

Portability of Supplementary Pensions Rights in Europe: Challenges, Opportunities and Lessons to Be Drawn

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17TH ILERA WORLD CONGRESS

**THE CHANGING WORLD OF WORK: IMPLICATIONS FOR LABOUR
AND EMPLOYMENT RELATIONS AND SOCIAL PROTECTION**

CAPE TOWN, 7-11 SEPTEMBER 2015

Why is portability important for labour mobility?

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- Holzmann and Koettl (2010: 2) individuate 3 reasons:
 - **economics**
 - ✦ individual labor mobility decisions should not be influenced by the lack of portability of social benefits for which acquired rights have been established;
 - **social policy**
 - ✦ social rights are key to life-cycle planning and social risk management;
 - **human rights**
 - ✦ nationals and migrants have the right to social protection according to national legislation and international conventions and these rights should to a large extent be portable across countries and professions.

Portability of supplementary pensions in the EU

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1. *Legal competence*

- the freedom of movement of workers is not just an economic freedom, but also has a social dimension

2. *Increased mobility*

- there were 10.3M mobile workers in 2013, increase after Eastern Enlargement
- unemployment was circa 10% in 2014

3. *Multi-pillarization*

- coverage varies, but the share of pensionable income from occupational schemes is bound to increase

Coordination without portability

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Regulations 883/2004 and 987/2009 constitute the Coordination Regime.

Principles: *equal treatment*, *aggregation*, *prevention of overlapping benefits*, *exportability*.

The *exclusion of non-statutory schemes* creates 2 problems:

- i) 99% of supplementary schemes are not covered;
- ii) the dichotomy statutory versus non-statutory leads to application problems of separate legal instruments.

Directive 98/49/EC

- improves the legal position of the insured in supplementary pension schemes, especially of posted workers;
- vested rights are preserved and pension rights are paid upon retirement in another Member State;
- it does not deal with waiting or vesting periods, does not prescribe minimum indexation and does not contain any aggregation rules.

Existing literature

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Political-economy on occupational pensions

- neglects the European dimension
- Ebbinghaus's portentous volume dedicates one paragraph only

Europeanization of occupational pensions

- fragmented and unsystematic
- requires the framing of national preferences according to the newest strands of PE scholarship

What needs to be addressed?

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1) Acquisition

- excessively long waiting and vesting periods
- excessively high vesting age

2) Transfer

- technical difficulties
- taxation issues

3) Preservation

- insufficient indexation

Previous taxonomies

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Bismarck versus Beveridge

- used by Hennessy (2013)
- mainly related to the emergence of occupational plans, but tells little about their characteristics

Esping-Andersen's three worlds

- used by Haverland (2007)
- Scandinavians have collectively agreed solidaristic schemes; Anglo-Saxons voluntary schemes offered by individual employers; Continental countries have underdeveloped plans
- it omits large differences within the Continental camp

Ebbinghaus and Wiß's 'macro' dimensions

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Maturity (impact of portability)

- mature (with a long tradition: **UK, NL, IE**)
- catching-up (the rapidly expanding **Scandinavians**)
- latecomers (**Continental Europe**, with huge differences)

Coordination (human resources and financing)

- LMEs (**UK, IE**) rely on radical innovation that requires dynamic hire-fire and developed financial markets with large institutional investors such as pension funds
 - ✦ support efficient portability and capital transfers
- CMEs (**Continental Europe**) rely on incremental innovation, requiring loyal employees and less dependence on volatile financial markets
 - ✦ strict limitations to entitlement shackle employees to firms and unfunded book reserves are cheap sources of internal financing

'Micro' dimensions: governance - acquisition

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Governance

- collective schemes (DK, NL, SE, less so in BE and DE)
 - ✦ nation- or sector-wide schemes facilitate mobility, by providing similar benefits across firms
 - ✦ subsidiarity principle plus possibility to retain employer contributions
- individual schemes (rest of EU-15)

Waiting periods after which an employee can join a pension scheme

- longer than 2 years in AT, FI, IE, LU

Vesting age for acquiring pension rights

- in BE, DE, SE, PT, DK (public sector) and LU it is still 25 or above

Vesting periods for establishing vested rights

- in 2007, 15% of DB schemes required ≥ 5 years; 32% ≥ 2 years
 - all employer-sponsored schemes in DE apply 5-year vesting periods, similar to some schemes in AT, DK, LU
 - IE and UK allow 2-years vesting periods that are seldom applied

The strictest statutory combinations of vesting and waiting are present in three Continental CMEs (AT, DE and LU) and, limitedly so, in DK.

'Micro' dimensions: funding - transfer

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Funding

- defined-benefit schemes (diffuse in many Member States)
 - ✦ actuarial calculations are particularly troublesome
- book reserves and unfunded schemes (Continental CMEs, mainly **AT, DE, LU** and, partly, **FR, IT**)
 - ✦ they serve as sources of cheap internal financing
 - ✦ in **DE** it is slowly changing via the establishment of voluntary funding through Contractual Trust Arrangements

Transfers (of capital and rights)

- generates liquidity problems
- creates unexpected cash flows

'Micro' dimensions: indexation - preservation

Indexation

- extremely heterogeneous practice, however schemes may
 - ✦ have legal obligations (SE, UK DB, DE public sector plans)
 - ✦ rely on self-regulation (FR, CH, several Scandinavian and DE funds)
 - ✦ have no special rules (IT, NL, UK DC, some DK schemes)

Preservation (of dormant rights)

- not always protected against inflation;
- salary rises are not reflected in future benefits;

both possibly leading to *insufficient entitlements* and, even, to the *deterioration of their real value* in time.

In 99% of *DC schemes*, dormant rights participate in the returns with the mass of other contributions.

In 25% of *DB and hybrid schemes* this is not the case: BE, DE, ES and IT grant the worst conditions.

Country positions

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Mature

- **UK** and **IE** are LMEs with a long tradition of worker mobility
- **NL** has solidaristic schemes (pro mobility, but contra subsidiarity), no binding indexation rules, and many DB plans

Catching up

- **SE** especially (**DK** has many DC schemes and **FI** has a semi-public second pillar) has subsidiarity concerns, all have fewer mobility issues

Latecomers

- **DE** and **BE** have medium-high coverage, but are different CMEs
 - ✦ **BE** relies on insurance plans, plus book reserves are prohibited
 - ✦ **DE** uses book reserves for internal financing and has acquisition limitations
- other Member States have low coverage
 - ✦ **Central and Eastern Europe** is limitedly impacted
 - ✦ **Mediterranean countries** favour liberal acquisition rules for own migrants
 - ✦ **FR** and **IT** have unfunded schemes but
 - AGIRC and ARRCO are under the Coordination Regime
 - Trattamento di Fine Rapporto is excluded

Portability: drafts and failures

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Draft Portability Directive in 2005

- *acquisition* - requirement of a two-year vesting period, a waiting period of one year and a minimum age of no more than 21 years of age (opposed by **AT**, **DE**, **LU**);
- *preservation* – fair value (opposed by **NL**)
- *transferability* - right to transfer acquired rights to another scheme or similar financial institution (unfunded schemes exempted), no penalization of workers, calculation left to Member States (opposed by **NL** among others)
- *tax issues* - excluded from the proposal (opposed by all)

Revised Draft in 2007

- removed all provision on capital transfers (appealed **NL**), limited the scope, redefined acquisition of rights
- indexation from fair value to fair treatment - ample leeway due to heterogeneity of pension funds (sole exception low-value dormant rights) (appealed **NL**)
- the Council did not reach a common position, as the principal bone of contention remained the conditions governing vesting criteria (opposed by **DE** and **LU**)

The 2013 breakthrough

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New legal base

- Article 46 TFEU on the free movement of workers prescribes OLP based on QMV
- in an environment characterized by great policy distance this increases the winset of the status quo as blocking minorities are difficult to form
- AT, DE, LU had to give in to the new state of affairs

Flexible rules on acquisition

- combined waiting and vesting periods (proposed by CY, elaborated on by AT)

Restricted scope

- no retroactivity (appeased DE)
 - ✦ only to periods of employment after implementation
- only cross-border movements (not to create a legal precedent)
 - ✦ shifts in employment within individual Member States are *de facto* included

A quid-pro-quo?

- elimination of Solvency II from IORP II, in exchange for the Portability Directive (appeased BE, DE, IE, NL, UK)

Acquisition and preservation

- Combined waiting and vesting period up to 3 years and minimum vesting age of 21.
- Preservation is addressed by individual Member States and only low-value vested rights may be excluded (and reimbursed)
 - it has to conform to national law and practice rather than to actuarial rules;
 - it has to take into consideration the type of fund (admin costs may be high);
 - it has to guarantee fair treatment;
 - small sums may be reimbursed subject to the outgoing workers' consent.
- Reimbursement rules
 - in DB and hybrid schemes, contributions are reimbursed in accordance with national law, collective agreements or contracts;
 - in DC schemes the worker is entitled either to the investment value or her contributions;
 - employer contributions can be retained.
- Non-regression
 - Member States can grant more favourable rules;
 - the social partners can apply their own rules.