legislation to different pension funds has aggravated the problem of the coordination and portability of social security rights. The IORP Directive on occupational pension schemes is very clear on the matter. Article 2 states: "This Directive shall not apply to: (a) institutions managing social-security schemes which are covered by Regulation (EEC) No 1408/71 (1) and Regulation (EEC) No 574/72", *de facto* precluding any coordination rules being applied to supplementary schemes, and creating ample room for abuse.

As pointed out by several officials of DG Market, the ambiguity existing between statutory and supplementary schemes leads to the selective application of one or the other legislative instrument. In particular, mandatory fully-funded pension schemes present in Denmark, Sweden and much of Central and Eastern Europe have been inserted under Regulation 883/2004. This guarantees a relatively smooth coordination of the rights accrued under these schemes (but see next paragraphs for a substantial objection), but allows these Member States to get away with any kind of prudential rules for these schemes.

The possibility to combine the IORP Directive (and other 'exclusive' pieces of EU legislation, such as those mentioned by Article 2 of the IORP Directive: "institutions which are covered by Directive 73/239/EEC, Directive 85/611/EEC, Directive 93/22/EEC, Directive 2000/12/EC and Directive 2002/83/EC") with coordination rules – in the persisting absence of a Portability Directive, which would solve the problem once and for all – could be a satisfactory solution. Exclusivity of application will have to be lifted in this case.

Annex on funded statutory schemes

Even though mandatory funded schemes have already a dedicated Annex in Regulation 883/2004, exempting them from pro-rata calculations, some of the experts we have interviewed have stressed the need for more clear and coherent rules.

The specific characteristics of financing (full funding) make these schemes very different compared to more traditional PAYG schemes. A revision of Regulation 883/2004 with the addition of a redrawn Annex would be needed.

The two main problems, mentioned by AEIP officials and in the present report, are: i) accumulated, but dormant capital may prove insufficient even after adequate safeguarding; ii) clear rules for the combination of benefits accrued under schemes using the pro-rata regime and those that do not are missing.

In the case of workers moving between countries having funded schemes under Regulation 883/2004 could very much benefit from the transferability of capital, without the need to draft a new Portability Directive.

Voluntary Declarations to Extend Application of Regulation

Member States could be encouraged to issue declarations in larger numbers so as to bring contractual schemes within the scope of Regulation 883/2004. One way to do so would be to make the Member States shoulder the burden of proof explaining why no declaration can be made to bring a generally binding scheme within the scope of the Regulation.

Extension of the material scope of Regulation 883/2004

An extension of the material scope of Regulation 883/2004 to encompass supplementary pension schemes might be an appropriate way to fully protect moving workers' pension rights. Yet, three main problems make this strategy difficult.

First, it would require a system of mutual recognition between supplementary pension schemes. Even though this solution has been favoured by many (see Dutch Federation of Pension Funds, 2011), similar problems that had been identified in the background documents to the Portability Directive may arise. The great diversity of supplementary schemes would be here a major impediment.

Secondly, there are significant, mainly administrative costs that may have to be borne by sponsors and/or beneficiaries. It is widely believed that the costs (in relative terms) are inversely related to the funds' size, meaning that such solutions would be more acceptable for nation-wide schemes. With respect to the transferability of capital, similar objections made the first attempts to draft an encompassing Portability Directive a failure.

Finally, such a coordination system in the form of a regulation would, moreover, not allow for the flexibility needed at Member State level. A Directive would in this case automatically better take into account the huge diversity of supplementary pension provision in the EU.

3.2 A New Portability Directive

The draft directive on portability was based on Articles 42 and 94 of the EC Treaty. Article 42 related to social security measures for community migrant workers was already, and Article 94 of the EC Treaty concerned measures for the approximation of national provisions concerning the establishment and the functioning of the internal market. Those provisions required unanimity voting in the Council. The Council never reached the unanimity and the proposal was left for further discussions.

In the meantime, the Lisbon Treaty entered into force and brought some important changes in the legislative procedure. This entry into force had consequences for ongoing inter-institutional decision making procedures. The new Article 48 TFEU (former article 42 EC) changed from unanimity to qualified majority voting in the Council while the new Article 114 TFEU (former Article 92 EC) still requires unanimity.

According to some experts ([66]), a new Directive based on the new article 48 TFEU requiring a qualified majority might have more chances to be adopted. However, Article 48 §2 provides for an emergency brake mechanism: where a Member State considers that the measures concerned would affect fundamental aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request the matter be referred to the European Council (thus automatically suspending the legislative procedure). The European Council must then within a period of four months either refer to the matter back to the Council, thus enabling the procedure to continue, or ask the Commission to submit a new proposal. The re-emergence of the draft directive on portability is supported by some national trade unions.

3.3 IORP Directive and the Extension of its Scope

Even though the extension of the IORP Directive to schemes that are not strictly occupational would encourage the creation of a single market for supplementary pensions in Europe – mainly due to the cross-border provisions contained in the Directive – this will not enough to solve the mobility problems of the European workforce. First, there is not yet enough appetite for pan-European pension solutions, which can be seen as an objective achievable in the longer term. Second, specific rules for portability would be still missing for people moving outside or between cross-border IORPs.

The Directive 2003/41/EC on Institutions for Occupational Retirement Provision (IORPs) establishes the freedom for authorized IORPs to provide cross-border services in the EU. However, despite its multiple advantages – one of which is to simplify the (cross-border or national) portability of supplementary pension rights for its participants – the IORP Directive did not automatically engender a thriving single market for occupational pensions, and does not solve all portability problems.

The advantages and drawbacks of pan-European pension funds

There are several advantages in setting up one pan-European pension fund, summarized in Table 9 (Ernst & Young, 2009: 17; Guardiancich, 2011: 22-24; Hewitt Associates, 2010: 5-6).

66. Interview with a member of the Banking, Finance and Insurance Commission, conducted on 4 May 2011; interview with a civil servant from the French Ministry of Health and Solidarities, conducted on 10 May 2011.

Table 9 Summary of pan-European fund's advantages by stakeholder

Chief Financial Officer/Chief Risk Officer
Efficiency gains, especially with respect to asset management (economies of scale)
Reduced financial risks through more controlled and efficient asset and/or insurance solutions
Major cost savings (no or limited duplication of capacity)
Global management of assets and liabilities, including potentially more regulatory and financial flexibility (important if DB plans are included, by employing so-called stabilization funds*)
Fewer providers and interfaces (one regulator/supervisor) and reduced internal management time
Human Resources Management
More efficient management of internationally mobile employees (including tax transparency)
Possibility to implement consistent new multi-country benefit plans with common look/feel/structure (pan-European framework)
Efficient anticipation of multi-country acquisitions and divestitures
Employees
Flexibility of the pan-European schemes (abiding by local social and labour law)
Increased security (through strict ring-fencing requirements)
Retention and management of the schemes' own identity (by setting up dedicated social committees**)
Improved strength of the plan's sponsor, access to more professional asset management and better quality investment options
One-stop-shop for their occupational pension arrangements (avoidance of complex transfers)

Source: Guardiancich, Ferrera and Jessoula (2011).

Notes: *A stabilization fund is a ring-fenced unit within a IORP, which holds assets (paid for by the sponsor) but no liabilities. Hence, this can be used as 'guarantee' for underfunded defined-benefit plans, without either injecting sponsor's money or increasing the contributions for members. **A social committee is an adjunct management board, attached to the individual ring-fenced unit. It has varying contractual arrangements with the IORP's main board and can be constituted by the host country's local employee representatives. This significantly increases local stakeholder participation and voice.

It is widely recognized that pan-European pension funds benefit from greater economies of scale, better governance and strengthened operational risk management.

Having a look at some of the few existing funds that are truly pan-European, i.e. that insure in country B (the home state) the local workforce of country A (the host state), we found out that the IORP Directive offers sufficient flexibility, and this for a number of reasons.

First, many commentators a priori ruled out a single market for occupational funds due to excessive hurdles represented by different tax as well as social and labour regulations. However, some pan-European funds operate in the Netherlands (as host country), which has some of the most stringent social and labour laws in the EU. Second, it was thought that the IORP Directive is suitable for fully-funded defined-contribution plans only and that hence, a defined-benefit plan would have been impossible to move or manage cross-border. Again, the supposition proved wrong. One pan-European scheme in particular, functions with a defined-benefit formula, was part of a different fund (even not ring-fenced) and was underfunded.

What is of greater interest for this report is that with respect to mobile employees, a pan-European arrangement kills two birds with one stone: the employees' account remains within the IORP, eliminating any potential portability or transfer issues. The member just moves within the IORP to a new ring-fenced unit.

This means that despite the gaps and inconsistencies in the EU regulations of the portability of occupational pension rights, the IORP Directive already allows for a cross-border solution, even in the absence of a new Portability Directive or without the extension of Regulation 883/2004.

This has elicited great interest among scholars (see references in Federation of Dutch Pension Funds, 2011) and within the European Commission, which commissioned to Hewitt Associates (2010) a feasibility study to create a pan-European pension fund for all researchers, namely the most mobile and skilled labour force in the European Research Area, and the one that gets the most from allocative efficiency.

Notwithstanding, the development of IORPs operating cross-border has been painfully slow (Hewitt Associates, 2010: 7-11; CEIOPS, 2010: 2). The 2010 survey conducted by CEIOPS shows that between June 2009 and June 2010, seven new cross-border IORPs have been established and five ceased their cross-border activities. Hence, the total change is from an already low 76 to 78 cases. This 3 per cent increase compares badly with the 9 per cent and 46 per cent increases reported, respectively, during 2009 and 2008. Moreover, of these 78 cases, very few are genuine pan-European pension funds, probably fewer than a dozen.

This requires an explanation and does not reveal some crucial developments. On the one hand, there are several competing accounts of why pan-European pension funds are easier said than done. On the other hand, the interest for such cross-border arrangements is on the rise, also to encourage better portability of social security rights.

Competing explanations on the stagnation of pan-European funds

The simplest explanation for the limited development of IORPs operating cross-border is that they (Guardiancich, 2011: 16) "archetypically embody the asymmetry between EU-level market-making and national market-correcting mechanisms." Initially, it was thought that complying with host Member State social and labour law and tax regulations represent for sponsors and providers the two main obstacles to the implementation of pan-European funds.

However, practice has shown that compliance with host country requirements is demanding but that it can be dealt with. Hewitt Associates (2010: 7) state that only about a third of implementation issues have a technical (regulatory, actuarial, legal) background; with social and labour law and tax requirements often mentioned as major impediments, but unlikely to become key material issues during implementation.

More relevant, stakeholder management, education and communication have so far catalyzed most of the industry's attention in the set up of pan-European pension funds. In fact, there is

often resistance from local stakeholders who are concerned about moving into unknown cross-border arrangements. Open communication and the involvement of local stakeholders in the governance of the new cross-border IORP seem to be the best ways to appease their concerns.
The most glaring difficulties in setting up a pan-European fund seem related to their complex setup, related to both the difficult choice of home and host countries and the complex strategies to follow for find compromises between stakeholders (for details see Guardiancich, Ferrear and Jessoula, 2011) ([67]).

Short-term and long-term future prospects

Several positive developments have marked the introduction of the first functioning pan-European funds, on behalf of regulators, providers and sponsors. These provide a tangible proof that a single market for occupational pensions is still attainable, even within the boundaries of the existing legislative framework.

As for regulators, Hewitt Associates (2010: 7) point out that there is wide heterogeneity with respect to two issues: the setup of dedicated expert teams on cross-border issues; and the interest in becoming locations of choice for pan-European funds. Whereas some supervisors are knowledgeable in supervisory issues and can handle English as a working language, others are less pro-active, requiring more time for prospective implementations. Some Member States have put in place flexible IORP vehicles and may soon become home states for several pan-European funds (Belgium, Luxemburg, Ireland, Liechtenstein and the Netherlands). Others are neutral in respect of cross-border transactions, have limited experience and technical limits still imposed by local legislation.
As for providers, growing supply shows that packaged solutions are slowly emerging. Mercer (9 October 2008) surveyed over 80 MNCs and 25 pension providers with EU operations. Managers noted the limited availability of off-the-shelf products, dealing with cross-border pension provision. Six providers offered pan-European solutions consisting of investment, administration, communication and plan management. By 2011, another 13 were expected to have a pan-European product.

Finally, sponsors show increasing interest in setting up IORPs operating cross-border, possibly as a result of first movers having successfully set up funds. Multi-National Companies, such as Kraft-Jacobs-Souchard, Coca Cola Europe, Volvo, IBM, Intel, Unilever have all considered setting up a pan-European pension solution, especially to manage their mobile labour force or to incorporate smaller, problematic pension funds.

67. Eight distinct stakeholders are usually involved in the procedure of setting up a cross-border IORP (headquarters, local management, Employees and members of the scheme, Board of trustees in the existing pension scheme, home and host state regulators, CEIOPS – now EIOPA, tax administration).

Well-run, large pension funds are unlikely to be moved across Europe to a new home state. With sizeable funds, one needs management, administration and language capacities. Looking at the efficiency gains of going pan-European, moving might be still profitable regarding communication, governance, surplus and deficit management. However, these alone are insufficient motives. Relocating such a structure is costly and one may lose the local administration team, e.g. due to linguistic barriers. Re-hiring one in a competitive market is expensive. Hence, other drivers are usually considered in setting up a pan-European fund. The most common ones are: corporate transactions; insufficient flexibility of a country's pension vehicle; low number of cross-border employees; strict solvency regulations; homogeneous benefit structure in a region; triggers related to regime shopping.

This leads us to think that only small, problematic pension funds will be moved cross-border in the near future – perhaps an exception being the 'artificial' creation of a pan-European funds for researchers ([68]). Therefore, the prospect of Europe becoming a single market for occupational pensions, dominated by large single- and multi-sponsor pan-European funds, is relegated to the longer term. Probably we are talking here of decades, rather than of years.

Ceteris paribus, however, even in a world dominated by large pan-Europen pension funds, portability issues are not resolved, if not for the worers moving between the ring-fenced units of one single IORP. Therefore, even extending the scope of the Directive to other supplementary schemes, mobility obstacles will remain entirely unsolved for the people moving outside of these cross-border IORPs or between them.
Ideally, the European pension market will consolidate, thereby limiting the number of existing pension funds in Europe and, with it, the current heterogeneity in provision. This will lead to finding easier legislative solutions to mobility. The IORP Directive is a relatively good and developing tool to achieving a single occupational pension market, however, such ideal market will still be in need of a portability standard.

3.4 EU-27 Matrix of Pension Provision (the necessity to mapping the terrain)

Due to the large diversity of EU pension schemes, the development of a matrix mapping out the different pension schemes would be a useful preliminary tool for a better coordination.
As argued in several responses to the Green Paper and mentioned by most interviewees, the heterogeneity of supplementary schemes in the EU is such that one-size-fits-all approaches are hardly desirable. As mentioned in the Background document, the range of collective and employer-led schemes is mesmerizing. The combinations of those factors contributing to creating obstacles

68. The Federation of Dutch Pension Funds (2011), however, thinks that there are easier arrangements to achieve a similar solution for researchers. In fact, it would suffice to simply treat them as posted workers within the framework already established by Directive 98/49/EC.

to employee mobility – waiting and vesting periods; indexation; limitations to choice; fiscal problems (transferability of capital and taxation issues); information (both throughout accumulation and pay-out phases) – is basically limitless.

Given such heterogeneity, the OSE team revealed that there are at least three taxonomical problems that should be resolved to create the basis for better regulation of coordination and portability of non-statutory schemes.

First, the dichotomy 'statutory – non-statutory', representing a building block of the EU-OECD three-pillar structure of pension systems risks to be the source of incoherence and confusion. Regulation 883/2004 covers schemes that have different financing mechanisms, serve different purposes and abide to different logics, adding, rather than subtracting, from the current ambiguity in pension coordination.

Second, the Background paper and other deliverables suggest that the adoption of a new taxonomy, based on the principal-agent relationships between sponsor and beneficiary (state-run, collective, employer-led, personal schemes) better portrays the current state of affairs, irrespective of the legislative tool through which these arrangements have been set up. Moreover, only by understanding this relationship can one make sense of which schemes promote and which schemes hinder (and for what reasons) the mobility of workers.

Third, and finally, even the classification put forward by the OSE team is still speculative. Mapping the terrain, thereby singling out all or most of the existing schemes present in the European Union is the only way to clarify pension system categories and subcategories. Only then can be our (or another) taxonomy be confirmed and justified.

Hence, the OSE team highly encourages the European Commission to initiate the background work in a serious and encompassing way, especially to avoid patchy mappings. This recommendation is in total agreement with some of the responses to the Green Paper, in particular with that of the European Parliament (2011): "*The European Parliament observes that the first-, second- and third-pillar pension schemes in Member States differ significantly from one another, that the EU lacks a set of common criteria, definitions and an in-depth analysis which would thoroughly explain the various pension systems and their capacity to meet the needs of citizens and that there is therefore a lack of transparent supervision applicable to all systems; stresses that the EU should primarily enhance the comparability of pension schemes and promote the exchange of good practices; is of the opinion that the Commission needs to make the necessary efforts to come up with a typology of pension systems in Member States as well as with a common set of definitions in order to make systems comparable"*

According some of the interviewees, such a matrix would make it easy to identify the schemes between which transfers would be possible and would provide legal consistency and clarity for citizens and scheme sponsors. The boundaries between the different layers or tiers of retirement income should be clarified at EU-level based on commonly agreed indicators for each layer or tier.

This means that a uniform, classification system of pension schemes should be developed in order to avoid the current problems of applicability of different EU laws ([69]). Here the main obstacle for an encompassing monitoring is represented by the large diversity of institutions that operate in Member States. There is a huge variety of occupational and individual schemes and this has to be well analyzed. We don't see any major impediment for the definition of a coherent matrix at the EU level.

3.5 A Principle-based Approach

Due to the wide variety of supplementary pension schemes, and the need to respect the principle of subsidiarity implicit in social and labour laws, some experts ask for a voluntaristic approach. The latter should be consistent with the definition of minimum principles for coordination. As argued by an interviewee, 'You need one simple article saying that every Member State should prevent from legal obstacles to arise for the transfer of pension rights across borders. If you use this principle base then every Member State can look at its own law and understand which obstacles may come out. This is the best way to do it.'

Of course there are different alternative strategies to fix such a basic set of rule for the transferability of pension rights: while new legislation is an option, less stringent instruments could be easily activated. Here we do refer to two main alternative. On the one hand, soft governance could integrate the principle of transferability in the set of guidelines to propose to Member States. The Open Method of Co-ordination in the field of social protection and social inclusion policies could represent an instrument. On the other hand, social partners may want to develop the European social dialogue: non binding agreements (e.g. code of conducts) could represent an important step forwards in implementing the principle of transferability of social security rights. The latter alternative seems much more difficult to be implemented due to the persistent divergence between social partners.

The principle-based approach seems very much coherent with the defence of subsidiarity many experts have confirmed to be a major limit to the EU action. This is the institutional objection to the adoption of a Portability Directive ([70]). As proved by the interviews, many stakeholders

69. Interview with EFRP representatives (Brussels, 12/05/2011): 'the European Parliament has also advocated to make this kind of matrix (a coherent map of different pension schemes in the Member States) (...) the Parliament is really calling for that. This is the groundwork that has to be done before any initiative to be taken'.
    Interview with Danish representative of Pension Funds Association (Copenhagen, 15/05/2011), 'I think as long as we have such big differences on how social systems are organized, it's difficult to see one model that will fit all different national systems, it's difficult to transfer from DC to DB, and what about different vesting periods, different treatments of dormant rights… I think you have a very uneven ground but you want to put something even on top of it, it's very difficult'.
70. This is quite evident in the summary of the legislative process that conducted to the failure of the proposed Portability Directive in 2005, see Mabbett (2009).

(especially employers and trade unions) still share the view that national social and labour legislation have to be safeguarded, as well as the role of social partners.

References

AEIP (2010), AEIP's Reaction to the Green Paper Towards Adequate, Sustainable and Safe European Pension Systems, COM (2010) 365/3. European Association of Paritarian Institutions of Social Protection, Brussels.

Anderson K. M. (2007), The Netherlands: Political Competition in a Proportional System. In The Handbook of West European Pension Politics, edited by E. M. Immergut, K. M. Anderson and I. Schulze. Oxford and New York: Oxford University Press.

Angelaki, M. and Natali D. (2011), Pension Policy in Europe after the crisis: EU developments and national reforms. In *Social developments in the EU,* edited by C. Degryse and D. Natali. Brussels, ETUI/OSE, forthcoming.

Antolín, P., and Whitehouse, E. (2009), Filling the Pension Gap: Coverage and Value of Voluntary Retirement Savings, OECD Social, Employment and Migration Working Papers No. 69. Paris: Organisation for Economic Co-operation and Development.

Bonker, F. (2005), Changing Ideas on Pensions: Accounting for differences in the spread of the multi-pillar paradigm in five EU social insurance countries. In *Ideas and Welfare State Reform in Western Europe*, edited by P. Taylor-Gooby. Basingstoke and New York, Palgrave MacMillan.

Bonoli G. (2003), Two Worlds of Pension Reform in Western Europe. Comparative Politics, July, 2003, pp. 399-416.

CEC (1997), *Supplementary pensions in the sSingle market. Green Paper*, COM(1997) 283.

CEC (2001), Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, The elimination of tax obstacles to the cross-border provision of occupational pensions, COM(2001) 214.

CEC (2005), *Annex to the Proposal for a Directive of the European Parliament and the Council on the Improvement of Portability of Supplementary Pension Rights*, SEC(2005)1293, Brussels.

CEC (2005a), *Proposal for a Directive of the European Parliament and the Council on the improvement of portability of supplementary pension rights,* COM(2005) 507.

CEC (2005b), *Commission staff working document - Annex to the "Proposal for a Directive of the European Parliament and the Council on the improvement of portability of supplementary pension rights",* (COM(2005)507), SEC/2005/1293.

CEC (2007), *Amended proposal for a Directive of the European Parliament and of the Council on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights*, COM(2007) 603.

CEC (2010a), Green Paper: Towards Adequate, Sustainable and Safe European Pension Systems, COM (2010) 365 final, Brussels, 07 July 2010.

CEC (2010b), *EU Legislation, Coverage and Related Initiatives, Accompanying Document to the Green Paper: Towards Adequate, Sustainable and Safe European Pension Systems,* COM(2010) 830 final, Brussels, 07 July 2010.

CEC (2010c), EU Legislation, Coverage and Related Initiatives, Accompanying Document to the Green Paper: Towards Adequate, Sustainable and Safe European Pension Systems, COM(2010) 830 final, Brussels, 07 July 2010.

CEIOPS (2008), Initial review of key aspects of the implementation of IORP directive, CEIOPS-OP-03-08 (final), 31 March 2008.

CEIOPS (2010), "Report on Market Developments", CEIOPS 56/10, 24 June 2010. Frankfurt: Committee of European Insurance and Occupational Pensions Supervisors.

Cornelissen, R. (2009), "50 years of European social security coordination", *European Journal of Social Security*, Volume 11(2009), Nos. 1-2, pp. 9-46.

Council of the European Communities (1968), Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257, 19 October 1968, pp.2-12.

Council of the European Communities (1971), Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 149, 5 July 1971, p.1.

Council of the European Union (1998), *Directive (EC) No 98/49 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community*, 29 June 1998, OJ L 209, 25 July 1998, pp. 46-49.

Ebbinghaus B and Wiss, T. (2011), The governance and regulation of private pensions in Europe, in *The Varieties of Pension Governance in Europe*, edited by B. Ebbinghaus. Oxford, Oxford University Press.

Ebbinghaus B. (2011), Introduction. Studying Pension Privatisation in Europe, in *The Varieties of Pension Governance in Europe*, edited by B. Ebbinghaus. Oxford, Oxford University Press.

EFRP (2010), *EFRP Response – EC Green Paper on the Future of Pensions in the EU.* European Federation for Retirement Provision, Brussels.

EFRP. 2009a, Annual Report. EFRP 2008. Brussels: European Federation for Retirement Provision.

EFRP. 2009b, *Press Statement. Tax Discrimination of Foreign Pension Funds. European Commission and Courts' Decision are Producing Tangible Results*. Brussels: European Federation for Retirement Provision.

EPC, (2009), The 2009 Ageing Report: Economic and Budgetary Projections for the EU-27 Member States (2008-2060). Brussels: Joint Report prepared by the European Commission (DG ECFIN) and the Economic Policy Committee (AWG), European Economy February 2009.

Ernst & Young. (2009), *Pan-European Pension Funds in a Future World*. Amsterdam: Ernst & Young Partner Financial Services.

Esposito, M. and Mum, D. (2004), Pension funds in the European debate and within the multilevel decision-making of the European Union, ETUI, Discussion and Working Papers 02 February 2004.

European Commission (2001), Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, The elimination of tax obstacles to the cross-border provision of occupational pensions, COM(2001) 214.

European Parliament (2011), *European Parliament Resolution of 16 February 2011 on 'Towards Adequate, Sustainable and Safe European Pension Systems'*, (2010/2239(INI)), Brussels, European Parliament.

European Parliament and Council (2004), Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security, OJ L 166, 30 April 2004, pp. 1-123.

European Parliament and Council (2009), Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security, OJ L 284, 30 October 2009, p.1.

European Parliament and of the Council of (3 June 2003), Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, OJ L 235 , 23 September 2003, pp. 10 – 21.

Federation of Dutch Pension Funds (2011), Supplementary Pensions for Researchers Pragmatic Solutions to Remove the Obstacles. Amsterdam: mimeo.

Ghailani, D. (2011), *Gaps of EU Legislation on the Coordination of pensions: Key issues*, 6th Deliverable for the project 'Scope of coordination in the pension field', DG Employment and Social Affairs.

Góra, M. and Palmer, E. (2004), Shifting Perspectives in Pensions. *IZA Discussion Paper*, No.1369, Institute for the Study of Labor, Bonn, October 2004.

Green-Pedersen, C. and Lindbom, A. (2006), Politics within Paths: Trajectories of Danish and Swedish Earnings-Related Pensions. *Journal of European Social Policy*, 16/3, pp. 245-258.

Guardiancich, I. (2010), The Interaction between Pension Privatization and Individualization in Europe, paper prepared for the SPF-Social Ssecurity, Belgian Government, www.ose.be.

Guardiancich, I. (2011), Pan-European Pension Funds: Current Situation and Future Prospects. *International Social Security Review* 64 (1): pp. 15-36.

Guardiancich, I., Ferrera, M. and Jessoula M. (2011), *A Road towards Pan-European Pension Funds?* Florence: mimeo.

Hemerijck, A. (2006), Recalibrating Europe's Semi-sovereign Welfare States. *WZB Discussion paper*, No.06/103, Social Science Research Centre, Berlin.

Hennion, S., le Barbier-Le Bris, M. and Del sol, M. (2010), "La protection sociale de la mobilité au sein de l'Union européenne", in *Droit social européen et international*, Presses universitaires de France, Paris.

Hewitt Associates. (2007), *Quantitative Overview on Supplementary Pension Provision. Final Report prepared for the European Commission, DG EMPL.* Brussels: Hewitt Associates.

Hewitt Associates (2010), Feasibility Study for Creating an EU Pension Fund for Researchers. Prepared for the European Commission Research Directorate-General. Final Report. Brussels.

Holzmann, R, and Koettl, J. (2010), Portability of Pensions, Health and other Benefits: Facts, Concepts, Issues, paper prepared for the Guidance Workshop on Establishing Portability: State of the Art, Key Issues and Next Steps, Marseille Center for Mediterranean Integration, Marseille, March 10th, 2010.

Holzmann, R. and Hinz, R. (2005), Old age income support in the 21st Century: An International Perspective on Pension Systems and Reform, Washington D.C., tThe World Bank.

Holzmann, R., Hinz, R. and Dorfman, M. (2008), Pension Systems and Reform Conceptual Framework, Social Protection and Labour Discussion Paper, Washington D.C., the World Bank.

Holzmann, R., Koettl, J. and Chernetsky, T. (2005), Portability Regimes of Pensions and Health Care Benefits for International Migrants: An analysis of issues and good practices, paper prepared for the global commission on International Migration, www.gcim.org.

http://www.slaughterandmay.com/media/1526010/pe-update-pensions-bulletin-17-mar-2011.pdf.

ILO (1990), *Coordination of Supplementary Social Security Schemes*, Note by the ILO for the Administrative Commission of the European Communities on Social Security for Migrant Workers, V/829/90-EN. European Communities, Brussels.

Immergut E. M. and Anderson K. M. (2007), Editors' Introduction: The Dynamics of Pension Politics. In The Handbook of West European Pension Politics, edited by E. M. Immergut, K. M. Anderson and I. Schulze. Oxford and New York: Oxford University Press.

ISG. (2009), Updates of Current and Prospective Theoretical Replacement Rates 2006-2046. Brussels: Indicator Sub-Group (ISG) of the Social Protection Committee (SPC) of the Directorate-General for Employment, Social Affairs and Equal Opportunities.

Jochem, S. (2007), "Contemporary Pension Reforms: Beyond Path Dependency?", in Clasen, J. and Siegel, N. (eds.), Comparative Analysis of Welfare Reforms: The Dependent Variable Problem, Edward Elgar Publishing, Cheltenham, pp. 261-280.

Jorens, Y. and Van Overmeiren, O. (2009), "General Principles of Coordination in Regulation 883/2004", *European Journal of Social Security,* Volume 11 (2009), Nos. 1-2, pp. 47-79.

Kalogeropoulou, K. (2006), "Improving the Portability of Supplementary Pension Rights", *Journal of Social Welfare and Family Law*, Vol. 28, No 1, Mmarch 2006, pp. 95-104.

Kessler, F. (2000), National Report France, European Observatory on Social Security for Migrant Workers, November 2000.

Korpi, W. and Palme, J. (1998), "The Paradox of Redistribution and Strategies of Equality: Welfare State Institutions, Inequality and Poverty in the Western Countries", Working paper series, No.1998/174, Luxembourg Income Study.

Le Barbier-Le Bris, M. (2006), "La portabilité des droits à pension complémentaire", *La Semaine Juridique Entreprise et Affaires*, No 46, 16 November 2006, 2648.

Leibfried, S. (2005), "Social Policy Left to the Judges and the Market?", in Wallace, H., Wallace, W. and Pollak, M. (eds.), Policy-making in the European Union, Oxford University Press, Oxford, pp.243-278.

Leppik, L. (2006), "Coordination of Pensions in the European Union", *European Journal of Social Securit*y, Volume 8 (2006), No 1, pp. 35-55.

Mabbett, D. (2009), "Supplementary Pensions between Social Policy and Social Regulation", *West European Politics*, Volume 32, No 4, pp. 774-791.

Mauclaire, M. (2004), "L'évolution de la réglementation et de la jurisprudence européennes en matière de retraite", *Questions Retraite,* No. 65, September 2004, pp. 1-28.

Mavridis, P. (2003), *La Sécurité sociale à l'Epreuve de l'Intégration Européenne. Etude d'une confrontation entre libertés du marché et droits fondamentaux,* Brussels, Bruylant.

Meyer, T. and Bridgen, P. (2007), Private Pensions versus Social Inclusion? Citizens at Risk and the New Pensions Orthodoxy. In Private Pensions versus Social Inclusion? Non-State Provision for Citizens at Risk in Europe, edited by T. Meyer, P. Bridgen and B. Riedmüller. Cheltenham, UK and Northampton, MA: Edward Elgar, pp. 3-43.

Michas-Béguerie, S. (1998), *Régimes privés de retraites complémentaires. Perspectives comparatives et européennes*, Paris, LGDJ.

Müller, K. (2007), "The politics and outcomes of three-pillar pension reforms in Central and Eastern Europe", in C. Arza and M. Kohli (eds.) Pension Reform in Europe, Politics, policies and outcomes, London, Routledge, pp. 87-106.

Munz, R. (2008), Migration, Labour Markets, and the Integration of Migrants: An Overview for Europe, Social Protection and Labour Discussion Paper, n. 0807, Washington D.C., the World Bank.

Natali, D. (2008), *Pensions in Europe, European Pensions*. Brussels, PIE-Peter Lang.

Natali, D. (2010), The Lisbon Strategy, Europe 2020 and the crisis in between, in E. Marlier and D. Natali (eds.) with R. Van Dam, Europe 2020: Towards a more social EU?, Brussels, PIE-Peter Lang.

Natali, D. (2011), Old Age Security through Multi-Pillar Pension Systems: Lessons from the UK, in M. Jessoula and K. Hinrichs (eds.), forthcoming.

Natali, D. and Guardiancich, I. (2011), Pension Systems in the EU: Reform Trends and their New Architecture, first deliverable for the project 'Scope of coordination in the pension field', DG Employment and Social Affairs.

OECD (2005), *Private Pensions, OECD Classification and Glossary*. Paris: Organisation for Economic Co-operation and Development.

OECD (2009), Pension Systems at a Glance: Retirement-Income Systems in OECD Countries. Paris: Organisation for Economic Co-operation and Development.

OECD (2011), Pensions at a Glance: Retirement-Income Systems in OECD and G20 Countries. Paris: Organisation for Economic Co-operation and Development.

Oliver, E. (2009), "From portability to acquisition and preservation: the challenge of legislating in the area of supplementary pensions*", Journal of Social Welfare and Family Law*, Vol.31, No 2, June 2009, pp. 173-183.

Orenstein, M. (2003), Mapping the Diffusion of Pension Innovation, in R. Holzman, M. Orenstein, and M. Rutkowski, Pension Reform in Europe: Process and Progress, Washington D.C., tThe World Bank, pp. 171-193.

Palier, M. (2003), La réforme de retraite, Paris, Presse Universitaire de France.

Pennings, F. (2005), Inclusion and Exclusion of Persons and Benefits, in Spaventa E. and Dougan M. (eds.) *Social Welfare and EU Law,* Oxford-Portland, Hart Publishing.

Pennings, F. (2010), *European Social Security Law*, Antwerp-Oxford-Portland, Intersentia.

Rein, M. and Turner, J. (2004), 'How societies mix public and private spheres in their pension systems', in M. Rein and W. Schmahl (eds.), Rethinking the Welfare State. The Political Economy of Pension Reform, (Cheltenham, Edward Elgar, 2004), pp. 251-293.

Schonewille, P. (2003), "Disappearing Taxw Obstacles", *Investment and Pensions Europe*, July 2003.

Schonewille, P. (2007), "Pan-European pension moves a step nearer", *Investment and Pensions Europe*, March 2007, pp 28.

Slaughter and May (2011), *Pensions and Employment: Pensions Bulletin*, Issue 04, 17 March 2011,

SPC (2005), Privately Managed Pension Provision, Report for the Social Protection Committee. European Commission, Brussels.

SPC, (2008), Privately Managed Funded Pension Provision and their Contribution to Adequate and Sustainable Pensions, Report for the Social Protection Committee, European Commission, Brussels.

Steinmeyer, H.-D, (2001), "Complementary Social Provisions and Mobility of Workers: "Status questions" in Comparative and European Law", presented at the 6th International Colloquium - European Insurance Law, Brussels, December 19th and 20th.

Stevens, Y. (2011), Social Protection and Social Inclusion in the EU: interactions between policy and law. The case of pensions - legal part, text written for the expert seminar of February 2011.

Van Raepenbush, S. (2001), *La sécurité sociale des travailleurs européens. Principes directeurs et grands arrêts de la Cour de justice des Communautés européennes*, Brussels, De Boeck.

Verreth, K. and Van Buggenhout, B. (2001), "Pensions complémentaires: où reste l'Europe sociale ?", *Revue Belge de Sécurité Sociale*, No 4 2001, pp. 853-876.

Verschueren, H. (2009), "Regulation 883/2004 and Invalidity and Old-Age Pensions", *European Journal of Social Security,* Volume 11 (2009), Nos. 1-2, pp.143-162.

World Bank (1994), *Averting the Old-Age Crisis: Policies to Protect the Old and Promote Growth.* The World Bank, Washington D.C.

List of Cases

ECJ, 22 June 1972, *Frilli*, C-1/72, ECR I-457

ECJ, 16 December 1976, *Inzirillo*, C-63/76, ECR 1976, I-2057

ECJ, 31 March 1977, *Bozzone*, 87/76, ECR 1977, I-87

ECJ, 29 November 1977, *Beerens*, C-35/7, ECR 1977, I-2249

ECJ, 27 January 1981, *Vigier*, C-70/80, ECR 1981, I-229

ECJ, 29 November 1984, *Weber*, C-181/83, ECR 1984, I-4007

ECJ, 28 March 1985, *Commission v Kingdom of Belgium*, C-275/83, ECR I-1097

ECJ, 24 February 1987, *Giletti*, C-379/85, ECR 1987, I-955

ECJ, 7 June 1988, *Roviello*, C-20/85, ECR 1988, I-2805

ECJ, 4 October 1991 *Paraschi*, C-349/87, ECR 1991 I-4501

ECJ, 16 January 1992, *Commission v France*, C-57/90, ECR I-75

ECJ, 8 April 1992, *Commission v Kingdom of Belgium,* C-256/90, ECR I-531

ECJ, 30 March 1993, *De Wit*, C-282/91, ECR I-1238

ECJ, 20 February 1997, *Martinez Losada*, C-88/95, ECR 1997, I-869

ECJ, 4 November 1997, *Snares*, C-20/96, ECR 1997, I-6057

ECJ, 24 September 1998, *Commission v France*, C-35/97, ECR I-5325

ECJ, 26 January 1999, *Terhoeve,* C-18/95, ECR 1999, I-345

ECJ, 15 February 2000, *Commission v France*, C-34/98, ECR 2000, I-995

ECJ, 21 September 2000, *Borawitz*, C-124/99, ECR 2000, I-7293

ECJ, 15 June 2000, *Sehrer*, C-302/98, ECR I-4585

ECJ, 6 July 2000*, Movrin*, C-73/99, ECR 1999, I-5625

ECJ, 3 January 2002, *Danner*, C-136/00, ECR I-8147

ECJ, 7 February 2002, *Kauer,* C-28/00, ECR 2002, I-1343

ECJ, 18 April 2002, *Duchon,* C-290/00, ECR 2002, I-3567

ECJ, 26 June 2003, *Skandia*, C-422/01, ECR I-6817

ECJ, 8 July 2004, *Gaumain-Cerri*, C-502/01, ECR 2004, I-6483

ECJ, 16 September 2004, *Baldinger*, C-386/02, ECR 2004, I-8411

ECJ, 29 April 2004, *Skalka*, C-160/02, ECR 2002, I- 5613

ECJ, 28 April 2004, *Oztürk*, C-373/02, ECR 2004, I-3605

ECJ, 7 July 2005, *Van Pommeren-Bourgondiën,* C-227/03, ECR 2005, I-6101

ECJ, 30 January 2007, *Commission v Kingdom of Denmark*, C-150/04, ECR I-1163

ECJ, 5 July 2007, *Commission v Kingdom of Belgium*, C-522/04, ECR I-5701

ECJ, 18 December 2007, *Habelt, Möser and Wachter*, C-396/05, C-419/05, C-450/05, ECR 2007, I-1895

ECJ, *Casteels v British Airways*, C-379/09, 10 March 2011, not yet published.

ANNEX 1
SURVEY ON "SCOPE OF THE COORDINATION SYSTEM IN THE PENSION FIELD"

Introduction

The present annex provides a summary of the survey launched by the OSE in April 2011 and the main results collected so far.

Section one illustrates the text of the survey and the key questions we proposed to shed light on the state of the coordination system for pension rights.

Section two focuses on the answers provided so far. While few of them are written, tha major part have been collected through 'face to face' and/or telephone interviews. This has allowed us to receive more feedbacks from national and EU experts and stakeholders.

Some first indications can be advanced. First of all, it is quite evident that few persions (especially at the level of national administration and stakeholders) have the full knowledge of the problems related to the coordination of statutory and the portability of supplementary pension rights. In some of the countries covered by the survey, it has been particularly difficult to find the right person to ask the questions. Second, the major part of respondents thinks EU legislation for the coordination of statutory pension schemes is effective. Many think there is no need for a revision, even after the most recent round of reforms. The same is true for the coordination of pension rights of migrants through international and bilateral agreements: in many countries the state of these agreements is perceived to be effective (e.g. France, Denmark). There is also some part of the respondents stressing the transfer of pension rights deriving from fully-funded pension schemes does not represent a problem. As much as these schemes (especially DC ones) do not lead to redistribution and solidarity, they are not considered an obstacle for the free movement of workers.

Such a result may be interpreted through two different lenses. On the one hand, it thus seems that problems for the coordination of social security rights (and to some extent also for the transfer of supplementary pension rights) are no more an issue. On the other hand, such replies may represent a tactic argument to to avoid opening a debate on the possible advancements still to reach.

A further result is related to the limited application of the voluntary clause for the extention of the coordination regime to non-statutory schemes. It is evident from the respondents that such a mechanism does not represent an incentive for widening the coordination regime. It is the case, confirmed by French respondents, that France used the voluntary clause to safeguard the 'complementary' PAYG schemes from the market rules. This was much related to the peculiar institutional traits (and historical path) of the AGIRC ARCCO schemes and the broad consensus between the government and social partners. In other EU members, where such a consensus does not exist, or where major stakeholders have the opposite position (to safeguard the pension funds' exclusion from EU regulation), the clause has proved to be ineffective.

The second part of the survey is focused on the potential for a revision of the EU toolkit in the field. Major part of respondents has proved sceptical about the possibility to advance new instruments for a more effective coordination and a more coherent framework of rules. Some of the interviews clearly show the main problems of the actual debate. First, the national cleavage is still particularly strong. As stressed by the Nordic countries' representatives (as well as the Dutch ones), the cost of a more direct EU legislation is at the top of the preoccupation of these countries. The need to safeguard the financial sustainability of supplementary pension funds (and of employers) is the main reason for vetoing new proposals. The second reason for oppositing both the extention of EU coordination regime and the introduction of the more effective portability of supplementary schemes is related to the the limits of EU competencies on social and labour laws. Here we are at the core of the tension between EU integration and national sovereignity. The same reasoning concerns taxation and the lack of coordination in the field.

Second, the room for some improvement does consequently seem narrow. Constraints to the more active EU role in the are difficult to overcome. Political contrasts and the limited will of some actors to be involved in a true dialogue are huge blockages. These are the conflicts that led to the very limited scope of the Directive 98/43 and the failure of the proposed directive on the transferability of supplementary pension rights. Treaty-based attribution to the EU and the persistent role of nation states in the field are a further constraint. What is more, social dialogue does not seem easy to activate. As stressed by trade unions' representatives, European trade unions see very much hostility against any form of collective agreement in the field.

Three, respondents have shown broader consensus on some points. For some of the interviewees, the first problem seems to be the lack of a coherent EU pension matrix (that is the complete map of pension schemes in EU countries). Despite the first attempts (see Trees, CEIOPS) much has to be done for a better understanding of the variety of pension schemes in EU countries. This is also reflected in the need for a coherent typology of pension schemes across Europe. Another problem to be tackled has to do with to address the potential incoherence linked to the case of mandatory fully-funded schemes. These schemes are based on individual affiliation and share much of the technical aspects of private supplementary schemes. In particular, some of the interviewees have stressed mandatory funded schemes should be covered by specific legal rules. A further point to be stressed is the more open debate on the so-called (mainly voluntary) principle-based approach. Even those who have expressed their concerns against a more active EU role in the field of coordination and portability are open to some form of coordination of national rules. The latter should be consistent with subsidiarity and the need to grant large room for the autonomous action of the Member States. While respondents have been vague in their proposals, it seems two options can be followed: on the one hand, a new directive (or a new piece of legislation whatever its form) addressing the transferability/portability issue through very broad principles (in line with the example of the Directive 98/43); on the other the use of non-binding guidelines through soft modes of governance (we think the social protection and social inclusion OMC could be used in that respect). For the social partners, it seems much more difficult to activate European social dialogue (even through a non-binding form, e.g. code of conduct).

The results of the survey and of the larger number of interviews is referred to in the text of the report and has been largely integrated in the more analytical effort provided by the research team in the review of the EU legal framework, the recent pension reform trends in EU member states and the scientific effort for a typology of pension schemes to be used for the application of the EU legislation. The synoptic table does also refer to the results of the survey.

Coordination of Pension Schemes in the EU

Dear Colleague,

as you are probably aware, the Commission launched in 2010 a Green Paper towards Adequate, Sustainable and Safe European Pension Systems. Among others, the Green Paper reaffirms that the (limited) portability of social security rights within the European Union is a major obstacle to the free movement of workers and EU-citizens as mandated by Article 48 TFUE (ex Article 42 EC).

Neither the Regulation (EC) No 883/2004, nor existing EU prudential legislation (including the Directive 98/49/EC on safeguarding supplementary pension rights of a person moving within the EU, IORP, Life, UCITS, etc.) provide adequate solutions. Clearly one of the tasks of the Union is to bridge or fill in the gaps and inconsistencies in EU legislation dealing with the coordination of pension schemes and the portability of occupational pension rights.
The EU Commission has thus financed a research project on 'The Scope of Coordination in the field of Pensions', carried out by the European social observatory (OSE). One of the aims of this study is to assess the current (and rapidly changing) configuration of the European pension panorama in light of its impact on the free movement of workers, and to inform the ensuing White Paper on Pensions.

We are hence contacting you, as a recognized national expert, to provide a relatively comprehensive mapping of the relevant supplementary (statutory and/or non-statutory private) pension schemes in your country, as well as the outstanding issue regarding the coordination and portability of the pension rights emanating from these schemes at national and international levels.
If you wish to interrupt filling in the questionnaire, you can save your work and resume later on.

Your answers will only be used within the framework of research conducted by the European Social Observatory (OSE) on behalf of the EU Commission. The data you contribute will not be divulged to anyone outside the OSE.
We thank you very much for your time and effort.
Best wishes
Prof. Maurizio Ferrera
Prof. David Natali
Dr. DalilaGhailani
Dr. Igor Guardiancich
Dr. MatteoJessoula

The questionnaire is divided into two parts.
Part 1 asks you to give a concise account of the characteristics and coverage of EU legislation with respect to the main non-statutory schemes in your country, as well as to concisely enumerate recent developments in legislation and eventual problems in applying existing EU laws.

Part 2 is entirely about your national schemes' coordination. Here we ask you to provide an account of existing rules for the coordination of pension rights at national level and international levels (through bi- or multi-lateral agreements). Finally we ask for your opinion, as an expert in the field, as for the best ways to extend the coordination of your national schemes to the European level.

We thank you very much for your collaboration and precious feedback.

There are 96 questions in this survey

Part I – Mapping the state of affairs

- **1 [Q1]**

Please indicate if there were any problems in applying EC legislation to your pension systems. In particular, please point out whether any particular schemes defied identification and why.
Please write your answer here:

- **2 [Character]**

Please indicate if in your country there have been any problems in applying EC legislation for the coordination of pensions to your pension systems. Please point out whether any particular schemes defied identification and provide the following details on these schemes.

- **3 [Q2Name]**

Please indicate the name(s) of the scheme:
Please write your answer(s) here:
- Original
- English translation (if available)

- **4 [Q3Nature]**

Nature of the scheme:
Please choose only one of the following:
- Statutory
- Supplementary
- Other

- **5 [Q3bis]**

Since this scheme is supplementary, please indicate if:
Please choose only one of the following:
- It is attached to eligibility/fruition conditions set out for statutory schemes (e.g. you would still consider it as part of the basic social security system)
- It is independent from statutory social security (supplementary proper)

Make a comment on your choice here:

- **6 [Q4Legal]**

Legal origin:
Please choose only one of the following:
- Legislative (so mandated by law)
- Agreement-based scheme (collective bargaining between employers and employees)
- Contract-based scheme (initiative of employers stipulating a contract with their employees)
- Do not know/other

- **7 [Q5ScopeI]**

Scope of application (affiliation):
Please choose only one of the following:
- Mandatory
- Voluntary
- Do not know/other

- **8 [Q5bis]**

Since the scheme is mandatory, please give a description of how this is done – mandated by law, extended though decree (e.g. intra-sectoral schemes):
Please write your answer here:

- **9 [Q5ter]**

Since the scheme is voluntary, please describe whether there are opt-out (auto-enrolment) or opt-in (minimum requirements) mechanisms:
Please write your answer here:

- **10 [Q6ScopeII]**

Scope of application (extension of occupational schemes). Please indicate, which sector(s) are encompassed.
Please choose only one of the following:
  - Firm-based
  - Sectoral
  - Intra-sectoral

Make a comment on your choice here:

- **11 [Q7ScopeIII]**

Please indicate which categories are covered. Please provide any relevant details.
Please choose all that apply and provide a comment:
  - Private employees
  - Public employees
  - Self-employed
  - Special categories of workers (e.g. jobs under unhealthy conditions)
  - Other:

- **12 [Q8Benefits]**

Please indicate, which type of benefits are covered:
Please choose all that apply:
  - Old-age
  - Pre-retirement
  - Disability
  - Survivor
  - Death grants
  - Maternity/paternity
  - Family benefits
  - Accidents at work
  - Occupational diseases
  - Sickness
  - Unemployment
  - Other:

- **13 [Q9LegalI]**

Please indicate the legal form (book reserve, autonomous fund):
Please write your answer here:

- **14 [Q10LegalII]**

Please indicate the financing mechanism:
Please choose only one of the following:
  - Pay-As-You-Go
  - Advance funding
  - Other

- **15 [Q11Europe]**

European legislation covering the scheme:
Please choose all that apply and provide a comment:
  - Regulations 883/2004 and 987/2009
  - Directive 98/49/EC (safeguarding supplementary pension rights)
  - Directive 2003/41/EC (IORP)
  - Directive 2002/83/EC (Life)
  - Directive 85/611/EEC (UCITS)
  - Directive 2006/48/EC (Banking)
  - Directive 2004/39/EC (MiFID)
  - None of the above
  - Other:

- **16-85** are omitted, because [The questions get repeated for as many as 6 different schemes]

- **86 [Develop]**

Please indicate the latest legislative developments in your country, asked for in the following questions.

- **87 [Q12Novelty]**

Please indicate which legislative developments during the last 20 years most modified the pension panorama in your country:
Please choose all that apply and provide a comment:

- Introduction of new type of schemes
- Changing nature/extension of existing schemes
- Fundamental changes in the legal/technical characteristics of existing schemes (e.g. from DB to DC, from PAYG to funding)
- Other:

- **88 [Q13Foresee]**

Foreseeable problems with the interaction of EC legislation and these new developments. Please give a short description.
Please write your answer here:

Part II – Coordination mechanisms

- **89 [Q14Volunt]**

Voluntary approach:
If Regulations 883/2004 and 987/2009 could be applied on a voluntary basis and have not been, please give an interpretation of the reasons.
Please write your answer here:

With respect to the 'voluntary approach contained in Regulation 883/2004', we mean the possibility of voluntarily extending the coordination regime to non-statutory schemes (e.g. AGIRC and ARRCO in France).

- **90 [Q15National]**

National coordination:
With regards to the schemes not covered by Regulations 883/2004 and 987/2009 is there any national coordination regime, above and beyond the safeguards guaranteed by Directive 98/49/EC?
Please choose only one of the following:

- Yes
- No

Make a comment on your choice here:

- **91 [Q15bis]**

Since there is a national coordination approach, what are its main provisions regarding:
Only answer this question if the following conditions are met:

Please choose all that apply and provide a comment:

- Equal treatment of nationals and foreigners
- Preserving rights conferring immediate entitlement with the provision of corresponding benefits abroad
- Preserving rights conferring prospective entitlement
- Other:

- **92 [Q16Inter]**

International coordination:
With regards to the schemes not covered by Regulations 883/2004 and 987/2009 are there any bilateral or multilateral coordination agreements with other EU/EEA countries?
Please choose only one of the following:
- Yes
- No

Make a comment on your choice here:

- **93 [Q16bis]**

Since there are international bi- or multilateral agreements, what are their main provisions regarding:
Please choose all that apply and provide a comment:
- Equal treatment of nationals and foreigners
- Preserving rights conferring immediate entitlement with the provision of corresponding benefits abroad
- Preserving rights conferring prospective entitlement
- Other:

- **94 [Q17Passage]**

EU legislation:

Have you experienced any problems in the passage from Regulation 1408/71/EEC to Regulation 883/2004?

Is there any issue unsolved under Regulation 1408/71 that remained unsolved under Regulation 883/2004?

Please comment.
Please write your answer here:

- **95 [Q18ExtendI]**

Instruments to extend coordination (I):

Which of the following you think are the best instruments to extend coordination of social security schemes outside the scope of Regulations 883/2004 and 987/2009?

Please provide a short explanation of your motives.
Please choose all that apply and provide a comment:
- The existing voluntary approach contained in Regulation 883/2004
- A new regulation encompassing also the schemes that are not mandated by law
- A new directive that covers agreement-based and/or contract-based schemes beyond the scope of Regulations 883/2004 and 987/2009?
- EU-wide collective agreements covering agreement-based schemes and a new directive covering contract-based schemes
- Other:

With respect to the 'voluntary approach contained in Regulation 883/2004', we mean the possibility of voluntarily extending the coordination regime to non-statutory schemes (e.g. AGIRC and ARRCO in France).

- **96 [Q19ExtendII]**

Instruments to extend coordination (II):

In order to solve the problems of aggregation of funded schemes with other funded or PAYG schemes what solution would you envisage

Please provide a short explanation of your motives.
Please choose all that apply and provide a comment:
- Transfer of capital from one Member State to the other
- No transfer of capital, and national agencies monitoring the payments from various schemes
- Other solutions

- Other:

Dear colleague,

You successfully completed the survey.
We thank you very much for your time and effort.
Best wishes

Prof. Maurizio Ferrera
Prof. David Natali
Dr. DalilaGhailani
Dr. Igor Guardiancich
Dr. MatteoJessoula

REPLIES AND INTERVIEWS TO NATIONAL EXPERTS

AEIP, Belgium

CBFA, Belgium

EFRP, Belgium

Czech Association of Pension Funds, Czech Republic

Forsikring and Pensions, Denmark

DSP, Ireland

Federation of Dutch Pension Funds, Netherlands

ZUS, Poland

MoLFSA (1), Slovenia

MoLFSA(2), Slovenia

ETUC

Finland

European Commission

French Ministry of Health and Solidarities, France

AEIP
Belgium

(1 April 2011)

What do you think of Regulation 883/2004 and its material scope, and of the possibility of extending it to interstitial funds? Would you suggest to create a new Directive to improve the coordination/portability of these schemes, or do you see other opportunities for the EU to achieve a similar goal?	With respect to 883/2004, this Regulation was thought mainly for PAYG systems (historically). We don't have problems with AGIRC and ARRCO being coordinated herewith, but we have problems in seeing FF schemes within this Regulation. I'm pretty sure that DG Social Affairs is trying to coordinate FF regimes, because 883 isn't adequate as it is now. FF regimes, which could be coordinated and could be like basic/statutory schemes – either because mandated by law or because they are extended to many people through collective agreements. Here we have a problem of subsidiarity of MS. Some FF regimes in Scandinavia – ATP in DK – or the FF regimes in CEE (SK, HU, PL), although FF they are part of their social security system. Even though these regimes aren't technically well placed within 883 they should be coordinated, because they are part of the public social security system. We can't and even not the EU can say why the other regimes, FF like the one in NL, which are very diffused due to collective agreements, are not considered by NL as part of the basic, social security regime. These are problems of subsidiarity, I don't think that the EU can oblige them to coordinate them as if they were public schemes. AGIRC and ARRCO are born and considered as private regimes, but upon the decision of the FR govt and with the agreement of AGIRC and ARRCO, they asked to be coordinated within the social security regimes. It is actually simple, because they are PAYG systems.
What is the main motive for this choice: to guarantee to FR citizens who migrate to another MS or to guarantee the foreigners who were included into these regimes?	I honestly think that this was put into place to guarantee the functioning of the regimes. Theoretically they could have been uncoordinated. But this was not conceivable, because there is a problem of the rights of FR citizens. This is mandated to pay a contribution to these schemes, it's impossible that he emigrates and then doesn't get paid. If there weren't the possibility to coordinate them, within 1408 and 883, these regimes would have been considered as what? Pension funds? No, because pension funds are not PAYG. There was a void. So there would have been no collocation for them within the IORP Directive, and they are de facto social regimes, which have nothing to do with competition and market logics of cross-border activities etc. Hence, their natural place was to be assimilated to social security regimes, even though they have the peculiarity of being managed and created by social partners. Hence, here again is the subsidiarity that counts: the FR govt and the social partners decide to coordinate these regimes into 883. Hence, the EU acknowledges this and collocates them within the list of coordinated regimes. Since they are assimilated to social security regimes, they do not enter a market logic.
What is the main problem with FF regimes… is there some study that demonstrates that they are not adequate for the coordination regimes?	That's in my opinion the main problem. Historically it was easy: the 1st pillar was PAYG and coordinated; the 2nd pillar was either agreed with social partners or not but was FF and was covered with the various Directives (especially IORP), eventually of the Portability Directive etc. But now there is such confusion. CEE regimes are FF, they are privately managed, but they are considered as social security regimes by the individual states – as the new generations are obliged to pay social security contributions. So how to collocate them? These regimes don't want to apply the IORP Directive, and I understand why. These are public regimes and want to keep some guarantees. The problem is that they are privately managed and hence don't have

	these great public guarantees: if there's a crisis, insolvency etc it's a problem of the insured. In a public regime there are greater guarantees. Probably, what we think, is that for these regimes we should create a third way: new legislation that should coordinate (call it as you wish, because there are many options at present) and cover those FF regimes, which are part of the public system (de facto). This would be then be valid for: Scandinavian countries and CEE. Or, alternatively, create an Annex to 883, which is dedicated to manage the coordination of these FF schemes.
Do you think there are any possibilities of creating an Annex to 883 to include FF regimes, which could include also the funds that are FF and are extended (not by law) and are quasi-universal?	No, there's the problem of subsidiarity. If PL tells to the Commission that their FF regimes are part of the coordination regimes, then the Commission must take this into account and insert FF regimes in PL and include them to an Annex of 883 or a new ad hoc instrument. But if NL govt says my mandatory professional regimes are not part of NL social security, the Commission cannot coordinate them anyway within 883 and similar instruments. Even if you're right because they are almost mandatory and very extended. But if NL says that they aren't part of social security, the EU can't impose the coordination. Another aspect: an ad hoc instrument for FF is not only FF vis-à-vis another FF (like PL and SE, which may work), but also the problem of coordinating the PL FF system with a GE PAYG system, which doesn't have a funded component.
Is there any solution for these passages PAYG-FF in coordination in other contexts?	From what I know, the money of a PL worker, which has paid a sum to a FF regime, will be congealed there in another MS, and only when he will ask for the benefits, this will be given to him + interests and dividends. There is no real coordination, you simply freeze them there. I don't think that then they are paid by the MS where you live, I think you have to fetch them in the country of origin. It's obvious that there is no transferability of capital, but there is also no coordination whatsoever. For example if it's denominated in another currency, it's possible that with inflation-based revaluation, that money after many years is absolutely worthless. The acquired rights should be portable… this part is not well legislated.
In practice there should be a Portability directive also for these regimes?	Well there could be within this new coordination of FF regimes (considered as social security) also insertion of some portability issue. This should be negotiated between MS but a new instrument is absolutely necessary. (confidential) Absolutely we say we need an ad hoc instrument: either an 883 Annex for these FF schemes of social security or another instrument, a new Directive just for FF regimes etc. The other question, the Portability of FF that aren't social security regimes. With respect to these we are cautious, because there are many technical problems. We are absolutely in favour of an instrument that recognizes acquired rights and that allows workers not to be sacrificed when they leave a fund, when they move inbto another MS. We are completely against the transferability fo capital, especially for DB schemes it's very complicated (due to solidarity clauses). We are in favour to voluntary solutions, where the funds among themselves find some solutions. This happens in the US: paradoxically for us Europeans, they are much less advanced than us. Between State there is no federal law that induces coordination/portability; hence, all the arrangements are based on bilateral agreements between funds. When a worker moves between sectors or States, they have probably good techniques, but there is no mandatory imposed federal law, which says that they should transfer the capital etc. It's all based on agreements.

	Hence, for Europe the social partners could play a greater role. Social partners (unions and employers in IT could find an agreement with other social partners in other countries): These could be Europe-wide agreements that are conducted through social dialogue at European level, since we represent "parithetic" institutions.
So having a framework agreement or the implementation of a Directive on behalf of the social partners?	A non voluntary and non agreed within social partners, if there were an European instrument, an initiative of the Commission, we should be cautious. Transferability is too difficult and not really possible. We can't be against the Commission finding a law instrument to guarantee the rights of workers that move across the EU, we know that. We were very critical against the Portability Directive – the first one was already proposing transferability, the second was amended and mediated which was more acceptable. So the main problems are: i) very different vesting periods – either we have very long transition periods to adapt all pension funds to the coordinated vesting periods as it is very complicated (I'm telling you this, because we represent the finds and they are telling us these problems); ii) in addition the Directive tried to impose criteria to index the acquired rights, it was giving 3-4 options, but it was telling to index them in a certain way. Even this is a bit messy. There are countries, such as NL, where indexation depends on economic performance. During the crisis, the social partners and representatives of pensioners as well and they agree that during the crisis, they won't index benefits. In this case, this should be maintained. At the level of collective responsibility everyone makes an effort also not to decrease the benefits for younger cohorts who are paying into the fund. So also pensioners accept not to have their benefits increased. We also gave a question in our response to the Green Paper. Portability and EU legislation would have strong juridical valence in the case it regulates all those situations which are cross-border. However, the Commission gave a vague response in the Green Paper on something we think it's much more complicated also juridically, that is the portability (or coordination) has to be applied also within the MS. In this case, it is questionable the principle of subsidiarity. The EU promotes the free movement of labour across MS, however, the Commission we're not that sure that it can impose to me the same rules within a MS: There's a great quantitative problem: the citizens moving across the EU are few, only 3 per cent. Imagine, if there were a system of transferring capital, which is really problematic, but only for 3% of workers, in practice there would be few impacts on pension funds. But if you impose this to the whole movement of workers, i.e. also within a country, then this would be a mess. This is the mess that motivated MS to say: never and block the transferability within the Portability Directive. Hence, in the Green Paper, the Commission says that internal portability is 'impractical'… hence, we at the same time to mock them we used the same term for transferability (impractical) as they use it for internal portability.
What about the White Paper, this should actually do something about portability?	The two things they will start doing something on, independently of the White Paper, will be the new IORP Directive and that one should be published in December, especially for what concerns solvency. This will be done before, they won't wait for the replies to the Green/White Paper. They are already working on it. Additionally, they will focus on this new portability, which I don't how they are going to call it and what's going to contain. I think they are already working on it, for example DG Employment. And also on this one they work on it irrespectively of the White Paper. They are advancing faster and independently form the replies.

CBFA
Belgium

(4 May 2011)

Given the failure of the Portability directive, are there any particular problems in Belgium with the application of the Regulation 883/2004 and in the passage from the 1408/71?	We collaborated a lot on the Portability Directive and the "non-result" of that. Belgian legislation is well placed to give a quick solution to that problem. Other countries have problems of vesting periods, calculation of vested rights etc …there is a problem of coordinating portability of pension rights from country to country. But in Belgium we have in our social and labour law which arranges the occupational pension, provisions establishing how you should calculate vested rights, and so on…for instance there is one year of vesting period and a precise way to calculate supplementary pensions. There is not an issue on whether it is necessary to create a cross-border portability for Belgian pension rights…and even in our legislation, in the social and labor law, it is established that when you leave your work and go somewhere else, even out of Europe, you can take your money with you, and legislation says how much you can take with you…you can leave it or take it with you.
When people move within Belgium is there a sort of national coordination from one occupational scheme to the other?	We don't have particular problems. We make a distinction between social and labour law and pensions institutions, and we have different pension institutions, there are two social insurance companies and pension funds. So the transfer between pensions institutions (insurance companies and pension funds) is arranged according to our social law. And both have to accept the money coming from other institutions. There is transferability of capital, but with some limitations: if you enter your career in a company with a pensions institution and then you switch to another one, for example, at that moment the old company has to inform the worker who is leaving that he has X amount at his disposal and that he has three choices: he can leave his money in the old pension institution, he can take it to the new employer, who has to accept the money, or he can choose a special kind of pension vehicle with special conditions. So it's up to his choice, but let's say he can receive the money until the age of 60.
Have you experienced any problem with third countries within the EU, is there any bilateral agreement or does it go on a fund-to-fund basis?	We have social and labour law saying that you can take your money with you to another country, there is no limitation except the European Economic Area, of course, but within the EEA you can take your money with no problem. Only the fiscal area is a bit of problematic, because we have this EET system, tax on exit and our taxation authority says when money leaves Belgium we tax it.
What happens regarding the dormant money? Does it actually participate to the build-up of interests and dividends that the fund is being producing or not?	Yes, it has to have the same treatment of all the active pension members…of course there is one big element of discussion: when you leave you have your pension capital but you loose your coverage for death, and there is a discussion because you leave your money there but when you die it is gone, in many cases – certainly for DB plans, so there is the possibility in law where you can go even with your old employer to a special structure where there is death coverage…this eats up your reserves: it's not the old employer that pays, it is you paying, but that is also a possibility.
What would be in your opinion the best way of proceding for the European Commission in devising ways to improve the mobility of workers with respect to the portability of	Belgium was in favour of the portability directive, and I also think that we are a good example of how to arrange portability. For some countries one year may be a too short vesting period, and there also may be a discussion of the calculation of vested

supplementary schemes?	rights…so on the parameters you can have a discussion but I would say in our legislation there are the seeds for a good solution. The ECJ just made a decision about the case of people working in different countries for the British Airways, also in Germany…and the Germans, because of the lack of ten years of vesting periods there, were saying that there was no right accrued for supplementary pensions. I think this case is important because it is a breach in the German prohibition, autonomy…because ECJ stated that you do not have to calculate ten years working in Germany, but you have to calculate working period for the company in general, so even if it is shorter than ten years you have to give them pension rights for that period. So the next step is no discrimination for people working for different companies and for people working in multinationals. Maybe the ECJ will push Germany to let fall a little bit of the discussion on vesting periods, and that will count also for other countries. And thirdly I've heard that the Commission stated that for the Portability Directive it's not sure that you need to reach unanimity…qualified majority voting could be enough.

EFRP
Belgium

(5 May 2011)

Since only France has opted for voluntarily extended coordination of schemes, while the same is not true for other schemes very similar in nature, what would you suggest to extend coordination regimes to such schemes and what do you think are the main obstacles in this sense?	First, I do not understand why France decided to fall under the coordination, I do not understand what the coordination brings to them, to portability of pensions. If I understood it well, coordination means that the State keeps records for you and that whenever you get retired you ask to the member state where you are resident at the moment of retirement, to coordinate the payment of your pension. Then I do not see why private institutions, funded pensions should have such system because I do not see what it could bring to them. They would need to have registers and that is what we have advocated in our response to the Green Paper: first of all there must be groundwork done, and that is mapping the whole system. And also attaching to them registers at national level so that you know where your rights are and who is administering them. And now this is not possible, so the most evident solution to that until now has always been for the funded systems to advocate that they must be transferred. But also for transfers you need registers because you you need at least a comparative table, a matrix which tells you when you are in Belgium and you want to go to Italy and to transfer into which system and into which vehicle you can transfer, and the coordination would bring nothing to that. The logic of the coordination is that the rights stay where they are when you leave the job and you are paid out when you get retired. And I do not see what is the problem if assets stay where they are, whether it is a funded system or an unfunded system, a PAYG. You could also take the stance that funded systems should go out of the coordination.
Should the coordination encompass only PAYG systems as such, so that everything else is under some sort of portability regime, if that is even possible?	We would advocate coordination only for statutory pensions. That is fundamental, we need a three pillars system. And if you mix up everything, the result will be a mix-max, in the first pillar or what government say is a first pillar as France has done, and in our view it is totally wrong that AGIRC and ARRCO are in the coordination, because it is a second pillar scheme, organised by social partners, and it is secondary and supplementary to the state. If we re going to make coordination by putting everything or everybody that would be like to be there for some reason, then we will end up with some kind of coordination nobody knows anymore what is it there, and then you will have a private system where there will be no coordination possible…and possibly we can also work with registers there in the second pillar but then that has to be kept by institutions and not by governments… and the error I find that the Commission is always making is that they refuse to make the exercise to build really a framework where you can say "these are the characteristics of the first pillar", "these are the ones of the second pillar", "these are the characteristics of the third pillar" etc, because each of them has a policy objective, ultimately of course to delivery an adequate and good pension, but which is in its means and techniques different, and that's why we need three pillars…and I don't see how this coordination could solve portability in private pensions if the transfers are not possible...it is just because there is no real framework and that is a technical work of course but also there is some policy choice there. And the debate is not even not launched. The Commission wants to solve it to have results but it does not have the groundwork. There is this underlying idea that if transfers are not going to work perhaps we can use the coordination regulation and bring more institutions under the regulation. But I think the regulations should only be limited to

	first pillars and keep it purely the responsibility of the member states to keep that in order, because that is already a problem. And it is not by adding to it that it will improve…on the contrary it will become more complex.
In a framework with a clear distinction between pillars, would you put those funded schemes considered as being part of first pillar, like in Poland, into the second pillar?	Yes, at least the first year of the second pillar, because they have all economic characteristics of the second pillars. For the only reason that you cannot start a system in an economy which is very poor and with very low wages and not very developed companies, governments have decided it was not a completely foolish idea to take some social security contributions and to put them into pension vehicle… and in fact that was a privatization of part of the first pillar. But it is a dangerous situation, just imagine that you are in a cross-border situation with people that have been working in Hungary for ten years -where they have funded system in a mandatory scheme- and that then go to France or Belgium and work for another period…so Hungarians may say "we take the money back" and so those workers would lose the pension.
What do you see as the main failures of the 2005 and 2007 revision of the Portability Directive and what should be done to relaunch it, in addition to a proper mapping of the situation?	They have first to develop and to make sure that they have a clear framework of the three pillars, in which you say that in the first pillar there is no portability because there is no coordination. There is no portability there because you have to wait until you're 65 to get your pension, then you have a second a third pillar. In the third pillar you have individual savings and there you can develop very easily without any social and labour law interfering, some kind of pan-European scheme and that would be perfectly 100% portable and you can keep it in one member state and contribute from a different member state to that scheme…you can do that, it's easy but in the second pillar it will be more difficult because there is large diversity and a large ingredient of social and labour law…and the problem there, is that member states don't want to harmonize social and labour law…if they try to find some kind of agreement among member states that would be some kind of second pillar funded schemes with such and such and such characteristics and then this is seen as a EU compliance second pillar scheme…then it would be easier, but I don't think that that is even in the mind of anybody as member states don't want to harmonize social and labour law and that is the problem as long as there is no much more streamline of the system, then at least that is why at least a mapping of the system is necessary…because the Commission is overly focused on portability because it is very attractive for people that have been working in a country in the second pillar and want to take their money with them…but it is not really the best thing, it depends. And that is also why we have in our Green Paper response asked for a metrics and national registers so at least it is better registered and documented than now, to know in which system you are and in which system you are going…this is the first thing to do and then to go further… The Commission wants to harmonize social and labour law in terms of vesting periods…and if you want to do that then you have to go deeper, vesting periods for which kind of pension schemes? And that is the reason why we have always said that the Commission was putting the cart before the horse we think that should be reversed: first do the ground work, make the metrics, make the framework, establish the three pillars system and obtain agreements from member states where their respective systems belong to, and then you can start legislation for this kind of box in the framework and that kinf of box in the framework

Do you see any other major obstacles to reach some agreement on how funds should behave with each other when people are moving between them?	Yes, because for instance for AGIRC and ARRCO there are no transfers to be made and there is no portability…so for other member states that is not very fair and that will come out once you have made this comparative table, metrics…there will be another kind of debate…because now the debate is between these people, who are trying to put a rule on different systems that are put together just because they are funded systems…and the function that AGIRC and ARRCO have is a function of second pillars because if you make a sum of the two you will arrive to a very adequate pension level and anything above that in France is what I would call some kind of icing on the cake. So it is very difficult in such a situation to say that in other countries where there is no AGIRC and ARRCO type of provisions that they have to start in the second pillar building up a good bit of adequacy that is not there if you don't have a second funded pension. For that there is no easy solution, I think the best thing to start is to put it on papers and evidence, documents with the differences, to say for which kind of pension entitlements, or products you want to do something. If you look at second and third pillar you will already see that in the third pillar there is less resistance because you don't have to deal with social and labour law, and it's the social and labour law that makes it difficult…for example in the UK there is the compulsory indexation of the dormant rights...if you say that in Germany they would go mad. And that is the problem…and if member states would agree that there is some harmonization to be made in social and labour law, then you will have a new situation of course… because it is very strange that the Commission wants to harmonize some aspects of social labour law, namely those having to do with supplementary pensions, and not some other aspects of social labour law…why only those ones? That's also a legitimate questions….why not harmonization on salaries or on other aspects…? And I think the obstacles are the diversity, distances between the systems, the social and labour law and the refusal of member states but also of social partners, because in my view the management of the system by social partners is not a solution because they don't want to harmonize the social labour law neither, they are just on the same line as the member states. And then you have also for some countries a tax problem, because of transfers, what they qualify as an access contributions, and they tax it, and so on…so those are also some minor problems. Once you have the metrics and it is accepted by all member states that that is a second pillar scheme, that is a third pillar scheme, etc, and they have each different taxation in almost all member states, different taxation between second and third pillar…that is also another reason why you need this differentiation. You will be able to refer to this kind of regulation framework and I think this in the long term will have more result that any directive or whatever on funded schemes and portability because the scope of that will never be clear…

CZECH ASSOCIATION OF PENSION FUNDS
Czech Republic

(5 May 2011)

What kind of problems related to coordination and portability do you have in Czech Republic (and with relation to the application of Regulation 883/2004)?	My perception is that regulation, with respect to statutory schemes and if we have to look practically at portability of rights, is functioning well. Regarding the private sector, what I have to stress is that in the Czech Republic we have only a fifteen years history of pensions in the private sector, and the scheme is fully based on individual membership, no collective contract or agreements, since everybody who would like to join a private voluntary scheme (we have no mandatory schemes or second-pillar) can do that on a citizenship principle, and contributions collected are saved in individual funds. There is the possibility for employers to contribute as well for their employee in these individual accounts, they have fiscal incentives motivating them to do that. However the contract is individual between the person and the specific pension fund company. At the national level, the portability is absolute.
Regarding mobility and the vesting period: first, how long does a member have to be in a pension fund in order to acquire these rights? Secondly, if a member moves from one fund to another, what happens to the capital? Thirdly, if a member moves from one fund to another, or if he/she stops contributing in a pension fund, what happens to the dormant capital of a person who is no longer contributing?	1)The first answer is 12 months, one year. After this period, the fund is obliged to give back the surrender value (surrender possibility, if a person decides to stop contributing in a voluntary pension fund) without the so-called state contributions, which have to be returned back to the State. 2)The same happens in the case of a switch to another pension fund: the capital, including state contributions, will be fully transferred to the new pension fund. This happens automatically. You can also be insured in two funds at the same time, but with state contributions only in one fund. State contributions are basically subsidies from the state to your own contributions, your savings, and it's purely individual. Employers have other types of incentives, like tax deductions. And since the structure of private pension funds is defined-contribution, portability is not an issue, at national level.
What about the international level? Are there bilateral agreements, or how do the funds respond to mobility outside the Czech Republic?	There are no bilateral or multilateral agreements. I suppose that that people who wish to move to another country have two basic options: either they ask for a surrender option, and they get back all their money and returns (of course excluding the state contributions, state subsidies), and they can transfer this money wherever. Or they basically stop to pay in the Czech pension funds, but without touching that money, "freezing" the capital. They will keep participating to interests/dividends, with all the returns… however if they don't continue to contribute, they will not keep getting state contributions. There is also a "prepaid", "top-up" savings' option, namely you can put in the fund a certain amount of money and the fund will regularly withdraw monthly contributions from this amount of money, so that you can continue to get the state subsidies.
What about foreigners? Like a worker coming from Slovakia, is he entitled to state contributions as well?	All foreigners who reside permanently, or with a long-term residency in the Czech Republic, have the same rights as Czech citizens. We have 2000 foreigners insured. Even people from third countries can have these rights, but they need to have a legal status of permanent residence, and they have to pay in the Czech Republic the statutory insurance for pensions or health care.
The AIEP has conducted a survey on which prudential regulation apply in the various	Formally, it's probably right, since we are not really capable of putting the Czech pension funds under the definitions of the

Member States, from which it emerges that the Czech pension funds are not covered by any EU prudential regulation. Is this the case?	regulations you mentioned. They are not IORP institutions, because they're not occupational, they're purely individual, etc. And the Czech pension funds are neither banks, nor Insurance Companies…despite they have some features similar to those of Life Insurance. So formally it's probably right. There is a debate in Czech Republic about how to deal with the decision of the European Court that we have to implement fully the IORP Directive. In my opinion it is far enough, but the ECJ is asking us to implement it in formal way. We are doing it in next two months. But I have to say that implementation of IORP Directive was basically a formal exercise in all Central Eastern European new Member States, because in all these countries you don't really find any occupational institution. That's maybe the formal problem. But other discussions are not in force, because there is no "push" on the side of the State or of employers to establish occupational schemes, or at least in the shape of the traditional occupational funds as we know them in Western Europe, because there is no need to do that. Employers can participate in the individual savings of their employees. In our system in fact it is quite widespread, 25-30% of all employees have contributions also from employers.
What would you suggest as a solution for the revival of the portability directive?	We are generally in favour of it, because our pension system is fully based on DC principle, on individual contract. So we have no problem with portability, and this should also be the way to solve that in Europe. In our case if somebody loses his job, he is not losing also his pension rights, they "follow" him. Of course he may lose contributions from his formal employers, but with a new job he will probably get contributions from the new employer, plus the money from his fund. And he's not forced to change the fund, because they are open funds. And even people that are unemployed are still in the fund, and can remain in it. The contract with the pension fund is fully individual, so you can keep contributing voluntarily. Workers can be retired or unemployed but they can remain in the fund. I understand that at the EU level it is much more complicated, but I think the only functioning way is DC system and individual accounts.

FORSIKRING AND PENSIONS
Denmark

(6 May 2011)

Is it the case to extend the coordination of Regulation 883/2004 to schemes that are not PAYG statutory schemes or is it better to start discussing in a more proper way a Portability Directive? What are the problems that you experience in Denmark with your occupational schemes with regard to portability?	First of all you have to distinguish between portability at national and international level. At a national level, to guarantee portability, we have an obligation according Danish law so all pension funds have rules, all companies, that describe and give some minimum rights to members regarding portability. What we have done was an agreement to fulfil these obligations according to law and that means that if an employee change his job he/she can save the value of the pensions scheme to the new pensions scheme. Moreover we do not have vesting periods, it is immediate.
Do you have any problems related to transferability of capital accumulated?	With the agreement that we have made and pensions funds have accepted, we have some general rules saying what you're entitled to bring with you. And then the technical content of the individual's company has to decide how the transferred value is calculated. It's similar between companies. But that's not an issue…you have to notify the supervisory authority about the technical base…it has to be fair and reasonable according to law. Workers can choose voluntarily whether to transfer or not for the sums they have paid into the old company. When you change your employer, in the future you are mandatorily insured in the new scheme, then it's the individual that decides whether he wants to transfer or not. He's transferring a sum of money, he's not transferring rights. The rights are defined by the rules of the new scheme. You can use the money to buy supplementary benefits in the new scheme according to the rules there. And if you choose not to transfer then dormant rights have the same treatment as for active members and the same interest.
In international terms instead, do you have any problem with portability?	It's not an issue, it has never been raised, perhaps because employees leave the dormant rights in the Danish pension fund or insurance companies when they travel abroad an then they come back and start being affiliated to the Danish scheme again… however in many situations I guess they will have the possibility to transfer capital from another country. If your company has an employee stationed abroad for a period of time, howevert, the sums invested are left in the Danish funds until retirement.
Do these rules apply also to the two small schemes within the first pillar of the Danish pension insurance, ATP and SP?	ATP is applied nationally to all employees no matter who your employer is…it doesn't make any difference if you change your employer. You can't transfer anything either to or from ATP and also for SP. The ATP is under 883/2004, so it's coordinated. Even if a worker moves, nothing happens, the rights accumulate with the regular interest and ATP gives it to the beneficiaries. You become a dormant member and when you come back to Denmark you start to pay to the employer and to ATP again and your savings increase that way. In Denmark you pretty much can compare your pension rights to bank accounts. You still get interests for periods you don't deposit and when you start depositing again your value increases. Another more political point of view is that we have a system that proves it's possible to make national mobility…perhaps national transferability should be an issue higher on the agenda more than cross-border portability, because there are more workers moving within Denmark. That's a

	more important question.
On the legislative side what's the position of Denmark or of the insurance companies with respect to the revival of a portability directive within the EU?	In principle we support the idea of transferability, portability. I think as long as we have such big differences on how social systems are organized, it's difficult to see one model that will fit all different national systems, it's difficult to transfer from DC to DB, and what about different vesting periods, different treatments of dormant rights…? I think it is difficult with such an uneven ground to put something even on top of it.
Would you suggest an entirely new legislative tool, aimed directly at new occupational pensions?	We believe that given all the differences between schemes across countries and social legislations, it's probably more important to ensure that beneficiaries can actually maintain their rights in the pension scheme they are member of, to ensure that the value of your rights don't decrease at least in the short and medium term, we think that would make better sense that to focus only on portability. Maintenance of rights rather than the portability/transferability of rights. We think it is more realistic to reinforce existing legislation.

DSP
Ireland

(17 May 2011)

Regarding the application of 883/2004, are there problems with portability of Irish schemes, in terms of vesting periods, taxation, and dormant capital?	Regarding vesting rights, a 1990 law makes provision for the preservation of benefits and to vest rights after 2 years of employment and if a person leaves the employment, the rights will be preserved and transferred to another scheme of employment. It's mandatory if the value of the fund is less than 10,000 EUR, and if it is more than that the worker has a set period to request the transfer and have the option to request the transfer of benefits, within 2-3 months. Regarding the dormant rights, they are preserved and revalued on an annual basis at the lesser of 4% and CPI. We are not aware of any problem related to internal mobility.
With resepct to the external mobility are there bi- or multi-lateral agreements with other countries or with funds, especially in UK?	We had arrangements with the UK up to a couple of years ago, they are now all catered for by IORP Directive. We're applying IORP for the exchange of pension rights between Ireland and UK or any MS that wants to exchange rights with us, we are open to that.
What is you position on the portability directive, as countries which don't have internal mobility problems?	We were in that kind of position, when the portability directive was proposed. It was pretty much complying with what we were doing. We have travelled down that road: we have vested rights, transferability, quite extensive info to schemes on the regulation.
Do extensive schemes that are quasi-mandatory exist in Ireland -for public employees, or specific types-?	Yes, public sector schemes, all employees are members of them. In the private sector you have DB and DC and they are provided by the employer on a voluntary basis. There may be an obligation for the employee who starts working to join the scheme and they are encouraged to join the schemes, but this varies from employer to employer. In the last couple of years we went through an extensive review of our pension system, a GP was published in October 2007 and an extensive consultation process completed in May 2008 and the National Pension Framework was launched by the govt on 10 March 2010 and the proposal was to intro an auto-enrolment scheme. Unluckily half of our workforce is in occupational pension schemes and the other half are not. Own workers are covered by the State Pensions Scheme, the pillar 1 scheme, which pays the rate of 34% of the general industrial wage and we encourage our workers to save more.
Among various legislative options on the table, which one would you prefer (Annex, new Directive etc)?	Since we had no difficulty as such with the portability of pension rights. We do recognize that other MS may have some problems.
Have there been any problems for workers coming from abroad to Ireland?	Not that I'm aware of. There are still very few cross-border schemes, hence, we have limited experience. We're not aware of problems, which doesn't mean they don't exist, especially if the number of pan-Euro solution increases.
What about setting up proper cross-border IORPs? Do you find that the IORP Directive with respect to mobility should be amended or is it too early?	We're open to exploring this possibility. I think it is too early for amendments, the Directive is out since 2005, I think perhaps some aspects have to be changed, but the Directive needs more time.
Was there any discussion in extending the 883/2004 Regulation to supplementary schemes?	No, there haven't been any discussions, as it is on the State Pension side. It's relegated to the statutory schemes and there were no discussion to extend it to supplementary pensions as well.

FEDERATION OF DUTCH PENSION FUNDS
Netherlands

(10 May 2011)

What are the main obstacles in the Netherlands with respect to the application of the voluntary clause of the coordination regime and what kind of solution do you envisage for problems arising with labour mobility?	In the Netherlands portability of pensions is not an issue, with respect to mobility in the labour market. Our first pillar, the old age benefits, is applied to everyone living in the Netherlands, with no connection with labour. Even if you don't work you still get a benefit when you reach the age of 65. Our second pillar is deeply related to labour. What we arranged is a set of rules, to decide how to transfer your pension right from one pension fund of an insurance company to another pension fund. But it only works if both pension schemes are capital funded. All pension schemes in the Netherlands are capital funded, so there's no money lost anywhere.
What happens in the Netherlands with respect to internal transferability of the capital, and to dormant rights and vesting periods?	Any money transfer from one pension fund to another pension fund is absolutely working well, with no loss. The issue is how to calculate liability, of course. There we get a set of legal rules to guarantee no loss of any right of the member, but it could happen that the new pension fund has to pay. Or in the case of transfer to an insurance company, the employer has to pay. The important question here is "why do you need to transfer your pension rights?". In the Netherlands most employers have average (?) income scheme, i.e. lifetime, so you just leave your pension rights in the old pension fund to your old employer, start working in the new pension fund with new pension rights, and there is no problem at all. So why is it necessary to transfer your pension rights? Especially if you have a DC scheme, then it is completely irrelevant. Now we have to make connections from that kind of pension schemes to 883. Regulation 883 is about state, government rules, which are on a PAYG basis. And countries are big collectivities so it is not a problem if some money is lost here and there. If you take this system, 883, and you transfer it to the labour related pension schemes, then the question is "Who is going to pay? How do you calculate liabilities?" because the main goal of 883 is that people living in the EU do not lose any rights. If the bill cannot be put on the people who move, who is going to pay? If a member state has to pay in general, it is not a problem. But it is different if the bill is on commercial insurance companies, or on very small company pension funds. And how do you calculate the bill, even before than that? It is a very complex method. We have a debate right now whether we really need a system in the Netherlands to have the right to transfer the pensions. Then it is the other way around in Europe. We need to introduce a system, which is not built for funded schemes, paid by and developed by social partners. With some connections between labour relations in the Netherlands and the labour relations in Italy or France or Germany.
What is your opinion on the configuration of a fairly complex country such as the Netherlands, where the occupational pension schemes are so embedded into social and labour law?	This is precisely the point. Every member state has one set of rules for first pillar pension schemes, but for the second pillar the differences between the member states and within the member state regarding the second pillar are huge. So I would say it is impossible to develop a system like 883 that covers all those different pensions schemes that you have in the EU (more than 100.000 schemes I guess). The second problem is, at the same way the EU does not come up, for pensions, with fiscal rules, they should not also interfere with Member States on labour law and social law.

How do you deal instead with international mobility of workers? Do you have any multilateral or bilateral agreements?	In most cases it is not a problem at all. If it is a transfer to a recognized and identified IORP, under supervision in the member state, then it is not a problem to transfer the capital, but there may be obstacles for fiscal reasons…for example if you want to transfer to the UK your pension rights, the problem is that in the UK you can get all the money as a lump-sum payment, but this is forbidden in the Netherlands. It has to be annuity, for fiscal reasons, because the premiums are exempt. We don't want the worker to transfer his/her pension fund to the UK, and not paying any tax on that capital. So the obstacles are only for fiscal reasons, not for the transfer itself, to IORPs within the EU. Regarding the calculation of liabilities for cross border situations, then we calculate the money you get, which can be transferred to your new pension fund, but we can't control how many rights you get in the pension fund of that country. So the member can choose whether it is convenient for him to leave the money in the Netherlands or not.
What about the dormant rights in the Netherlands and what is the vesting period, on average, to be entitled to any right?	We don't have vesting rights, vesting periods. The dormant rights and indexation is very important though. The law just says if you index the pensioners, you also have to index the dormants, in the same way. Every pension fund wants to have an indexation for its pensioners. There are no discriminations between dormants and pensioners, if there is no enough money to index for the first, then there is not also for the latter.
Have there been major moves towards DC schemes or you are still keeping the tradition of DB schemes that are quite widespread in the Netherlands?	There is a huge development of so-called "hybrid schemes" so we don't have pure DB schemes anymore, but we are far away from pure DC schemes. It is a development of DB schemes with capital funded benefit, related to the average income. But there are restrictions on the height of the premium, the amount that the company, the employers will pay. There might be a cut on the benefit. In an economic crisis, where there is no return on investments, then the benefit is cut. Now for 3 funds in the Netherlands this is the case.
What would you recommend as a development to improve portability of pension rights in the EU?	First, they should stay away from 883, rather solving problems with a specific Directive concerning the second-pillar. Secondly they should solve aspects like fiscal obstacles and vesting periods, otherwise it is of no use at all. Third, I am in favour of a principle-based approach. You need one simple article saying that every Member State should prevent from legal obstacles to arise for the transfer of pension rights across borders. If you use this principle base then every Member State can look at its own law and understand which obstacles may come out. This is the best way to do it. Every Member State should take care that there is the possibility to transfer pension rights. Brussels should not tell how to do it, because there is too much variety. They should simply stick to obligations to Member States to take care of these problems. However the main problems with transferability are fiscal problems, as if you live in a country wehre premium is taxed and you to one where benefits are taxed, transferring your pension rights becomes more complicated. If you look at the German situation, you have vesting periods of five years, so for transfer of money after only four years, there's no money to transfer!

ZUS
Poland

(17 May 2011)

Do you have any problems with the coordination of mandatory individual pensions (Open Pension Funds - OFEs) in Poland?	We don't have any problems with the coordination of old-age pensions from OFEs. On the basis of the contribution paid to the second pillar (OFE) there are 2 types of pensions: periodic funded old-age pension amount paid by ZUS basis on sources accumulated in OFE, and lifelong capital old-age pension which currently is not paid yet to any person and there is a big discussion on how it should be administered: by ZUS or by the other institutions. So, I can only tell you few words on this periodic funded old-age pension amount from OFEs paid by ZUS. This pension is a part of social insurance system, although the money comes from the sources accumulated in OFE. So, pension from the first pillar (ZUS) and pension from the second pillar (OFEs) are together two parts of a basic old-age pension system In Poland in a common system for workers and self-employed except farmers and civil servants. We actually do not find any big problems with co-ordination of this 2-nd pillar pension with the other EU Member States. Our 2-nd pillar pension (OFE) is almost always paid by ZUS together with 1st pillar pension (ZUS), so they usually exist together.
How does the coordination process of OFEs work in practice?	The coordination process on old-age pension from OFEs (capital old age pension from II pillar) is the same as coordination process on old-age pension from I Polish pillar. And according to Polish internal law (Act dated of 21.11.2008 on capital old-age pensions), right to capital old age pensions (from II pillar) and its amount is determined by Social Insurance Institution (ZUS) so the same institution which determines old age pension from I pillar. Submission a claim for old age pension from II pillar means submission a claim from old age pension from I pillar (and vice versa). So if the person living in European Member State outside Poland and there submitting (in foreign pension competent institution) a claim for old age pension, it means a claim for old age pension both from 1-st and 2-nd Polish pillar. Having received this pension claim from abroad (E202) the Polish ZUS starts establishing entitlement to both pensions and issues pension decision on them which is communicated to a person concerned and competent institutions of the other MSs. The Social Insurance Institution (ZUS) determines right to and the amount of an periodic funded old-age pension amount from OFEs according to Polish internal provisions (because of the exclusion from application of art. 52 of Reg. 883/2004, regulation 883/2004 doesn't modify internal provisions on the method of calculation of amount of old age OFE pension). When ZUS establishes right and amount of the capital pension has to cooperate with OFEs in order to receive the financial sources for payments of pension. The Polish Act dated of 21.11.2008 on **capital old-age pensions** provides two types of old-age pensions based on capital accumulated in OFEs (II pilar): - the periodic funded old-age pension amount, - the lifelong capital old-age pension. The periodic funded old-age pension amount is awarded to women who: - is a member of OFE, - has 60 years old, - has established right to so called „new old age pension from I pillar" for persons born after 31.12.1948 - her capital in OFE account is equal or higher then the current amount of care supplement (*dodatek pielegnacyjny*) multiplied by 20. The right to this pension terminates when a person reaches 65 years. Then the right to lifelong capital old-age pension should be established. Formula calculation of the periodic funded old-age pension amount:

	The amount of periodic funded old-age pension = Amount of capital accumulated in OFE' individual account of the person / average life expectancy for person of the age at of which the person retires Lifelong capital old age pension is awarded to person (man or woman) who: - is a member of OFE, - has 65 years old, - has established right to so called „new old age pension from I pillar" for persons born after 31.12.1948 - her/his hypothetical capital old age pension from OFE is equal or higher then 50% amount of care supplement. Formula how to calculate the lifelong capital old age pension: The amount of lifelong capital old age pension = Amount of capital in OFE account of the person / average life expectancy for person of the age at of which the person retires As you can see above right to capital old age pension and its amount doesn't depend on length of periods of insurance, so regulation no 883/2004 and 1408/71 doesn't modify rules of determining right to and the amount of the capital pension. According to article 52 (5) regulation 883/2004, notwithstanding the provisions of paragraphs 1, 2and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Member State concerned.
What kind of solution would you propose to resolve taxation issues related to coordination? Do you think that some piece of legislation directly regulating the coordination or portability of statutory FUNDED schemes would be advisable?	ZUS doesn't have any problems with taxation capital old age pensions. In our opinion current rules in regulation 883/2004 are enough for us to determine old-age pension from I pillar (from OFEs). Capital old-age pensions based on OFE contribution are something different than pensions based on employer pension funds (existing in Poland and in other countries), so they are not a part of supplementary pension system, but rather part of a basic state pension system for all of the insured in the Polish common pension system, administered by ZUS. What is also important 1^{st} pillar pension and 2^{nd} pillar pension joined together are protected with a minimum guaranty of pension amount, guaranteed by the State Budget.

MoLFSA (1)
Slovenia

(28 April 2011)

Do you have any problems related to internal portability in Slovenia?	With respect to supplementary pensions, there are no problems in Slovenia, because it's a pure DC system. So there are neither problems in exiting the system, where the capital is being taken out… and entering the system is also easy, as only capital is being moved (as opposed to the rights). In any case there might be problems in these flows, if we are going from a DB to a DC. In a DC system, only the capital is being moved and the rights are being calculated at the end only.
When someone exits a Slovenian fund what happens with the capital, is there a physical transfer? When the capital remains in the fund, is this capital participating to returns?	In Slovenia, the rights are being kept… in the case that the insured doesn't withdraw the money and transfers it, the money stays in the account and participates to the returns as all the other active members. With respect to the SODPZ, this is just a very small number of workers in unhealthy and heavy conditions, very few and the problem is minimal (miners, railway workers). But the system is the same: DC gets returns from investment and returns. The capital remains there and participates to returns.
Regarding the schemes that don't fall under 883/2004, like public employees and all other IORPs, is there an internal (to Slovenia) legislation dealing with coordination/portability of these?	Within Slovenia it's possible to transfer – the SODPZ is only one and you're mandatorily insured (hence no influence on portability). If the employer has a supplementary scheme and the employee moves to another employer, which has a different scheme by a different provider, the employee can move the capital from one IORP to the other. The mechanism isn't automatic and the employee decides to transfer. The employee can decide to leave the money in the first fund and start contributing to the new fund. Or he can transfer the capital to the other fund, which is better in a DC system (I guess due to admin fees etc). The capital left in the first fund participates to returns on the market. Even if the capital stays there and the member is a default member, his capital is being considered as the capital of active members.
What about international mobility: are there any bi- or multilateral agreements with other MS? Or is this depending only on the individual member?	Here there are some problems. In the PAYG system we have coordination in the EU and here there are no problems, and there are some agreements with extra-EU countries. Problems arise in the supplementary system. The IORP Directive allows cross-border arrangements, but in Slovenia no one has set up such vehicles yet. From other MS no one also set up a fund in Slovenia. So an employee who moves abroad cannot transfer the capital abroad and leaves them in Slovenia. If he retires abroad he doesn't have to be physically present but will have to ask for the conversion here of these rights into annuities etc. There are no bi- or multilateral agreements with other MS for supplementary pensions. There is the possibility – not a real one however – one can cease to be insured here, take the money and transfer it to another MS. However, in this case he will have to pay taxes here. Instead within our schemes, this transfer is tax free, so that is a big difference.
Is it the same for public employees as well?	Yes, it's basically the same scheme. We have 2 mandatory schemes: i) for public employees, which is the same as supplementary pensions, with the difference that public employees can't decide whether they join or not; ii) the other is SODZP, for heavy jobs, and that is part of the first pillar and is coordinated with 883/2004. Public employees can move their

	capital to other schemes, but if I'm a policeman and change employer (a private firm), then I can't move the capital from that scheme which enables for earlier retirement. This scheme which is also some sort of DC, but it simply is a replacement for a first pillar early retirement scheme.
What about vesting periods?	DB schemes in the 2nd pillar there none and they are forbidden by law and for the same reason there is no vesting period. The only possibility is a 'waiting period', the law says that the employer if you're an employee for the first time has the possibility not to pay your premia for one year. But there is no vesting. After one year, he has to pay the premia if it has a scheme, and this only for future benefits. But in practice no one does it. This one year is basically in order to create loyalty of workers, but in practice there is none (but this must be a priori specified). With respect to the absence of the vesting period, when the employer starts paying the money in he simply can't get that money back, it's of the employee. In this case also the employer is obliged to pay the premia to the employee for all the time he's employed in this firm.
What about Third Country Nationals? Is there equal treatment?	There are no additional nationality requirements, but only employment by an employer that has a business registered in the Rep of Slovenia. The real condition is the insurance in the statutory Slovenian pension scheme, independently from the nationality. He has to be an employee and will pay into the statutory scheme.
Did Slovenia encounter problems in changing 1408/71 to 883/2004?	How could we solve the problem of PAYG and funding? In Slovenia this seems to be very difficult. We don't have this problem – apart form the scheme for pilots and miners etc – we don't have any funded schemes falling under 883/2004.
How is it possible that the voluntary extension of 883/2004 to public employees did not happen, and this fund has become directly an IORP?	The thing is that this scheme, although it's mandatory it's seen as closer to supplementary than to statutory schemes. This is also the consequence of the fact that supplementary funds are here relatively young and the consciousness of the importance of these schemes isn't rooted yet. However, you are right – in reality our public scheme is very near to these occupational funds that may be coordinated as statutory schemes. This is the first time I think about this, we always consider it as a supplementary scheme, almost as 3rd pillar. It's not that we don't want to include this scheme under coordination, but rather that when we were including the schemes into 883/2004, we didn't even think that the public employee scheme could be part of the statutory scheme. But this comes out of our concept of these schemes, how we categorize them. Only after talking with you it came to my mind that they could qualify as statutory. In Slovenia, even during the 2010 reform debate, the main bulk of the debate relates to the 1st pillar (PAYG), which shall provide the bulk of the pension benefit. People as such do not bother about the second pillar, we will have to inform them.

MoLFSA (2)
Slovenia

(4 May 2011)

Why the voluntary extension of 883/2004 to public employees did not happen, and this fund has become directly an IORP?	With respect to the mandatory funded scheme for public employees we didn't even think of Regulation 883/2004. In fact, it's pretty clear what it's all about: it's for mandatory schemes, but our public employee scheme doesn't fall within classical statutory schemes. It's second pillar simply. According to this we didn't seriously think about the issue whether this scheme should be part of the Regulation or not.
Do you think there are any problems of coordination with other countries for Slovenia, and were there problems in changing Regulation 1408/71 to 883/2004?	The implementation of the Regulation is problematic, which are basically following the fact that the harmonization isn't perfect in Slovenia. There are some technical and admin issues create obstacles, and then these cases are solved on a case-by-case basis. Other difficulties relate to the heterogeneity of EU system, and sometimes it's then difficult to find common understanding/points with, for example, Scandinavian systems. In these cases, problems are usually solved together with the other country. This is regarding the whole Regulation. The pensions part is instead running quite smooth… perhaps our professional system is a bit difficult to explain to other MS (the former accumulation periods with bonus), and this translates into technical difficulties: how to explain this to other MS, or is it even relevant to explain them etc. But in my opinion, pensions are working quite fine with respect to coordination.
As the Portability Directive was never legislated, are there in Slovenia any internal portability problems and are there bi- or multilateral agreements with other countries?	The majority of the issues pertaining supplementary schemes aren't even the responsibility of the MoLFSA.
Were there any problems in applying the Regulations, also in light of the various reforms?	With respect to pensions not really. As this sector was already somehow coordinated through bilateral agreements with other MS. And this has been simply extended. In addition, our statutory scheme is contribution-based which renders things easier, as we pay our pro-rata share of the pension , which has been paid in Slovenia, and that's it. This practice was already dealt with bilateral agreements, and we still have bilateral agreements with some third countries, such as: BiH, Montenegro, FYROM, Serbia… all those within the EU were replaced by the Regulation, and then outside Europe, such as Australia etc. We are however not as active with respect to bilateral agreements as, for example, the Netherlands.

ETUC (1)

(6 June 2011)

Is there in your country any problem for the coordination of social security schemes?	No major problems in France. The extension of the coordination rules to AGIRC ARCCO has led to the broad coverage of public schemes.
Have the last two decades of reforms led to the emergence of new problems in coordination/portability?	The case of France is not problematic : recent reforms have not altered the logic of the system (at least not yet). The role of voluntary pension funds is still limited and it is not an issue at the public opinion level.
Why has the voluntary extension of 883/2004 to supplementary pension schemes been used so rarely by EU member?	With respect to the AGIRC ARCCO schemes, the main issue was to defend them and to reaffirm their public nature. Especially French trade union consider them as part of the social security. It was important to reaffirm their redistributive aim. To sum extent the coordination of pension rights was a marginal issue. The declaration issued by the French government aimed at isolating these schemes from market rules and competition. It is clear that for other EU countries this is not the case. Voluntary instruments are always at the disposal of the member states, but if the latter do not want to use them, it is difficult to activate incentives.
Do you think there are any problems of coordination with other countries for France, and were there problems in changing Regulation 1408/71 to 883/2004?	France has several bilateral agreements with third countries to coordinate the rights of migrants. We have not experienced problems on that , neither before nor later the shift from 1408/71 to 883/2004.
As the Portability Directive was never legislated, are there in France any internal portability problems and are there bi- or multilateral agreements with other countries?	No major problems on that.
What is the promising instrument to extend application of the coordination rules?	Trade unions are open to discuss further revision of the EU legislation in the field. But it seems to us that there are some major blockages. This is the case for the revision of the present regulation and for the introduction of new pieces of legislation (especially on the portability of supplementary pension rights). The main problems are originated by national cleavages. Some countries (e.g. Nordic ones) do not want to legiferate on that. For a true dialogue on that there should be a shared understanding of the problems and some common interests. This is not the case for the moment.
Do you think EU social dialogue may represent an effective tool?	As I said, trade unions are ready for using it, but it seems to me there are too many divisions between social partners to really activate the dialogue. I don't see major room for that.

FINLAND

(6 May 2011)

Is there in your country any problem for the coordination of social security schemes?	No major problems in Finland. EU legislation works well for the coordination of social security rights. Part of the activity of the Finnish Government was to clearly define the schemes covered by Regulation 883: the case of TEL was of interest for us. The latter is not covered by Reg. 883. In the case of Finland we had some delay for the application of EU legislation for supplementary pension funds. Especially the diffusion of information was an issue.
Have the last two decades of reforms led to the emergence of new problems in coordination/portability?	No major changes in fact. For instance it is not allowed to shift supplementary pensions' financiang rules from DB to DC schemes.
Why has the voluntary extension of 883/2004 to supplementary pension schemes been used so rarely by EU member?	No political interest for applying it.
Do you think there are any problems of coordination with other countries for Slovenia, and were there problems in changing Regulation 1408/71 to 883/2004?	France has several bilateral agreements with third countries to coordinate the rights of migrants. We have not experienced problems on that , neither before nor later the shift from 1408/71 to 883/2004.
As the Portability Directive was never legislated, are there in Finland any internal portability problems and are there bi- or multilateral agreements with other countries?	No major problems on that.
What is the promising instrument to extend application of the coordination rules?	Workers Mobility is not part of the national debate. The main problem is related to the costs of mobility for pension funds. We do not want to increase the costs on the shoulders of employers. Being supplementary schemes voluntary, we don't see the need to intervene.
Do you think new EU legislation may represent an effective tool?	Finnish government does not think labour mobility is a big issue at EU level. The percentage of mobile workers is so marginal. As stressed in our reply to the Green Paper, we do not see the need to revise EU legislation and to have a more marked intervention by the EU in the field. Especially if this will lead to increased costs for pension funfs and employers.

EUROPEAN COMMISSION

(25 March 2011)

What do you think of Regulation 883/2004? Are they some lacunas? Could it be improved? If so, in which way?	The statutory pensions schemes are well covered by the Regulation 883/2004. This instrument contributes in an effective way to the free movement of workers. It clearly allows them to freely move across the EU without losing their rights. Some minor administrative problems sometimes occure in the application of the coordination rules, but nothing really problematic. Of course, the coordination has some limits due to the differences of the national social security systems. For instance, in the Netherlands, the entitlement to an old age pension is linked to the residence on the territory. The survival pension is granted until the age of 65 and is replaced by an old age pension after that term. So, let's imagine a spouse living in Spain. Her husband worked in the NL. After his death, the spouse was entitled to a survival pension. At 65, if she is not a resident in NL, she will lose her survival pension and she will not have the right to claim for an old age pension. That shows that the coordination rules are not perfect. Some lacunas could also be mentioned. After the enlargment, some funded schemes of the Central and Eastern Members States were covered by the Regulation as if they were "statutory" whereas the coordination rules are more designed to PAYG schemes. Some hybrid schemes (as Maltese schemes) may also be problematic. The Regulation 883/2004 could of course be improved but the improvements in the field of pensions would be very limited for two main reasons. First, the case law of the ECJ has to be taken into account. Second, the chapter dedicated to pensions within the Regulation is one of the most complicated.
What do you think about the distinction between statutory and non statutory schemes defining the material scope of the Regulation 883/2004? Is it still relevant? Should it be revised?	The material scope is indeed based on a formal criteria as it is limited to benefits governed by legislation, meaning laws regulations and other statutory provisions. It then excludes contractual provisions. The criteria is then more formal than functional and is not relevant anymore. This is a critical point which had already been highlighted by the EC in 1998. The initial proposal included the conventionnal agreements which have been subject of a decision by the public autorities rendering them compulsory or extending their scope. It would have allowed to bring many non-statutory occupational pension schemes within the scope of the new regulation. But the article has been amended for security reason. A revision of the criteria should then be at the agenda.
In case of an extension of the material scope to supplementary pension schemes not covered, what would be the main problems ? May the coordination rules be applied easily to those schemes?	The coordination rules related to pensions could not be easily applied to all supplementary pension schemes as the Regulation is clearly designed for the PAYG schemes. The prorata calculation rule does not fit the DB schemes. An extension of the scope of the Regulation to this kind of schemes will then need some adaptations of the calculation method.
Do you think it is still relevant to relaunch "portability directive it? Is there any major problem to do it? Does the ECJ have a role to play? Would the Member States be more favourable to an EU instrument on portability?	The issue of portability of supplementary pension rights has to be debated and needs an action at the EU level. We can't promote the mobility of workers through Europe2020 in one hand, and stay inactive in the other hand. The amended proposal of 2007 is still on the table. However, the entry into force of the Lisbon Treaty implies some changes. The proposal was based on articles 42 and 92 requiring at that time the unanimity. It is not the case anymore as the new article 48 TFEU (former article 42 EC)

	required the qualified majority while the new article 114 TFEU (former article 92 EC) still requires the unanimity. There is then a contradiction between the legal bases that needs to be solved! A new proposal based on the article 48 TFUE requiring the qualified majority might have more chances to reach an agreement within the Council. The ECJ also may play a positive role in relauching the debate. The last judgement delivered in early March in Casteels may push the Commission to take action in this field. Regarding the MS, the economic context, the political pressure, the increasing importance of the supplementary pension schemes are some elements which might make them more favourable to an action in this field.

French Ministry of Health and Solidarities
France

(10 May 2011)

Is there in your country any problem for the coordination of social security schemes?	The coordination of social security schemes raised in the last few years some administrative difficulties but there are no major problems in France. The coordination covers about 20 different pension schemes: basic state pension schemes, special schemes (civil servants, military,…) and compulsory industry-wide schemes federated in AGIRC and ARRCO. Those schemes are based on solidarity and resdistribution. The decision to incorporate Regulation 1408/71 was taken by the social partners governing the institutions and was notified by the French government in 2000. The decision to pursue coordination was first motivated by the ambiguous status given to this compulsory supplementary retirement pension scheme in the Directive on the safeguarding of supplementary pensions for workers. The social partners considered that it did not really fit with this particular scheme, which is based on a national cross-industry agreement setting up a compulsory (pay-as-you-go) scheme. Another reason derived from the case law of the ECJ. Integrating ARRCO and AGIRC into the scope of Regulation 1408/71 constituted the best way to protect them from the application on EC competition law. The extension of the coordination rules to AGIRC and ARCCO has led to the broad coverage of public schemes.
Have the two last decades of reforms led to the emergence of new problems in coordination?	The last reforms aimed essentially to reinforce the basic state pension schemes and to assure the sustainability of the redistribution system. They also led to the emergence of new supplementary schemes as PERCO created in 2003. But they did not lead to problems in terms of coordination.
As the Portability Directive was never legislated, are there in France any internal portability problems and are there bi-or multilateral agreements with other countries?	In France, the mobility of workers is mainly internal from an employer to another one. Internal portability is far from being problematic as the issue concerns a few occupational schemes. In case of cross-border mobility, the problems are generally solved through the bilateral agreements.
What is the most promising instrument to extend application of the coordination rules?	From a French point of view, there is no real need to extend application of the coordination rules as no problems have been detected. Besides implementing effective portability of supplementary pension schemes seems to be unrealistic due to the national cleavages. The initial proposal was really ambitious but not feasible. However, a very minimalist directive might have a chance to reach an agreement under the new article 48TFEU requiring the qualified majority instead of the unanimity.

ANNEX 2
MAP OF PENSION SCHEMES IN EU COUNTRIES
(Updated version, based on CEIOPS 2010 Annex to the Green Paper 2010)

	Types of the private pension institutions		***Type of pension scheme***	***Mandatory/ Voluntary/ Opting out***	***Source***	***EU Legislation***
	Domestic name	**Legal form**				
BE	IRP (Institutions de Retraite Professionnele)/ IBP (Instelling voor Bedrijfspensio envoorziening)	non-profit organisation or mutual insurance association Organisation for Financing Pensions	DB/DC/Mixed	Voluntary	Occupational	IORP
	entreprise d'assurance/ verzekeringso nderneming	limited partnership with a share capital cooperative partnership mutual insurance association	DB/DC /Mixed Individual life insurance	Voluntary	Occupational Or Individual	LIFE
	fonds d'épargnepension / pensioenspaar fonds	UCITS: open-end investment company	Individual pensions savings	Voluntary	Individual	UCITS
	Book reserves		DB/DC	Voluntary	Occupational	Excluded from IORP Directive based on

						Art. 2.2.(e)
BG	Пенсионно-осигурително дружество	Joint Stock Company	DC	Voluntary	Occupational	IORP
	Пенсионно-осигурително дружество	Joint Stock Company	DC	Voluntary	Individual	No EU prudential legislation
	Пенсионно-осигурително дружество	Joint Stock Company	DC	Mandatory	Individual	Regulation 1408/71 and 574/72
CZ	penzijní fond	Joint Stock Company	DC	Voluntary	Individual	No EU prudential legislation
DK	ATP, Allman tillaggspension	?	DB	Mandatory	Statutory	Regulation 883/2004
	SP	?	DC	Mandatory	Statutory	Regulation 883/2004
	Firmapensions kasse	Company Pension Fund	DC or DB	Mandatory	Occupational	IORP
	Livsforsikrings Selskab	Life Insurance Company	DC or Unit linked	Voluntary/Mandatory	Occupational/Individual	LIFE
	Tværgående pensionskasse	General pension fund	DC or Unit linked	Mandatory	?	LIFE
DE	Pensionskasse	Joint-stock company Mutual insurance association Corporation under public Law Institution under public law	DC	Voluntary	Occupational	IORP

	Pensionsfonds (b)	Joint-stock Company Mutual pension fund association		Voluntary	Occupational	IORP
	Direktzusage	book-reserve schemes		Voluntary	Occupational	Excluded from IORP Directive based on Art.2.2(e)
	Unterstützung Skasse	Limited liability company Registered association Foundation		Voluntary	Occupational	Excluded from IORP Directive based on Recital 16 and Art. 2.2(d)
	Lebensversicherungsunternehmen (Direktversicherung – direct insurance) (d)	Joint-stock company Mutual insurance association Corporation under public law Institution under public law		Voluntary	Occupational	LIFE
	Altersvorsorgevertrag (contract)	Personal pension schemes		Voluntary	Individual	Life, Banking, UCITS
	Basisrentenvertrag (contract)	Personal pension schemes		Voluntary	Individual	Life, Banking, UCITS
EE	Vabatahtlik pensionifond	Contractual Fund	DC	Voluntary	Individual	UCITS+extra requirement
	Kohustuslik pensionifond	Contractual fund	DC	Mandatory	Statutory funded	UCITS+extra requirement

	Elukindlustusselts	Joint Stock Company	DB/DC (Unit linked)	Voluntary	Individual	LIFE
	Elukindlustusselts	Joint Stock Company	DB	Mandatory	Statutory funded	LIFE
IE	Occupational Pension scheme	Trust	DB/DC/Hybrid schemes and Trust Retirement Annuity Contracts	Voluntary	Occupational	IORP
	Personal pension	Contract	Individual Retirement Annuity Contracts /Personal Pensions	Voluntary	Individual	LIFE
	Personal Retirement Savings Accounts	Contract	Individual retirement savings accounts	Voluntary	Individual	LIFE
EL	ΤΑΜΕΙΑ ΕΠΑΓΓΕΛΜΑΤΙΚΗΣ ΑΣΦΑΛΙΣΗΣ (Τ.Ε.Α.)	Non-profit private entities with legal personality	Occupational Insurance FundsDC	Voluntary	Occupational	IORP (b)
	ΑΣΦΑΛΙΣΤΙΚΕΣ ΕΠΙΧΕΙΡΗΣΕΙΣ	?	Group Insurance Contracts (c)	?	?	LIFE (d)
ES	Fondo de Pensiones de empleo	?	DC, DB, or mixed	Voluntary	Occupational	IORP
	Fondo de Pensiones personal	Personal Pension Fund	Individual and associate	Voluntary	Individual (a)	No relevant prudential EU

			d pension scheme			legislation applicable (b)
	Seguros colectivos	Collective Life Insurance contract	DB	Voluntary	Occupational	LIFE
	PPSE (Employer Social Prevision Plan)	Collective life insurance contract	DB	Voluntary	Occupational	LIFE
	PPA (Prevision Plan Assured)	Individual life insurance contract	DB	Voluntary	Individual	LIFE
FR	AGIRC ARrcO		PAYGO	Mandatory	Occupational	Regulation 883/2004
	Assurance vie	Stock company Or Mutual insurance company	DC/DB	?	Occupational/individual (a)	IORP/or LIFE (b)
	Institution de prévoyance	Paritarian institution ruled by the “social protection code”	DC/DB	?	Occupational/individual (a)	IORP/or LIFE (b)
	Mutuelle	Mutual company ruled by a specific code	DC/DB	?	Occupational/individual (a)	IORP/or LIFE (b)
ITA	Fondi pensione negoziali (a)	Association/Foundation	DC	Voluntary Opting-out	Occupational	IORP
	Fondi pensione aperti (b)	An autonomous pool of	DC	Voluntary Opting-out/ Voluntary	Occupational/Individual	IORP

		assets instituted by a financial company separately from its own assets				
	Fondi pensione preesistenti autonomi (c)	Association/Foundation	DC/DB Closed to new members	Voluntary Opting-out	Occupational	IORP
	Fondi pensione preesistenti (non autonomi) (d)	Book reserve	DC/DB Closed to new members	Voluntary Opting-out	Occupational	Excluded from IORP Directive based on Art. 2.2(e) (d)
	Enti privati di previdenza obbligatoria dei liberi professionisti (e)	Association/Foundation	DB/DC	Mandatory	Statutory funded	Regulation 1408/71
	Piani pensionistici individuali (Pip) (f)	An autonomous pool of assets instituted by an insurance company separately from its own assets	?	Voluntary	Individual	LIFE
CY	Ταμεία Προνοίας	Provident Funds - Private Entities with Legal Personality	DC/DB set up via collective agreements	Mandatory or Voluntary (determined by the rules of each	Occupational (a)	IORP

				provident fund)		
	Ταμεία Συντάξεως	Provident Funds - Private Entities with Legal Personality	DB set up via collective agreements	Mandatory	Occupational (b)	IORP
	Επενδυτικά Ατομικά Σχέδια Ζωής	Insurance Contract	Unit Linked Personal Life Contracts	Voluntary Opt out	Individual	LIFE
	Σχέδια Συντάξεως (c)	PAYGO	DB	Mandaory	Occupational	Excluded from IORP directive
	Σχέδιο Φιλοδωρήματος (d)	Book reserve	DB	Mandatory	Occupational	Excluded from IORP directive
LV	Privātais pensiju fonds	Stock company	DC/DB	Voluntary	Occupational and individual (a)	IORP (b)
	?	State funded pension scheme (c)	DC	Mandatory/Voluntary	Statutory Funded	Regulation 883/2004
LT	Pensijų asociacija	Association	DC, DB (a)	Voluntary	Occupational	IORP
	Gyvybės draudimo įmonė, vykdanti profesinių pensijų kaupimo veiklą	Public limited liability company/Private limited liability company/European company (*Societas Europaea*)	Life assurance contract under which occupational pensions are accumulated	Voluntary	Occupational	IORP (art 4)

	Valdymo įmonė	Public limited liability company/Private limited liability company/	DC	Voluntary	Statutory funded	Excluded from IORP Directive based on Art. 2.2(a)
	Gyvybės draudimo įmonė					
	Valdymo įmonė	Public limited liability company/Private limited liability company/	DC	Voluntary	Individual	UCITS (b)
	Gyvybės draudimo įmonė	Public limited liability company/Private limited liability company/European company (*Societas Europaea*)	Life assurance contract	Voluntary	Individual	LIFE
LU	Fonds de pension (CSSF) (a)	Pension savings companies with variable capital and pension savings associations	?	Voluntary	Occupational	IORP
	Fonds de pension (CAA) (b)	Mutual insurance associations,	?	Voluntary	Occupational	IORP

		co-operative companies, co-operative companies organized as a public limited company, charitable associations				
	Assurances de groupe	Insurance company/ Group insurance contracts	?	Voluntary	Occupational	LIFE
	Régime interne de pension	NA Bookreserve schemes	?	Voluntary	Occupational	No relevant prudential EU legislation applicable
	Contrat de Prévoyance vieillesse	Pension products represented by insurance products as well as by banking products invested in licensed units for collective investment		Voluntary	Individual	Life, Banking, UCITS (c)
HU	magánnyugdíj pénztár	Association with special legal form	DC (a)	Mandatory	Statutory funded/Individual	Regulation 883/2004
	önkéntes nyugdíjpénztár	Association with special legal form	DC	Voluntary	Individual	No relevant prudential EU legislation

						applicable
	Nyugdíjbiztosí tás (Life Insurance company)	- joint-stock company - association	Pension Insurance	Voluntary	Individual	LIFE
	foglalkoztatói nyugdíjszolgál tatás	Joint stock company	DB/DC	Voluntary	Occupational	IORP
	nyugdíjelőtak arékossági számla (c)	pension saving account	DC	Voluntary	Individual	Banking/UCITS (C)
MT	Occupational Retirement Scheme	Trust Contractual (a)	Trust Deed Contract between the employer and the Retireme nt Scheme Administr Ator	Voluntary (b)	Occupational	IORP (C)
	Personal Retirement Scheme	Trust Contractual (a)	Trust Deed Contract between member and the Retireme nt Scheme Administr ator	?	Individual (b)	No EU Prudential Legislation
NL	Pensioenfonds (´pension fund´)	Foundation (a)	?	Mandatory for industry-wide schemes	Occupational (b)	IORP

				Voluntary opt-out for company schemes		
	Verzekeraar (´insurance company´ or ´insurer´)	Public limited company	?	Voluntary	Occupational (b)/individual	LIFE
AT	Pensionskasse	Joint-stock company	DB and DC	Voluntary	Occupational	IORP
	Betriebliche Kollektivversic herung	Joint-stock company, mutual insurance association and SE	DB and DC	Voluntary	Occupational	LIFE
	Lebensindivid ual- und Gruppenrente nersicherung	Joint-stock company, mutual insurance association and SE	DB and DC	Voluntary	Individual	LIFE
	Direkte Leistungszusa gen (Bookreserve schemes)	?	DB/DC	Voluntary	Occupational	Excluded from IORP Directive based on Art 2.2(e)
PL	pracowniczy fundusz emerytalny	occupational pension fund (in Polish legal framework is registered as separate legal entity)	DC	Voluntary	Occupational	IORP (b)
	Zakład ubezpieczeń na życie	joint-stock company	DC	Voluntary	Occupational (a)	LIFE

	Fundusz inwestycyjny otwarty	investment fund (in Polish legal framework is registered as separate legal entità	DC	Voluntary	Occupational (a)	UCITS
	zarządzający zagraniczny (foreign manager)	Not specified – all form of IORPs notified by relevant authorities from other Member States	DC	Voluntary	Occupational (a)	IORP (c)
	Otwarty fundusz emerytalny	Open pension fund (in Polish legal framework is registered as separate legal entity)	DC	Mandatory	Statutory funded	Regulation 883/2004
	Indywidualne konta emerytalne	1) Investment fund -in Polish legal framework is registered as separate legal entity, 2) jointstock company, 3) jointstock company, 4) Limited company or joint-stock company	DC	Voluntary	Individual	1) UCITS 2) Life 3) Banking 4) ISD

PT	Fundos de pensões fechados (closed pension funds)	Pension Funds	DB/DC	Voluntary	Occupational	IORP
	Adesões colectivas a fundos de pensões abertos (collective membership of open pension funds)	Pension Funds	DB/DC	Voluntary	Occupational	IORP
	Contratos de seguro de grupo (group insurance policies)	Insurance Polizie	DB/DC	Voluntary	Occupational	LIFE
	Planos de poupança-refo rma (saving-retire ment schemes)	1) Pension funds 2) Insurance policies 3) Investme nt funds	DC	Voluntary	individual	1) No relevant EU prudential regulation (a) 2) Life 3) UCITS
	Adesões individuais a fundos de pensões abertos (individual membership of open pension funds)	Pension Funds	DC	Voluntary	individual	No relevant EU prudential regulation (b)
	Contratos de seguro individuais	Insurance Polizie	DC	Voluntary	individual	LIFE

	(individual insurance policies)					
	Planos de pensões financiados no balanço da empresa (book-reserve schemes)		DB/DC (c)	Voluntary	Occupational	Excluded from IORP Directive based on Art. 2.2(e)
RO	Administrator al unui fond de pensii administrat privat	Administrato r of a privately administrate d pension fund- joint stock company	hybrid DC (a)	Mandatory	Statutory funded (individual)	Regulation 883/2004
	Administrator de fonduri de pensii facultative	Administrator of voluntary pension funds – joint stock company	DC (b)	Voluntary	Individual	IORP (C)
SI	Sklad obveznega dodatnega pokojninskega zavarovanja		DB (with State guarantee)	Mandatory for certain occupations (heavy and unhealthy occupations)	Occupational	Regulation 883/2004
	Pokojninska družba	Joint-stock company	DC	Voluntary opt-out	Occupational (a)	IORP
	Zavarovalnica	Joint-stock company	DC	Voluntary opt-out	Occupational (a)	IORP
	Vzajemni pokojninski sklad	Mutual pension fund, managed by bank, insurance company,	DC	Voluntary opt-out, Mandatory for public employees (Closed Mutual Pension Fund for Public Employees)	Occupational (c)	IORP

		pension insurance company				
	Sklad obrtnikov in podjetnikov (SOP)	Found	DC/DB	Voluntary	Individual	No relevant prudential EU legislation applicable to the pension product
SK	dôchodková správcovská spoločnosť	joint stock company	DC (personal, protected)	Voluntary	Statutory funded (individual)	Regulation 883/2004
	doplnková dôchodková spoločnosť	joint stock company	DC (hybrid, unprotect ed)	Voluntary, in general (a)	Individual, in general (b)	IORP
FI	TEL	Statutory scheme	PAYGO/Funded DB	Mandatory	Statutory Occupational	Regulation 883/2004
	Additional TEL	Supplementary		Voluntary	?	?
	ETAlisäeläkesäätio	company pension fund (independent legal entity)	DB	Voluntary	Occupational	IORP
	ETAlisäeläkekassa	Industry wide pension fund (independent legal entity)	DB	Voluntary	Occupational	IORP
SE	Premium pensions	Pension funds	DC	Mandatory	Individual	Regulation 883/2004
	Livförsäkrings bolag	Proprietary Life insurance company	DC/DB	Voluntary (a)	1) Occupational 2) individual (b)	1) IORP (Art. 4) 2) Life

	Livförsäkrings bolag	Mutual life insurance company	DC/DB	Voluntary (a)	1) Occupational 2) individual (b)	1) IORP (Art. 4) 2) Life
	Tjänstepensio nskassa	Occupational pension fund	DC/DB	Voluntary (a)	Occupational and Individual	IORP
	Pensionsstiftel se (c)	Pension foundation	None/Investments only	Voluntary (a)	Occupational	IORP
	Särskild redovisning av pensionsskuld (Book reserves (d)		DB	Voluntary (a)	Occupational	Excluded from IORP Directive based on Art. 2.2(e)
UK	Occupational DB scheme	Trust (a)	DB	Voluntary	Occupational	IORP
	Occupational DC schemes	Trust (a)	DC	Voluntary	Occupational	IORP
	Occupational Hybrid scheme	Trust (a)	DB/DC (b)	Voluntary	Occupational	IORP
	Personal pension	Contract	DC	Voluntary	Individual	LIFE