

TIME FOR RESTRUCTURING SOCIAL SECURITY¹

2001 was a year in which many reforms were made to the rules governing the social security systems in European countries. Today it is clear that such transformations to the rules are ruled by common imperatives and take generally similar forms. Naturally there are national divergences and these will remain for some time, due to the history of each national social security organisation, as the institutions themselves would be the first to admit. Nevertheless, broad social security coverage is the norm in Europe, especially in comparison with other regions of the world. This situation today has widespread support: there are no longer proposals to eliminate public interventions in this field but rather to refocus on gains in efficiency, generalisation and more precise targeting of public policy measures. Even though this approach has borrowed terms from the world of business, such as the concept of a customer (instead of "beneficiary" or "taxpayer"), and even though the emphasis is placed not only on rights but also on the obligations of customers, public control of social security coverage has been broadly strengthened.

No review of the major development trends in basic social security systems would be complete without a presentation of the activities of the European Union in this field (I). The Member States are increasingly having to take into account the European Union context via various co-ordination procedures that are binding to varying degrees. The questions of social protection are now clearly seen as an element of European economic construction². This is illustrated by the recent European Commission communication on an integrated approach to support national strategies intended to guarantee safe and viable

¹This summary was based mainly on reports submitted by MISSOC Correspondents in January 2002.

²One example is the "Progress report to the Ecofin Council on the Impact of ageing populations on public pension systems" submitted in November 2000 and submitted the following month to the European Council in Nice.

pensions³: "ensuring the viability of pensions is vital to the overall socio-economic development of the European Union. They [retirement pensions] also play a key role in fiscal consolidation and the quality and viability of public finances. Moreover, pension systems determine the quality of life for a major part of the population and have a strong influence on the overall functioning of the economy and especially labour and capital markets." Social security is manifestly an issue common to all Member States of the European Union.

Fundamental trends can therefore be identified (II) that reach beyond the originality of certain reforms (III).

I. The Community framework

It is not simply a matter of identifying the influence of the mechanisms, nowadays referred to as the "Luxembourg processes", on unemployment payment schemes, but also of highlighting the effects of the "Lisbon process", in the general framework of the European social agenda⁴, on national social security policies for a proper understanding of these changes.

Similarly, we cannot overlook the activities of the European Union institutions in the field of basic economic freedoms, which take the form of legislative initiatives and jurisprudence applied by the Court of Justice of the European Communities, which we shall present very briefly. As we know, this institution influences national legislatures by monitoring the application of the fundamental principles of equal treatment (men and women, nationals and non-nationals) and the application of the principles of free competition.

³COM (2001) 362 final of 3 July 2001.

⁴The European social agenda defines the priorities for concrete actions for the next five years based on six strategic guidelines in all fields of social policy.

A. The open method of co-ordination

A large number of national social protection policies are today drafted within the framework of the procedures expressly stipulated by the Treaty in the field of employment, which re-orient national unemployment benefit systems, and a political process in the fields of social protection and combating exclusion⁵, known as the open method of co-ordination (OMC). The OMC takes the form of an action programme prepared by the Commission to encourage and support co-operation between Member States, by drawing up common objectives in the form of guidelines, by national action plans reporting on the implementation of the defined objectives and by a joint Commission/Council report aimed at identifying the best national practices which are of interest to all Member States.

1) The *labour market* reform being implemented within the European Union has a significant influence on policies towards the unemployed. There is a dual link with basic social security systems and guaranteed incomes. These measures are supposed to influence not only the size of the working population (increased number of elderly workers, return to work, etc.), but also the amount of revenue for the portion of the system financed by contributions (increased revenues or a reduction where employment measures are accompanied by social security exemptions). The reform also applies where the benefits are provided by the institutions that administer the unemployed: a strictly monitored return to work for individual job seekers and financial incentives to accept a poorly paid job are the most visible instruments (see below). A complete assessment of national employment policies was carried out during 2001. The Member States therefore have an assessment of their policy on the subject, recommendations indicating the "progress to be made" and guidelines for 2002.

2) In the field of *pensions*, as the Social Protection Committee stresses at the end of its report on safe and viable pensions, it is

⁵Based on articles 136 and 137 of the Treaty of Amsterdam.

necessary to take into account "sharing roles between the European Union and the Member States, underlining their common interests: it is up to Member States to decide on the pension systems they desire (...). However, despite considerable diversity within the European Union, the Member States are faced with common challenges [in particular demographic ageing] and also share common objectives in the field of pension systems. It is therefore necessary for Member States to co-ordinate their efforts (...). The role of the European Union will be to help Member States progressively to formulate their policies (...)".

The European Council, at the Göteborg Summit in March 2001, charged the Social Protection Committee with formulating indicators in the field of pensions. These were presented in the joint report of the social protection committee (SPC) and the economic policy committee (EPC)⁶.

3) Thanks to the national action plans drawn up between January and May 2001, we now have an overview of the battery of indicators used to measure *poverty and social exclusion* and very detailed reports on the national social policies implemented to deal with them, as well as a first assessment of them. These summaries are comparable with each other because they are based on a common analysis matrix elaborated at the Nice Summit⁷. The guidelines were refined by the Social Protection Committee in the form of common indicators⁸.

All of this work, carried out annually (or every two years) at supranational level, provides each country with an opportunity to assess and revise its internal strategies. The national plan obliges each country to review co-ordination between the different levels

⁶On the "Objectives and working methods in the field of pensions: application of the open method of co-ordination" 10672/01 ECOFIN 198 SOC 272.

⁷Comprised of the four general objectives selected in the guidelines – promotion of participation in employment and access for everyone to resources, rights, goods and services; prevention of exclusion; actions for the most vulnerable; mobilisation of all actors and the promotion of equality between men and women – and the sub-themes that explain them.

⁸Report on indicators in the fields of poverty and social exclusion October 2001.

of intervention – national, regional and local. It constitutes not only an instrument for exchanging experiences and reporting to peers, but also a spur to implement new measures. In this sense, the Community processes play a significant role⁹.

4) Finally, actions in the field of *health* have been launched. A Commission Communication on "the future of healthcare for the elderly: guaranteeing accessibility, quality and financial viability"¹⁰ reports on the challenges represented by population ageing for national health systems and that provide social coverage of health risks, characteristic of the European social model.

B. The impact of Community fundamental freedoms on the legislation of Member States

Community law is intended to implement the economic principles of the free movement of persons, goods, services and capital. Traditionally, these freedoms are accompanied by the prohibition of certain types of discrimination. This normative activity and draft bills have a carry-over effect on national legislation.

1) On the subject of *freedom of movement for persons*, we note that Switzerland will join from 1st June 2002 the co-ordination network of basic social security systems¹¹, so the benefits of the

⁹This obviously applies only to the 15 current members of the EU and not to EFTA countries.

¹⁰COM (2001) 723 fin. Communication from the Commission to the Council, the Parliament, the Economic and Social Committee and the Committee of the Regions.

¹¹The agreements between the EU and Switzerland of 21 June 1999 (on free movement of persons) have since led to integration of Switzerland in the system for co-ordinating basic social security regimes; all Member States of the EU have ratified the agreement on the free movement of persons. The Council of the European Union has formally approved the seven agreements including the one on the free movement of people containing the reference to regulation 1408/71. Unless otherwise agreed in appendix II of the agreement, the bilateral social security conventions between Switzerland and the EU Member States are suspended where the same matter is governed by the agreement (art. 20). The agreement of 21 June 2001 amends the one setting up the EFTA and in that way

social security system in this country will have to be made compatible with the principles of non-discrimination that underpin Regulation 1408/71. Elsewhere, at the end of 2001 the Belgian Presidency of the European Union, with a mandate from the other countries, formulated a working method in the form of parameters with a view to the modernisation of Regulation 1408/71, a method that was accepted by the Ministers of Social Affairs from the Member States. Although this approach has not yet assumed normative powers, it will certainly have an effect on legislation - note the proposition to allow nationals of third countries to benefit from the rules of "*totalisation/proratisation*" from which they are currently excluded. Jurisprudence has also ruled on the exportation of special non-contributory benefits. In his ruling, Jauch¹² came down in favour of exporting such benefits although it was on the list of non-exportable benefits; national legislatures will have to take into account this new situation in their criteria for allocating benefits of this type. By reminding that double contributions are forbidden, the European Court of Justice¹³ led the French legislator to amend legislation on the collection of general social security contributions and on the contribution to the reimbursement of the social debt following a ruling that considers that the conditions for collection from border workers were in conflict with the prohibition on dual contributions in Regulation 1408/71.

2) The *free provision of services*, in the field of retirement products, as well as the emergence of a single capital market, including those held by funded retirement schemes, were on the agenda of the Community institutions in 2001. These questions are evidently covered by the "Cardiff process", according to which the Member States and the Commission will draw up brief annual reports describing progress with economic reforms relating to the market for products and capital. Remember also that in 1997 the

takes into account this integration in the relations between Switzerland and the other EFTA countries.

¹²EJC 8 March 2001, Jauch, case C-215/99.

¹³EJC 15 February 2000. Commission v/ French Republic, case C-169/98.

Single Market DG at the Commission published a Green Paper on supplementary retirement pensions which was used as the basis for a wide-ranging consultation on the means of improving the functioning of supplementary retirement pension schemes at European Union level. The results of this consultation were reported in a communication from the Commission in May 1999¹⁴, stating that a Community framework for supplementary retirement pensions could be based on three strands: the elaboration of a draft directive concerning the prudential regulation of occupational retirement funds; the lifting of restrictions on professional mobility in the European Union; and finally, the co-ordination of tax regimes in Member States. Only the first strand has resulted in a "Proposal for a directive on institutions for occupational retirement provision" (October 2000), an amended version of which was adopted on first reading in July 2001 by the European Parliament. Funded supplementary retirement pensions set up during 2001 by certain countries (see below) will have to satisfy the rules on the cross-border provision of supplementary pension products and take into account the financial character of the services offered with a view to the abolition of national barriers. Naturally, the debates at both national and Community level will have to take on board this situation.

Jurisprudence concerning the free provision of services and the free circulation of healthcare provision has made this another interesting year. It has been pointed out on several occasions that the Kohl and Decker¹⁵ rulings constitute landmark decisions concerning the link between the principles of the single market, defined by the Treaty, and the social protection system mechanisms, defined by each Member State and falling within their competence. These rulings were confirmed and complemented in 2001 by the Geraets-Smits and Peerbooms

¹⁴"Towards a single market for supplementary pensions".

¹⁵EJC, 28 April 1998, Decker, case C-120/95 and EJC, 28 April 1998, Kohl, case C-158/96.

decisions, as well as the Vanbraekel ruling¹⁶: all hospital and outpatient care must be measured against the yardstick of the rules governing the free provision of services. At national level this results in legislatures having to make their healthcare system and access to healthcare "eurocompatible". In terms of the free movement of medical goods and services, the criteria established by the social protection system (the personal and material field of application as well as the methods of regulation) may not be discriminatory, directly or indirectly, with regard to foreign providers, except where there is legitimate justification, interpreted strictly by the Court in the above-mentioned cases.

Bringing the legislation on occupational accident insurance managed by private institutions in Belgium into line with the Insurance Directive following the Commission ruling against Belgium on 18 May 2000¹⁷, illustrates the influence of the rules on the free provision of services on the organisation of social protection, because Belgium had to open up its market to all Community operators.

3) Other decisions by the Court of Justice of the European Communities concern the principle of *equal treatment*.

Equal treatment of men and women first. The Griesmar and Mouflin rulings concern the application of the principle of equal treatment to the special French regime of civil service retirement pensions¹⁸. Regimes of this type (for example, the social protection of German civil servants) therefore find themselves subject to the rules on occupational regimes and to the special Community rules on co-ordination. These regimes will therefore have to be revamped.

¹⁶EJC 12 July 2001 Geraets-Smits and Peerbooms case C-157/99; EJC 12 July 2001, Vanbraekel, case C-368/98.

¹⁷EJC 3 May 2001, Commission v/ Belgium, case C-347/98.

¹⁸EJC 29 November 2001 Griesmar, case C-366/99 et EJC 13 December 2001, Mouflin, case C-206/00.

Next comes equal treatment of nationals and non-nationals. The Grzelczyk¹⁹ ruling certainly makes a major contribution to the development of rights to minimum income: this ruling prohibits discrimination in the allocation of the minimum income, invoking European citizenship. In so doing, it overturns the national conditions for the allocation of these benefits under Regulation 1408/71, which upheld the principle of non-discrimination in the benefits paid out by basic social security regimes and measures to provide minimum resources²⁰. On the other hand, it reinforces the concept of European citizenship.

It was in this context, heavily influenced by Community actions, that changes were made to national legislation.

II. Major trends

Several remarkable trends, in addition to technical changes, were witnessed again this year.

1) The major preoccupation of the countries studied was the question of *retirement pensions*. All of the national reports mention efforts in this domain, albeit to varying degrees. Overall we identified the following:

- countries that had completed general reforms such as Germany (of the basic regime) or a wide institutional reform (on statutory supplementary schemes handled by AGIRC and ARRCO in France);
- those that had undertaken partial reforms such as Switzerland, Spain and Iceland;
- those that are in discussions, often where the system collapses and after an exploratory phase, with the social partners, such as Norway, or have a pre-legislative agreement for reform such as Spain, Luxembourg, Portugal and Finland (for supplementary pensions);

¹⁹EJC 20 September 2001 Grzelczyk, case C-184/99.

²⁰As shown in MISSOC table No. X.

- and finally those that are at the stage of preliminary studies or the early stages of reform such as France that started thinking on this subject after the 1993 reform of its most important basic regime, whose effect spread over years is still visible. More than any other reforms, as witnessed by the national report from Ireland, those in the field of retirement pensions have been preceded by long and wide-ranging discussions.

The reforms and planned reforms have several common elements. Firstly, savings, deemed inadequate to guarantee the long-term risks and largely replaced by social solidarity mechanisms when modern social security systems were set up in the middle of the last century, once again have the wind in their sails. Germany is following in the footsteps of Sweden and the United Kingdom, which had already reformed their systems in favour of the widespread promotion of long-term savings and bolstering prudential guarantees to give a degree of protection to savers. Spain and Italy are discussing similar reforms. These optional mechanisms for providing funded pensions, complementing or substituting the mandatory systems, are often subsidised by the state in the form of tax reductions. The reforms undertaken over the past two decades to pensions in the United Kingdom, Italy and Portugal, as well as the optional French "*surcomplémentaire*" pension, demonstrate that tax advantages are becoming a major ingredient in redistribution and motivation in the field of social protection.

A targeted increase in the retirement starting age has been signalled in several countries. Switzerland and Liechtenstein have reformed their system for women. This involves aligning the starting age for men and women. Note also the reforms to the rules on early retirement, with reductions in pensions (Switzerland and Liechtenstein). These measures seem to reflect the view that early retirement should be facilitated and become a matter of individual choice concerning retirement income, as in Belgium. Luxembourg, which increases its basic benefits and is heading for an upward alignment of the public and private systems. Austria has announced its intention to increase contributions to the pension system for farmers.

A correlated or alternative improvement in the lowest or minimum pensions has also been reported in Belgium, Iceland, Italy, Norway, Finland and the United Kingdom, as well as for farmers in France.

2) Once again this year many reports broached the question of the *invalidity guarantee* – the transformation of this branch of social security came up in the reports from Denmark, Italy, Ireland, Liechtenstein, the Netherlands and Norway. This is by no means a new phenomenon, but it does seem possible to speak of a ground swell. Sometimes the reforms involve an adjustment: Liechtenstein has improved the guarantee whilst relaxing the conditions of entitlement, reorganised the competent administration and transferred to the state budget part of the burden of invalid minors. Sometimes they are more fundamental. The principles and the rules governing invalidity have been under attack since the early 1990s, first in doctrine then in legislative reform in certain European countries. Many governments deemed that expenditure in this domain was excessive due to the over-generous conditions governing access to benefits, especially for elderly workers. In the Netherlands and the United Kingdom invalidity was used on a massive scale as a substitute for dismissal during periods of restructuring. Elsewhere, the philosophy underpinning these mechanisms has been criticised: the systems in place gave priority to the individual limitation of the functional capacities as defined by the doctor, to the detriment of consideration of the general environment of the injured person. This was the thinking behind the Danish reform introduced in 2001, but operational only as from 2003. There have also been proposals for the replacement of special rules for compensation associated with the first approach by rules to combat discrimination and favour social integration. Article 13 of the Treaty of Amsterdam and the recent Directive to combat discrimination reflect this approach. These rules have the merit of ignoring the status of the employee to which invalidity insurance is traditionally linked and drawing attention to the fate of non-salaried workers and "atypical" workers in the event of the occurrence of this risk. These categories, which we know are expanding rapidly, are in reality inadequately protected in many

EU Member States. Finally, in certain countries, such as Denmark, Sweden and Ireland, as well as throughout the Union, we have the emergence or strengthening of lobbies defending the interests of invalids. The consequences of this new state of affairs are extremely diverse. We find that there is a north-south divide within Europe: Denmark, Germany, Ireland, the Netherlands, Sweden and the United Kingdom appear to be the ones that have given most thought to a change in the way we deal with invalidity, even though their implementations vary enormously. The German reform, decided at the end of 2000, came into force at the beginning of 2001. It involves a substantial restructuring of the invalidity pension mechanisms, sometimes accompanied by transitional measures and rigorous clauses for certain categories of the population. Other countries have broached the issue through new anti-discrimination laws; this is particularly true of France and Spain. "The activation of expenditure", in other words a renewed effort to help invalids to return to or remain in work, using more individual advice and a more integrated approach to unemployment insurance – such as the reforms announced by Denmark, Ireland and the United Kingdom – are at the heart of these debates, projects and reforms. One of the flagship measures involves encouragement to cumulate a small-scale job with an invalidity pension. This could reflect the influence of the philosophy of the EU guidelines for employment even though they only contain a vague reference to the needs of invalids. Austria has also introduced legislation, revising the rules on cumulating invalidity pensions with earned income. Luxembourg is foreseeing a reform that would give a priority to integration measures instead of granting disability pensions.

However, the path of reform is long and hard. The former authoritarian measures such as employment quotas for handicapped persons or invalids, 3% of employees in the United Kingdom and up to 6% in Germany and France, have proven to be ineffective. Many countries today recognise the limitations of subsidies for employing invalids or, as in Denmark, preferential employment in the public sector. The United Kingdom reports a lack of success with specific occupational training, although entrusted since 1990 to institutions run by private enterprises,

supposedly more effective than public sector training. The protected sector and job offers under conditions outside of the normal rules have proven to be a ghetto, to such an extent that certain governments, such as in the Netherlands, have increased incentives for reintegration into the ordinary world of work. Finally, grants for the transformation/adaptation of jobs have proven to take too long to implement to be effective according to a Danish survey. But the time is not yet ripe to assess the results of the reforms. There are other issues on the horizon. The future will tell whether, in a context of non-discrimination, we can provide reasons why, in most European countries, "civilian invalids" with the same degree of incapacity are less well compensated than the victims of occupational accidents and war invalids.

3) It has already been noted in the past that, under pressure from the guidelines for employment, the *return to work*²¹ was becoming a component of the unemployment benefits mechanisms, for which an individualised and strictly monitored job-seeking process and financial incentives for accepting a poorly paid job are the most visible instruments. This trend towards more individualised support is not only confirmed (Greece, Spain, France and Ireland report reforms of this type), the approach is also found in other branches of social protection. This approach, which was originally the prerogative of social assistance policies in certain countries, diverts unemployment benefits to other social security benefits. The fastest possible return to work for the beneficiaries of social security benefits is the absolute priority of reforms at the beginning of this century in most European countries. Social support benefits are becoming mixed up with supplementary benefits, from help in kind in the form of individualised assistance to get back into the job market or the obligation to accept a job. A return to work has also been encouraged amongst single parents previously collecting social security benefits and it is a priority for many of the mechanisms for dealing with invalids or handicapped people. Tax credits, as in

²¹See "Social protection becoming more European" MISSOC-info 02/2001.

the United Kingdom, or the possibility of cumulating wages and social security benefits, as in France or Austria, provide incentives to work; employers' subsidies for certain types of workers, as in Germany and France, complement this panoply of financial instruments. Not only are the borders between social support and the right to unemployment benefits becoming less watertight, the simultaneous granting of guaranteed resources and a wage during the initial phase of a return to work is blurring the traditional distinction between the worker and the beneficiary of social security benefits.

4) We know that traditionally *the funding of social security systems* was a mix of taxes and social security contributions, with the respective percentages varying from one country to another and from one branch to another within the same national system or sub-system. In this field, note that France and Liechtenstein have increased the portion funded by taxation and that Portugal has completed a vast reorganisation of the social protection system, transferring certain expenditure to taxation. Once again we note that, in the selected reference period, there have been developments in the tax rules with a purpose other than to guarantee resources, namely the introduction of tax credits and tax exemptions accompanying products that supplement the basic social security regime, particularly in the field of long-term savings intended to complement public retirement schemes (see above). We know that "tax credits" reflect concerns that go beyond social security. They are above all a means of eliminating and simplifying a whole range of current social programmes and thereby make savings in administrative costs. This objective is sometimes even the primary aim of introducing negative taxes. The reforms introduced in the United Kingdom and Germany, with direct state intervention and the corresponding rationalisation of its administrative organisation, are consistent with this approach. Tax credits on the one hand and tax deductions on the other, point to a refocusing of state activity for the benefit of the most vulnerable and a transfer of the coverage of certain risks to private operators. One might wonder whether this presages wider reforms of the tax system towards greater individualisation of taxation. Insurance products for people subsidised by tax

deductions, together with tax credits, have in common that they are excluded from the rules on the co-ordination of social security systems, part of the fundamental "*acquis communautaire*" for removing obstacles to the free movement of workers represented by the national rules for acquiring benefits. International tax law is based largely on bilateral agreements that are difficult to handle. European tax harmonisation is not yet on the horizon and co-ordination hardly probable, at least in the short term. In other words, there is a contradiction between the use of tax law and the debate on the necessity for pan-European worker mobility.

5) Another recurring theme is the constant concern of countries to *improve social benefits*. These reviews have the dual features of being highly targeted in terms of both the personal field of application and the benefits in question. This is not a time of general reform but of ad hoc improvements in favour of the most vulnerable and the integration of categories totally or partially excluded from certain benefits. Essentially they concern the basic pension mechanisms (see above). However, in Iceland they have also improved benefits for the handicapped. An increase in social security income for elderly farmers, the handicapped and the unemployed, as well as family allowances for those most in need has been signalled by Greece, and for certain asbestos victims in France. The conditions governing the granting of birth allowances have been relaxed to include those most in need in the United Kingdom. In Denmark they have announced an increase in health care and pension benefits for the elderly. Similarly, France has reformed its support system for the elderly in need of long-term assistance. A personal autonomy benefit mechanism is intended to widen the circle of beneficiaries. Finally, in Finland dental health care provision has been improved, as have certain sectors of sickness insurance in Switzerland, France and Luxembourg.

III. Original reforms

This category covers changes that seemed to us to be more closely linked with the domestic context.

In the field of administrative organisation. Several countries mention restructuring exercises or announce reforms in the organisation of the institutions in charge of the basic regimes. The stated objective, referred to in the reports from Denmark, Greece, Liechtenstein, the Netherlands, Norway, Portugal and the United Kingdom, is improved efficiency and greater simplicity and clarity in the division of competencies. Sometimes, as in the case of Ireland, it involves widening the range of services. Transformations in relations between health care providers and sickness insurance management and supervisory institutions have also been announced in Iceland, Ireland and Liechtenstein. Belgium has announced a plan to change over to handling all data electronically.

Several countries, such as Germany, Iceland, Luxembourg and the Netherlands, have also moved towards greater flexibility in implementation and identical rights to parental or family leave for women and men.

In the field of employment support, we note an original variant on lowering the cost of employment as a job support mechanism introduced by the German legislature. The obligation to employ 6% of handicapped persons has been reduced to 5%, temporarily and subject to respect by employers for the moral obligation to recruit such handicapped workers within a certain period, thereby reducing the associated costs for employers. This reflects a "win-win" negotiation between the legislature and employers.

Other notable elements include the fact that Sweden has launched a vast programme to improve health at work and new measures against fraud are reported in the Netherlands.

The most original reform we have come across was in Luxembourg which, in a bilateral agreement with Germany, took an innovative step by entrusting reinsurance to the German compulsory insolvency insurance institution in the event of the

insolvency of an employer who provides a supplementary pension scheme and provided that the financing mode is internal to the company.

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